

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11738, Umatilla County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	DIVERSION AND CHANGES IN
	)	PLACE OF USE

**Authority**

ORS 540.505 to 540.580 establish 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**

Mike Becker  
P.O. Box 1159  
La Grande, OR 97850

**Agent**

Ronald V. McKinnis  
79980 Prindle Loop Rd  
Hermiston, OR 97838

**Findings of Fact**

1. On February 6, 2014, Robert Forth filed an application for additional points of diversions and to change the place of use under two decreed water rights evidenced in Umatilla River Decree in Volume 3, Page 241 and Supplemental Findings, Volume 15, Page 428. These lands also have a supplemental water right under Permit 7400. The Department assigned the application number T-11738.
2. Notice of the application for transfer was published on February 18, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 17, 2014, the Department received a new amended application and revised maps to describe the place of use.
4. On April 16, 2015, Transfer Application T-11738 was assigned from Robert Forth to Mr. Mike Becker.
5. On February 1, 2016, the agent and CWRE for the applicant submitted another revised, amended application and map clarifying the original point of diversion and the place of use for the supplemental water right.

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. The portion of the first right and its layered supplemental water right to be transferred are as follows:

**Water Use:** Water Right evidenced by Umatilla River Decree, Volume 3, Page 241, in the name of J. E. SMITH; LIVESTOCK CO. (confirmed by Umatilla River Decree)

**Use:** IRRIGATION OF 81.20 ACRES AND STOCK

**Priority Date:** 1890 FOR 66.45 ACRES AND 1902 FOR 14.75 ACRES

**Rate:** 0.83 CUBIC FEET PER SECOND (cfs) for 1890 and 0.185 cfs for 1902

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

**Certificate:** 79439, issued in the name of U. S. Bureau of Reclamation (perfected under Permit S-7400)

**Use:** SUPPLEMENTAL IRRIGATION OF 81.2 ACRES

**Priority Date:** July 1, 1924

**Rate & 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 cfs, (or its equivalent) provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

**Source:** McKAY RESERVOIR (constructed under reservoir Permit R-564), a tributary of McKAY CREEK. Water is run down the natural channels of McKay Creek and Umatilla River and is re-diverted at the point of diversion / Barnhart Ditch

**Authorized Point of Diversion and Re-Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	NW SE	McKAY DAM
2 N	31 E	WM	14	NW NE	BARNHART DITCH ( <i>re-diversion</i> ) - SOUTH 0 °53'30" EAST 1235.4 FEET FROM THE N¼ CORNER OF SECTION 14 (Sp. Ord. Vol. 8, Pg 205)

**Authorized Places of Use:**

IRRIGATION (IR), SUPPLEMENTAL IRRIGATION (IS), AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Acres ( <i>priority date</i> )		
					Vol.3, Pg 241		Permit 7400
					1890	1902	
2 N	31 E	WM	14	NW SW	4.50	--	4.50
2 N	31 E	WM	15	SW NW	--	8.70	8.70
2 N	31 E	WM	15	SE NW	5.95	6.05	12.00
2 N	31 E	WM	15	NE SW	27.75	--	27.75
2 N	31 E	WM	15	NW SW	7.75	--	7.75
2 N	31 E	WM	15	NE SE	2.50	--	2.50
2 N	31 E	WM	15	NW SE	18.00	--	18.00
Total					66.45	14.75	81.20

7. The water use tabulated in Volume 3, Page 241 of the Umatilla River Decree identifies a Barnhart Ditch as the delivery system, but does not describe the location of the point of diversion from the Umatilla River for the water use. Information is available however from Transfer Application T-6368's application map and Department record's Permit 7400 McKay Reservoir supplemental water right map. In addition, information is available from the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicating that the point of diversion on the Umatilla River is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	31 E	WM	14	NW NE	BARNHARDT DITCH – NORTH 0°53'30" EAST 1235.4 FEET FROM THE N¼ CORNER OF SECTION 14

8. Transfer Application T-11738 proposes an additional point of diversion downstream approximately 2.0 miles from the authorized point of diversion. The proposed additional point of diversion is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	31 E	WM	15	NW SW	POD #4 - 1815 FEET NORTH AND 590 FEET EAST FROM THE SW CORNER OF SECTION 15

