



# Oregon

Kate Brown, Governor

November 17, 2015

**Water Resources Department**

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Salem, OR 97301

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TOM R. AND DONNA L BUTTERFIELD  
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JOSEPH, OR 97846

SUBJECT: Water Right Transfer Application T-11821

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11821. 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 503-986-0886 or [Patrick.K.Starnes@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: T-11821  
David D. Bates, District 7 Watermaster (*via e-mail*)  
Gregory T. Blackman, Agent/ CWRE for the applicant (*via e-mail*)



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

**Certificate:** 3024 in the name of FARMERS WATER DITCH CO. (confirmed by Wallowa River)

**Use:** IRRIGATION OF 70.0 ACRES, LIVESTOCK AND DOMESTIC

**Priority Date:** 1900

**Limit/Duty:** The amount of water to which right is entitled is limited to an amount actually beneficially used for said purposes, and shall not exceed 1½ acre feet per acre during any period of 30 days prior to July 31 of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of the irrigation season.

**Source:** WALLOWA RIVER, a tributary of the GRANDE RONDE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	
2 S	45 E	WM	5	NWNW	FARMERS DITCH

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	27	NW NE	20.0
2 S	45 E	WM	27	SW NE	40.0
2 S	45 E	WM	27	NW SE	10.0
TOTAL					70.0

6. Transfer Application T-11821 proposes to move the authorized point of diversion less than ¼ mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH - 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5.

7. 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)]**

8. The quantity of water delivered by the Associated Ditch Companies to the ditches downstream in this reach meets the requirements of the instream right; therefore water is available within the instream reach specified in Certificate 73022.
9. 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.

10. A diversion structure and ditch 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-11821.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water right.

**Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-11821 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11821 is approved, the final order will include the following:*

1. *The change in point of diversion proposed in Transfer Application T-11821 is 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 Certificate 3024 and any related decree.*
3. *Water right certificate 3024 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
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 water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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 change and full beneficial use of the water.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 17 day of November, 2015.



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or [marcy.j.osborn@wrд.state.or.us](mailto:marcy.j.osborn@wrд.state.or.us) .

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.