

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre, and shall be subject to all other conditions and limitations contained in said decree.

Source: EAGLE CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	23	SE SE	10.5

5. Certificate 4754 does not describe the location of the point of diversion, however information is available from Certificate 89274 and the CWRE's survey indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH - 940 FEET NORTH AND 190 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 10

6. Transfer Application T-12759 proposes an additional point of diversion approximately 2.3 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	45 E	WM	33	SE NW	NEWT YOUNG DITCH - 1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

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

Certificate: 4772 in the name of W.B. WRIGHT (confirmed by Powder River Decree)

Use: IRRIGATION of 33.8 ACRES

Priority Date: 1886

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre, and shall be subject to all other conditions and limitations contained in said decree.

Source: EAGLE CREEK, tributary to the POWDER RIVER

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	23	NE SE	27.3
9 S	45 E	WM	23	SE SE	6.5
Total					33.8

8. Certificate 4772 does not describe the location of the point of diversion, however information is available from Certificate 89274 and the CWRE's survey indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SE NW	KAY YOUNG DITCH - 940 FEET NORTH AND 190 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 10

9. Transfer Application T-12759 proposes an additional point of diversion approximately 2.3 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	45 E	WM	33	SE NW	NEWT YOUNG DITCH - 1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

10. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screen. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of five years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

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

11. Water has been used within the last five years 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.
12. A diversion structure and ditch 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-12759.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

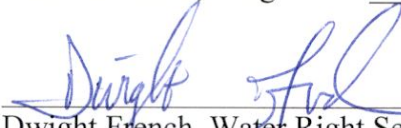
The additional point of diversion proposed in Transfer Application T-12759 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12759 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-12759 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 Certificates 4754 and 4772 and any related decree.*
3. *Water right Certificates 4754 and 4772 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use, the water user shall install a ramp flume or parshall flume, or with prior approval of the Director, another suitable measuring device, at each new point of diversion.*
 - b. *The water user shall maintain the measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Before water use, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
7. *By October 1, 2023, or within five years after the date of this order the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2023. The water user shall provide to 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. The water user shall maintain and operate 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*

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

Dated at Salem, Oregon this APR 05 2018.


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@oregon.gov.

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>