



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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July 25, 2014

VIA E-MAIL

Dillon Irrigation Company  
c/o Mike Taylor  
31466 Andrews Rd.  
Echo, OR 97826

SUBJECT: Water Right Transfer Application T-11648

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department has concluded that approval of the changes in point of diversion proposed in T-11648 would result in injury to instream water right Certificate 59837. Consistent with your request that we seek a recommendation from the Department of Fish and Wildlife (ODFW) on whether we should consent to the injury to the instream water right, we are proceeding with that process concurrently with issuance of the preliminary determination.

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530©, we may approve the transfer only if the agency that requested the instream water right concludes that the changes proposed will result in net benefits to the resources protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency review letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

After we have received recommendations from Oregon Department of Fish and Wildlife on whether to consent to the injury, provided no protests have been filed, and no meetings are requested during the 30 days following publication of notice of the recommendations, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or
- Reaffirming our decision that the instream water right would be injured and denying the transfer.

The timing for issuance of the order will depend on the availability of information needed by ODFW to perform the net benefits analysis upon which their recommendation must be based, and the time necessary to allow public review and comment on the recommendation. You are not authorized to use water from the proposed point of diversion pending the final decision by the Department on your transfer application.

A public notice is being published in the Department's weekly publication and in the Hermiston Herald newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.



If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination as modified by the recommendation of ODFW. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@wrд.state.or.us if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Joan Smith", written in a cursive style.

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11648  
Mike Ladd, North Central Regional Manager *(via e-mail)*  
Umatilla Basin Watershed Council, Agent for the applicant *(via e-mail)*  
Paul L. Wattenburger, CWRE #57194 *(via e-mail)*

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**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11648, Umatilla County	)	PROPOSING DENIAL OF A CHANGE
	)	IN POINT OF DIVERSION

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

DILLON IRRIGATION COMPANY  
31466 ANDREWS RD.  
ECHO, OR 97826

**Findings of Fact**

1. On August 9, 2013, DILLON IRRIGATION COMPANY filed an application for an additional point of diversion under adjudicated, un-certificated rights (Umatilla River Decree Volume 3, Page 127 and Volume 15, Page 378). The Department assigned the application number T-11648.
2. On March 10, 2014, the applicant requested the application be amended to a change in the point of diversion and not an additional point of diversion.
3. Notice of the application for transfer was published on August 20, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On April 17, 2014, the Department issued a draft Preliminary Determination that set a deadline of May 17, 2014, for the applicant to respond to the Department's findings.
5. On June 24, 2014, the Department mailed a revised copy of the draft Preliminary Determination proposing to deny Transfer Application T-11648 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 24, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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6. On June 27, 2014, the applicant requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5050.

7. The first right to be transferred is as follows:

**Decree:** Umatilla River in the name of DILLON IRRIGATION COMPANY  
(Volume 3 Page, 127)

**Use:** IRRIGATION, LIVESTOCK, AND DOMESTIC of 753.40 ACRES

**Priority Date:** NOVEMBER 17, 1897 and 1907

**Rate/Duty:** 9.30 CUBIC FEET PER SECOND (subject to the provisions of the Umatilla River Decree, Paragraph 33)

**Period of Use:** Usually MARCH 1 to NOVEMBER 1

**Source:** UMATILLA RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:** Not described in Decree

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	1	NE NE	40.00
3 N	28 E	WM	1	NW NE	19.80
3 N	28 E	WM	1	NW NE	15.20
3 N	28 E	WM	1	SW NE	10.20
3 N	28 E	WM	1	SW NE	13.80
3 N	28 E	WM	1	SE NE	14.00
3 N	28 E	WM	1	NE NW	15.00
3 N	29 E	WM	6	NW NW	50.00
3 N	29 E	WM	6	SW NW	42.90
4 N	28 E	WM	35	NE NE	13.00
4 N	28 E	WM	35	NW NE	12.00
4 N	28 E	WM	35	SW NE	20.00
4 N	28 E	WM	35	SE NE	20.00
4 N	28 E	WM	35	NE NW	18.00
4 N	28 E	WM	35	NW NW	9.70
4 N	28 E	WM	35	SW NW	7.00
4 N	28 E	WM	35	SE NW	19.00
4 N	28 E	WM	36	NW NE	2.00
4 N	28 E	WM	36	SW NE	7.00
4 N	28 E	WM	36	SW NE	20.00
4 N	28 E	WM	36	SE NE	18.90
4 N	28 E	WM	36	SE NE	9.90
4 N	28 E	WM	36	SE NE	9.70
4 N	28 E	WM	36	NE NW	19.10
4 N	28 E	WM	36	NW NW	20.00
4 N	28 E	WM	36	SW NW	40.00
4 N	28 E	WM	36	SE NW	40.00
4 N	28 E	WM	36	NE SW	39.10
4 N	28 E	WM	36	NW SW	36.10
4 N	28 E	WM	36	SW SW	8.00
4 N	28 E	WM	36	SE SW	31.00
4 N	28 E	WM	36	NE SE	37.00
4 N	28 E	WM	36	SE SE	36.00
4 N	29 E	WM	31	NW SW	20.00
4 N	29 E	WM	31	SW SW	20.00
<b>TOTAL</b>					<b>753.40</b>

