



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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VIA E-MAIL

EAST FORK IRRIGATION DISTRICT
PO BOX 162
ODELL OR 97044

SUBJECT: Water Right Transfer Application T-11643

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11643. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Hood River News 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. 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 503-986-0886 or Patrick.K.Starnes@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst

cc: Transfer Application T-11643
Robert L Wood, District 3 Watermaster (*via e-mail*)
Larry Toll, CWRE/Agent for the applicant (*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-11643, Hood River County)	PROPOSING APPROVAL OF
)	CHANGES IN CHARACTER OF USE
)	AND PLACE OF USE

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

East Fork Irrigation District
PO Box 162
Odell OR 97044

Findings of Fact

1. On August 1, 2013, John Buckley of East Fork Irrigation District filed an application to change the character of use and place of use under portions of Certificates 80928, 81340 and 84803. The Department assigned the application number T-11643.
2. Notice of the application for transfer was published on August 6, 2013 pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 10, 2014, the applicant amended the application to delete a portion of the proposed "TO" lands because the landowners could not secure a change in the Local Land Use zoning ordinance to allow industrial use. The district submitted a new amended map as well to reflect to better describe the place of use and proposed "TO" lands.
4. On June 16, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11643 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 15, 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.

5. On August 20, 2014, the Department revised the draft Preliminary Determination to include conditions to prevent enlargement of the rights involved and e-mailed a copy to the applicant and agent. No response was received from the applicant nor agent.
6. The portion of the first right to be transferred is as follows:

Certificate: 80928 in the name of EAST FORK IRRIGATION DISTRICT (perfected under Permit S-30825)
Use: IRRIGATION OF 4.0 ACRES
Priority Date: AUGUST 13, 1965
Rate: 0.05 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: EAST FORK HOOD RIVER, a tributary of HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 E	WM	4	NW SW	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	10 E	WM	11	NW SW	1301	4.0

7. Certificate 80928 sets an annual duty (total volume diverted) of 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The annual duty (total volume diverted) of water for 4.0 acres of equivalent irrigation use would be 12.0 acre-feet (4.0 acres x 3.0 acre-feet per acre).
8. The portion of the second right to be transferred is as follows:

Certificate: 81340 in the name of EAST FORK IRRIGATION DISTRICT (decree of the Circuit Court of the State of Oregon for Hood River County)
Use: IRRIGATION OF 4.2 ACRES
Priority Date: NOVEMBER 25, 1895
Rate: 0.05 CUBIC FOOT PER SECOND (CFS)
Source: EAST FORK HOOD RIVER, a tributary of HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 N	10 E	WM	12	NW SE	400	0.50
2 N	10 E	WM	13	NW SE	900	0.75
2 N	10 E	WM	25	SE NW	1301	2.15
2 N	10 E	WM	26	NE NW	2100	0.20
2 N	10 E	WM	26	SE NW	311	0.10
2 N	10 E	WM	36	SE SE	802	0.50
TOTAL						4.20

9. The Hood River decree sets an annual duty (total volume diverted) of 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The annual duty (total volume diverted) of water for 4.2 acres of equivalent irrigation use would be 12.6 acre-feet (4.2 acres x 3.0 acre-feet per acre).

10. The portion of the third right to be transferred is as follows:

Certificate: 84803 in the name of EAST FORK IRRIGATION DISTRICT (perfected under Permit S-43395)

Use: IRRIGATION of 8.7 ACRES

Priority Dates: AUGUST 8, 1977 FOR 0.10 CUBIC FOOT PER SECOND (CFS) AND AUGUST 3, 1978 FOR 0.01 CFS

Rate: 0.11 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: EAST FORK HOOD RIVER, a tributary of HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 E	WM	4	NW SW	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	10 E	WM	10	NE SE	200	4.10
1 N	10 E	WM	10	NE SE	300	4.50
1 N	10 E	WM	29	NW SW	510	0.10
TOTAL						8.70

11. Certificate 84803 sets an annual duty (total volume diverted) of 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The annual duty (total volume diverted) of water for 8.7 acres of equivalent irrigation use would be 26.1 acre-feet (8.7 acres x 3.0 acre-feet per acre).

12. Transfer Application T-11643 proposes to change the character of use to Industrial Use for the three water rights described above. The applicant has agreed to the Industrial Use being limited to the irrigation season of April 15 to October 1 of each year.
13. Transfer Application T-11643 also proposes to change the place of use of the above described rights to:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Q-Q	Tax Lot
1 N	10 E	WM	10	SE NE	1000, 1100
1 N	10 E	WM	11	NW NW	300
1 N	10 E	WM	11	SW NW	400, 500, 601, 1200
1 N	10 E	WM	11	NW SW	1302

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

14. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A diversion structure, ditches, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11643.
16. The proposed changes would not result in enlargement of the rights, provided the rates of diversion and total volumes diverted for industrial use under each right during the time period of April 15 to October 1 of each year, do not exceed:

Certificate	Maximum Rate (cfs)	Maximum Total Volume diverted (acre-feet)
80928	0.05	12.0
81340	0.05	12.6
84803	0.11	26.1

17. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

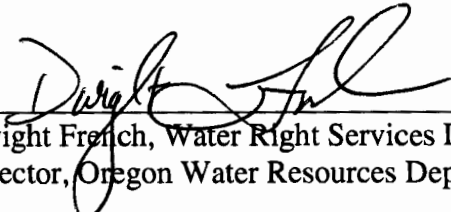
The changes in character of use and place of use proposed in Transfer Application T-11643 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11643 is approved, the final order will include the following:

1. *The changes in character of use and place of use proposed in Transfer Application T-11626 are approved.*

2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 80928, 81340 and 84803 and any related decree.*
3. *Water right certificates 80928, 81340 and 84803 are modified. The Department will issue superseding certificates, in the name of East Fork Irrigation District, describing the rights when it determines that it is necessary for record keeping.*
4. *The quantity of water allowed for industrial use under the right described by Certificate 80928 shall not exceed a rate of diversion of 0.05 cubic foot per second (cfs) and a maximum total annual volume of water diverted of 12.0 acre-feet (af) during the time period April 15 to October 1 of each year.*
5. *The quantity of water allowed for industrial use under the right described by Certificate 81340 shall not exceed a rate of diversion of 0.05 cubic foot per second (cfs) and a maximum total annual volume of water diverted of 12.6 acre-feet (af) during the time period April 15 to October 1 of each year.*
6. *The quantity of water allowed for industrial use under the right described by Certificate 84803, shall not exceed a rate of diversion of 0.10 cubic foot per second (cfs) with a priority date of August 8, 1977 and 0.01 cfs with a priority date of August 3, 1978, and a maximum total annual volume of water diverted of 26.1 acre-feet (af) during the time period April 15 to October 1 of each year.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the District to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

Dated at Salem, Oregon this 10 day of September, 2014.



Dwight French, Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

This preliminary determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@ wrd.state.or.us.