



Oregon
Kate Brown, Governor

Water Resources Department
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March 24, 2015

VIA E-MAIL

FLYWAYS RANCH LLC
2625 NORTH ROLLING HILLS DR
STAR, ID 83669

SUBJECT: Water Right Transfer Application T-11776

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11776. 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 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 Department's notice.

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 Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11776
Ronald K. Jacobs, District 9 Watermaster (*via e-mail*)
Michael Holladay, CWRE #69 (*via e-mail*)
Owyhee Irrigation District

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11776, Malheur County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND PLACE OF USE, AND THE
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

FLYWAYS RANCH LLC
2625 NORTH ROLLING HILLS DR
STAR, ID 83669

Findings of Fact

1. On April 2, 2014, FLYWAYS RANCH LLC filed an application to change the point of diversion and to change the place of use under Certificate 28453. The Department assigned the application number T-11776.
2. Notice of the application for transfer was published on April 15, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 24, 2014, the Department contacted the applicant by email to notify them of deficiencies in the application. The Department requested that the deficiencies be resolved by October 27, 2014. The main deficiencies being: an incomplete transfer map, the documentation for the Evidence of Use Affidavit was not provided and the application page (Table 2) describing the changes needed clarification. Later contacts were made with the applicant and the applicant's Certified Water Rights Examiner (CWRE) and the date for response was eventually extended to February 23, 2015.

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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4. On February 17, 2015, the CWRE submitted final amended documentation resolving the deficiencies.
5. On February 17, 2015, the applicant submitted an Affidavit for Partial Cancellation of Water Right Certificate 28453 requesting to voluntarily cancel 0.5 acre of irrigation use appurtenant to tax lot 900, in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 25, T 20 S, R 46 E, W.M.
6. On February 19, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11776 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 23, 2015, 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.
7. The portion of the right to be transferred is as follows:

Certificate: 28453 in the name of ARCHIE D. MOSES (perfected under Permit S-16540)

Use: IRRIGATION of 26.8 ACRES

Priority Date: AUGUST 24, 1945

Rate: 0.449 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-SIXTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: APRIL 1 TO OCTOBER 15

Source: OWYHEE RIVER, tributary of SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
20 S	46 E	WM	25	SE SW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
20 S	46 E	WM	25	SE SW	4.02	POD/POU
20 S	46 E	WM	36	NE NW	0.06	POD/POU
20 S	46 E	WM	36	NW NW	5.24	POD/POU
20 S	46 E	WM	36	SW NW	2.00	POD/POU
20 S	46 E	WM	36	SE NW	0.10	POD/POU
Total POD/POU Change:					11.42	
20 S	46 E	WM	25	SE SW	5.68	POD
20 S	46 E	WM	36	NE NW	6.94	POD
20 S	46 E	WM	36	NW NW	2.76	POD
Total POD Only Change:					15.38	

8. Certificate 28453 does not describe the measured distances of the point of diversion, however information is available from the applicant and CWRE further describing the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	46 E	WM	25	SE SW	POD 1: NORTH 37 DEGREES 25 MINUTES 46 SECONDS EAST 627.90 FEET FROM THE WEST 1/16 CORNER OF SECTION 25

9. Transfer Application T-11776 proposes to move the authorized point of diversion approximately 200 feet northeast, due to a shift in the river, to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	46 E	WM	25	SE SW	POD 2: NORTH 20 DEGREES 22 MINUTES 30 SECONDS EAST 662.63 FEET FROM THE WEST 1/16 CORNER OF SECTION 25

10. Transfer Application T-11776 proposes to change the point of diversion and to change the place of use of the right as identified below:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
20 S	46 E	WM	36	NE NW	10.70	POU/POD
20 S	46 E	WM	36	NW NW	0.72	POU/POD
Total POU/POD change:					11.42	
20 S	46 E	WM	25	SE SW	5.68	POD
20 S	46 E	WM	36	NE NW	6.94	POD
20 S	46 E	WM	36	NW NW	2.76	POD
Total POD Only Change:					15.38	

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.

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

12. Water has been used within the last five years 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.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11776.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

16. On February 17, 2015, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from David Charlton, Managing Partner of Flyways Ranch. The right to be cancelled is as follows:

Certificate: 28453 in the name of ARCHIE D. MOSES (perfected under Permit S-16540)
Use: IRRIGATION of 0.5 ACRE
Priority Date: AUGUST 24, 1945
Rate: 0.001 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-SIXTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: APRIL 1 TO OCTOBER 15
Source: OWYHEE RIVER, tributary of SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
20 S	46 E	WM	25	SE SW

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acre
20 S	46 E	WM	25	SE SW	0.50

Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11776 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11776 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11776 are approved. The portion of the right that has been abandoned is cancelled.*
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 Certificate 28453 and any related decree.*
3. *Water right Certificate 28453 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*

4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *Within one year after receiving written notification from the ODFW that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 24 day of March, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.