

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12753, Wallowa County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND A CHANGE IN POINT OF
	)	DIVERSION

**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.

**Applicant**

OREGON PARKS AND RECREATION DEPARTMENT  
61323 HWY 203  
UNION, OR 97883

**Findings of Fact**

1. On September 25, 2017, OREGON PARKS AND RECREATION DEPARTMENT filed an application for an additional point of diversion and a change in point of diversion under Certificate 3113. The Department assigned the application number T-12753.
2. Notice of the application for transfer was published on October 3, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 6, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12753 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 6, 2018, for the applicant to respond. The applicant requested the completion date be extended to October 2, 2023 and for 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.

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.

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

**Certificate:** 3113 in the name of J M MITCHELL (confirmed by Wallowa River Decree)  
**Use:** IRRIGATION, LIVESTOCK AND DOMESTIC OF 174.9 ACRES  
**Priority Date:** AUGUST 30, 1880  
**Limit/Duty:** The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.  
**Source:** WALLOWA RIVER, tributary to the GRANDE RONDE RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	28	NW SW	20.0
2 S	45 E	WM	28	SW SW	20.0
2 S	45 E	WM	29	NE SE	40.0
2 S	45 E	WM	29	NW SE	27.9
2 S	45 E	WM	29	SW SE	35.0
2 S	45 E	WM	29	SE SE	32.0
Total					174.9

5. Certificate 3113 does not describe the location of the point of diversion, however information is available from the Wallowa River Decree tabulation, the CWRE's survey and water right certificate 48313 indicating the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	45 E	WM	5	NE NW	SILVER LAKE AND MITCHELL DITCHES - 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5

- The Mitchell Ditch is a lateral ditch off of the Silver Lake Ditch described in the Wallowa River Decree findings, Paragraph 19.

6. Transfer Application T-12753 proposes to move the authorized point of diversion for some lands and add an additional point of diversion for some lands approximately 1300 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	45 E	MDM	5	NW NW	FARMERS DITCH - 157 FEET SOUTH AND 566 FEET EAST FROM THE NW CORNER OF SECTION 5



7. The table below lists the acreage involved in the transfer with the proposed POD's:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD
2 S	45 E	WM	28	NW SW	20.0	SILVER LAKE DITCH, MITCHELL DITCH, AND FARMERS DITCH
2 S	45 E	WM	28	SW SW	19.0	SILVER LAKE DITCH, MITCHELL DITCH, AND FARMERS DITCH
2 S	45 E	WM	28	SW SW	1.0	FARMERS DITCH
2 S	45 E	WM	29	NE SE	40.0	SILVER LAKE DITCH, AND FARMERS DITCH
2 S	45 E	WM	29	NW SE	19.6	FARMERS DITCH
2 S	45 E	WM	29	NWSE	8.3	SILVER LAKE DITCH, AND FARMERS DITCH
2 S	45 E	WM	29	SW SE	22.06	SILVER LAKE DITCH, AND FARMERS DITCH
2 S	45 E	WM	29	SW SE	12.94	FARMERS DITCH
2 S	45 E	WM	29	SE SE	32.0	SILVER LAKE DITCH, AND FARMERS DITCH
Total					174.9	

8. The supplementary irrigation right (TRACT #3) with an August 14, 1900 priority date from Certificate 3113 out of the Citizen's ditch (aka Farmer's ditch) will remain in effect on the remaining right certificate.
9. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

10. 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.
11. 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-12753.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

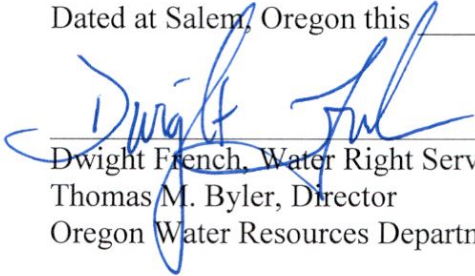
The additional point of diversion and change in point of diversion proposed in Transfer Application T-12753 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12753 is approved, the final order will include the following:*

1. *The additional point of diversion and change in point of diversion proposed in Transfer Application T-12753 are 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 3113 and any related decree.*
3. *Water right Certificate 3113 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new or additional points 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 meter or measuring device at each point of diversion (new and existing).*
  - 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. *The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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. *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.*

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

Dated at Salem, Oregon this JUN 18 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](mailto: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>