8. The Umatilla River Decree Volume 3, Page 127, does not provide a detailed description of the location of the authorized the point of diversion, however the applicant has provided a description of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Measured Distances
3 N	29 E	WM	8	SE NW	1200	1475 FEET SOUTH AND 2285 FEET EAST FROM THE NW CORNER OF SECTION 8

9. Transfer Application T-11648 proposes to move the point of diversion to a location approximately 2.6 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	21	SW NE	100	NORTH 76 DEGREES 45 MINUTES 56 SECONDS EAST; 2913.19 FEET FROM THE W ¼ CORNER OF SECTION 21

10. Transfer Application T-11648 also proposes to change the place of use of the right to:

PRIORITY DATE: NOVEMBER 17, 1897						
IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
3 N	28 E	WM	1	NE NE	40.00	100
3 N	28 E	WM	1	NW NE	19.80	100
3 N	28 E	WM	1	NW NE	15.20	400
3 N	28 E	WM	1	SW NE	10.20	400
3 N	28 E	WM	1	SW NE	13.80	401
3 N	28 E	WM	1	SE NE	14.00	400
3 N	28 E	WM	1	NE NW	10.00	400
3 N	29 E	WM	6	NW NW	50.00	600
3 N	29 E	WM	6	SW NW	42.90	600
4 N	28 E	WM	36	NW NE	2.00	2902
4 N	28 E	WM	36	SW NE	14.40	2902
4 N	28 E	WM	36	SW NE	12.60	3000
4 N	28 E	WM	36	SE NE	18.90	2600
4 N	28 E	WM	36	SE NE	9.90	2700
4 N	28 E	WM	36	SE NE	9.70	2800
4 N	28 E	WM	36	NE SE	37.00	3100
4 N	28 E	WM	36	SE SE	36.00	3100
4 N	29 E	WM	31	NW SW	3.50	1700
4 N	29 E	WM	31	SW SW	3.50	1700
<b>TOTAL</b>					<b>363.40</b>	

PRIORITY DATE: 1907						
IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
3 N	28 E	WM	1	NE NW	5.00	400
4 N	28 E	WM	35	NE NE	13.00	3402
4 N	28 E	WM	35	NW NE	12.00	3402
4 N	28 E	WM	35	SW NE	20.00	3407
4 N	28 E	WM	35	SE NE	20.00	3490
4 N	28 E	WM	35	NE NW	18.00	3400
4 N	28 E	WM	35	NW NW	9.70	3400

PRIORITY DATE: 1907						
IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
4 N	28 E	WM	35	SW NW	7.00	3400
4 N	28 E	WM	35	SE NW	19.00	3400
4 N	28 E	WM	36	NE NW	19.10	3200
4 N	28 E	WM	36	NW NW	20.00	3490
4 N	28 E	WM	36	SW NW	40.00	3490
4 N	28 E	WM	36	SE NW	40.00	3200
4 N	28 E	WM	36	NE SW	39.10	3200
4 N	28 E	WM	36	NW SW	36.10	3490
4 N	28 E	WM	36	SW SW	8.00	3406
4 N	28 E	WM	36	SE SW	31.00	3200
4 N	29 E	WM	31	NW SW	16.50	1700
4 N	29 E	WM	31	SW SW	16.50	1700
<b>TOTAL</b>					<b>390.00</b>	