9. Transfer Application T-11738 proposes to change the place of use of the above described rights to:

IRRIGATION (IR), SUPPLEMENTAL IRRIGATION (IS) AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Acres (priority date)		
					Vol.3, Pg 241		Permit 7400
					1890	1902	
2 N	31 E	WM	14	NW SW	1.45	--	1.45
2 N	31 E	WM	15	SW NE	0.10	--	0.10
2 N	31 E	WM	15	SW NW	--	1.95	1.95
2 N	31 E	WM	15	SE NW	0.30	6.65	6.95
2 N	31 E	WM	15	NE SW	21.80	5.65	27.45
2 N	31 E	WM	15	NW SW	6.80	0.50	7.30
2 N	31 E	WM	15	NE SE	17.90	--	17.90
2 N	31 E	WM	15	NW SE	18.10	--	18.10
Total					66.45	14.75	81.20

10. The second right and its layered supplemental water right to be transferred are as follows:

**Water Use:** Water Right evidenced by Umatilla River Decree, Supplemental Findings, Vol. 15, Page 428, in the name of BROWNS DAIRY (confirmed by Umatilla River Decree)

**Use:** IRRIGATION OF 7.8 ACRES

**Priority Date:** 1902

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

**Original Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	31 E	WM	14	NW NE	BARNHART DITCH - SOUTH 0°53'30" EAST 1235.4 FEET FROM THE N¼ CORNER OF SECTION 14 (Sp. Ord. Vol. 8, Pg 205)

**Certificate:** 79439, issued in the name of U. S. Bureau of Reclamation (perfected under Permit S-7400)

**Use:** SUPPLEMENTAL IRRIGATION OF 7.8 ACRES

**Priority Date:** July 1, 1924

**Rate & 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 cfs, (or its equivalent) provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

**Source:** McKAY RESERVOIR, (constructed under reservoir Permit R-564), a tributary of McKAY CREEK. Water is run down the natural channels of McKay Creek and Umatilla River and is re-diverted at the point of diversion / Barnhart Ditch

**Authorized Point of Diversion and Re-Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	32 E	WM	34	NW SE	McKAY DAM
2 N	31 E	WM	14	NW NE	BARNHART DITCH ( <i>re-diversion</i> ) - SOUTH 0 °53'30" EAST 1235.4 FEET FROM THE N¼ CORNER OF SECTION 14 (Sp. Ord. Vol. 8, Pg 205)

**Authorized Places of Use:**

IRRIGATION(IR), SUPPLEMENTAL IRRIGATION(IS), AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres ( <i>water use</i> )	
					Vol.15, Pg 428	Permit 7400
2 N	31 E	WM	15	SW NE	2.20	2.20
2 N	31 E	WM	15	SE NW	0.30	0.30
2 N	31 E	WM	15	NE SW	1.45	1.45
2 N	31 E	WM	15	NW SW	2.25	2.25
2 N	31 E	WM	15	NE SE	0.30	0.30
2 N	31 E	WM	15	NW SE	1.30	1.30
Total					7.80	7.80

11. Transfer Application T-11738 proposes to change the place of use of the above described rights to:

IRRIGATION(IR), SUPPLEMENTAL IRRIGATION(IS), AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres ( <i>water use</i> )	
					Vol.15, Pg 428	Permit 7400
2 N	31 E	WM	15	SW NW	4.10	4.10
2 N	31 E	WM	15	NW SW	3.70	3.70
Total					7.80	7.80

12. Transfer Application T-11738 proposes an additional point of diversion downstream approximately 2.0 miles from the authorized point of diversion. The proposed additional point of diversion is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	31 E	WM	15	NW SW	POD #4 - 1815 FEET NORTH AND 590 FEET EAST FROM THE SW CORNER OF SECTION 15

13. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion (POD #4) to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
14. On February 1, 2016, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-11738 to the applicant. The Preliminary Determination set forth a deadline of March 2, 2016 for the applicant to respond. On February 19, 2016, the applicant requested 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.

***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 rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
16. A diversion structure and ditches 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-11738.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The additional points of diversion and changes in place of use proposed in Transfer Application T-11738 appear 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-11738 is approved, the final order will include the following:*

1. *The additional points of diversion and changes in place of use proposed in Transfer Application T-11738 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in water use described in said decree.*

3. *Water rights evidenced and tabulated in the Umatilla River Decree at Volume 3, Page 241, and the water right tabulated in the Supplemental Findings Volume 15, Page 428 of said decree are cancelled.*
4. *The quantity of water diverted at the new additional point of diversion, together with that diverted at the original points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each new point of diversion.*
  - b. *The water user shall maintain the meter or measuring device in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*
7. *The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If 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.*
8. *The former places of use of the transferred rights shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15 day of March 2016.

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

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.

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.