

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12020, Malheur County	)	PROPOSING APPROVAL OF
	)	CHANGES IN POINT OF DIVERSION
	)	AND PLACE OF USE AND PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT

**Authority**

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement 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**

ROBERT K. AND SUSAN B. CARLSON  
2300 ASPEN COVE DR  
MERIDIAN, ID 83642  
robertkcarlson@aol.com

**Findings of Fact**

1. On March 30, 2015, ROBERT K. AND SUSAN B. CARLSON filed an application to change the point of diversion and to change the place of use under Certificates 75699 and 44030. The Department assigned the application number T-12020.
2. Notice of the application for transfer was published on April 7, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 28, 2017, the applicant submitted an amended transfer application.
4. On December 28, 2017, the applicant submitted an amended transfer map.
5. On January 26, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12020 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 26, 2018, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2023 and

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.

for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

**Certificate:** 75699 in the name of OWYHEE DITCH CO. (confirmed by Owyhee River Decree)

**Use:** IRRIGATION of 2.0 ACRES

**Priority Date:** OCTOBER 30, 1888

**Limit/Duty:** The amount of water to which this right is entitled for the purposes aforesaid shall not exceed 1.0 acre foot per acre during any calendar month prior to June 1<sup>st</sup> and .75 acre foot per acre during any calendar month after June 1<sup>st</sup> of each year, and a total not to exceed 3.0 acre feet per acre during the irrigation season.

**Period of Use:** APRIL 1 – OCTOBER 15

**Source:** OWYHEE RIVER, tributary to the SNAKE RIVER

**Authorized Point of Diversion:**

Ditch Name
THE OWYHEE DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	31	SE NW	2.0

7. Transfer Application T-12020 proposes to move the authorized point of diversion approximately 6.3 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	45 E	WM	9	SW NW	CARLSON POD - 1580 FEET NORTH AND 270 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 9

8. Transfer Application T-12020 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	45 E	WM	9	NW NW	1.2
22 S	45 E	WM	9	SW NW	0.8
				Total	2.0

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

**Certificate:** 44030 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-33967)  
**Use:** SUPPLEMENTAL IRRIGATION of 2.0 ACRES  
**Priority Date:** NOVEMBER 7, 1968  
**Rate:** 21000.0 ACRE-FEET  
**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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein 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 herein.  
**Source:** OWYHEE RESERVOIR, tributary to the OWYHEE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
22 S	45 E	WM	20	NW SE

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	31	SE NW	2.0

10. Transfer Application T-12020 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	45 E	WM	9	NW NW	1.2
22 S	45 E	WM	9	SW NW	0.8
Total					2.0

11. 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. This diversion may be eligible for screening cost-share funds.

***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 rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 13. 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-12020.
- 14. The proposed changes would not result in enlargement of the rights.
- 15. The proposed changes would not result in injury to other water rights.

**Partial Cancellation of a Water Right**

16. On January 12, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Charles Hansen & the irrigation district. The right to be cancelled is as follows:

**Certificate:** 29394 in the name of OWYHEE DITCH CO. (perfected under Permit S-23806)  
**Use:** SUPPLEMENTAL IRRIGATION of 2.0 ACRES  
**Priority Date:** MARCH 14, 1955  
**Rate:** 0.004 CUBIC FEET 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, 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, and shall also be limited to the water available at the proposed point of diversion and shall not carry with it the right to compel the continuance of the waste water.  
**Source:** WASTEWATER IN COW HOLLOW WASTEWAY, tributary to the OWYHEE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
20 S	46 E	WM	33	SW NE

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	31	SE NW	2.0

17. On January 12, 2018, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Charles Hansen & the irrigation district. The right to be cancelled is as follows:

**Certificate:** 75690 in the name of UNITED STATES OF AMERICA BUREAU OF RECLAMATION (perfected under Permit S-24285)  
**Use:** SUPPLEMENTAL IRRIGATION of 2.0 ACRES  
**Priority Date:** OCTOBER 1, 1951  
**Rate:** 0.04 CUBIC FEET 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, is limited to ONE-FORTIETH 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 6.7 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** SNAKE RIVER, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
20 S	47 E	WM	18	NE SW	3	DUNAWAY PUMPING PLANT

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	31	SE NW	2.0

**Determination and Proposed Action**

The change in point of diversion and change in place of use proposed in Transfer Application T-12020 appears 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 rights will be cancelled.

*If Transfer Application T-12020 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-12020 are approved. The portion of the rights that has been abandoned are 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 Certificates 75699 and 44030 and any related decree.*
3. *Water right certificates 29394, 75690, 75699 and 44030 are modified. The Department will issue superseding certificates describing the rights when it determines that it is necessary for record keeping.*
4. *The quantity of water diverted at the new point 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 meters or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices 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.*

*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.*

7. *The former place 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, 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 changes 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 25 2018.



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

This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0806 or [arla.l.heard@oregon.gov](mailto:arla.l.heard@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>