11. The second right to be transferred is as follows:

**Decree** Umatilla River in the name of DILLON IRRIGATION COMPANY  
(Volume 15, Page 397)

**Use:** IRRIGATION of 1008.80 ACRES

**Priority Date:** 1907

**Rate/Duty:** 14.41 CUBIC FEET PER SECOND (subject to the provisions of the  
Umatilla River Decree, Paragraph 33)

**Period of Use:** USUALLY MARCH 1 TO NOVEMBER 1

**Source:** UMATILLA R, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:** DILLON CANAL

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
3 N	28 E	WM	1	NW NE	3.30	400
3 N	28 E	WM	1	SW NE	7.10	401
3 N	28 E	WM	1	NE NW	23.00	400
3 N	28 E	WM	1	NW NW	31.80	400
3 N	28 E	WM	1	NW NW	1.10	401
3 N	28 E	WM	1	SW NW	34.60	401
3 N	28 E	WM	1	SE NW	1.20	400
3 N	28 E	WM	1	SE NW	33.10	401
3 N	28 E	WM	1	NE SW	35.70	401
3 N	28 E	WM	1	NW SW	25.10	401
3 N	28 E	WM	1	SE SW	23.60	401
3 N	28 E	WM	1	NE SE	38.00	300
3 N	28 E	WM	1	NW SE	40.00	401
3 N	28 E	WM	1	NW SE	34.20	401
3 N	28 E	WM	1	SE SE	37.40	300
3 N	29 E	WM	6	NW SW	51.80	1190
3 N	29 E	WM	6	SW SW	53.00	1190
4 N	28 E	WM	34	SW NE	8.20	3400

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
4 N	28 E	WM	34	SE NE	10.80	3400
4 N	28 E	WM	34	SW NW	2.40	3400
4 N	28 E	WM	34	SW NW	16.40	3404
4 N	28 E	WM	34	SE NW	11.60	3400
4 N	28 E	WM	34	SE NW	12.90	3404
4 N	28 E	WM	34	NE SE	17.00	3600
4 N	28 E	WM	35	NE NE	1.50	3402
4 N	28 E	WM	35	SW NE	5.00	3407
4 N	28 E	WM	35	SW NW	24.00	3400
4 N	28 E	WM	35	SE NW	16.30	3400
4 N	28 E	WM	35	NE SW	39.40	3400
4 N	28 E	WM	35	NW SW	38.00	3400
4 N	28 E	WM	35	SW SW	26.10	3400
4 N	28 E	WM	35	SE SW	39.80	3400
4 N	28 E	WM	35	NE SE	20.80	3400
4 N	28 E	WM	35	NW SE	39.40	3400
4 N	28 E	WM	35	SW SE	35.80	3400
4 N	28 E	WM	35	SE SE	35.00	3403
4 N	28 E	WM	36	NE NE	5.00	2800
4 N	28 E	WM	36	NW NE	9.20	2902
4 N	28 E	WM	36	NW NE	3.80	3000
4 N	28 E	WM	36	SW NE	5.40	2900
4 N	28 E	WM	36	SW NE	3.40	3000
4 N	28 E	WM	36	NW NW	11.40	3490
4 N	28 E	WM	36	SW SW	24.50	3406
4 N	28 E	WM	36	SE SW	3.80	3406
4 N	28 E	WM	36	NW SE	30.50	3100
4 N	28 E	WM	36	SW SE	34.00	3100
4 N	29 E	WM	31	NW SW	3.40	1700
<b>TOTAL</b>					<b>1008.80</b>	

12. The Umatilla River Decree Volume 15, Page 397, does not provide a detailed description of the location of the authorized the point of diversion, however the applicant has provided a description of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	8	SE NW	1200	1475 FEET SOUTH AND 2285 FEET EAST FROM THE NW CORNER OF SECTION 8

13. Transfer Application T-11648 proposes to change the point of diversion to a location approximately 2.6 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
3 N	29 E	WM	21	SW NE	100	NORTH 76 DEGREES 45 MINUTES 56 SECONDS EAST; 2913.19 FEET FROM THE W¼ CORNER OF SECTION 21

14. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.


***Transfer Review Criteria [OAR 690-380-4010(2)]***

15. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
16. A pump and pipeline and a municipal delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11648.
17. The Department requires a suitable measuring device at the proposed point of diversion. The proposed point of diversion is currently equipped with a gaging station that satisfies this requirement.
18. The proposed change would not result in enlargement of the right.
19. An instream water right, Certificate 59837, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed point of diversion.

**Determination and Proposed Action**

The change point of diversion proposed in Transfer application T-11648 appears NOT to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be DENIED unless the Oregon Department of Fish and Wildlife recommends the Department consent to injury of an instream water right filed pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 25 day of July 2014.

  
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Dwight French, Water Right Division Services  
Administrator, for  
DIRECTOR, Water Resources Department

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@ wrd.state.or.us

*Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*