

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING OF  
T-11135, Crook County                                    )     ADDITIONAL POINTS OF DIVERSION

**Authority**

ORS 540.505 to 540.580 establishes 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.

**Applicants**

ML BELLA RANCH LLC  
SKIDMORE LP  
PO BOX 707  
BEAVERCREEK OR 97004

**Findings of Fact**

**Background**

1. On September 22, 2010, JAMES R. AND CHRISTINE R. BAUERSFELD and STEVE AND MONICA MYRIN, filed an application for additional points of diversion under Certificates 75205, 76366, 83370, and 83371. The Department assigned the application number T-11135.
2. Notice of the application for transfer was published on September 28, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 26, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11135 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 25, 2015, for the applicants to respond.
4. On June 19, 2015, the transfer application was assigned to ML Bella Ranch LLC and Skidmore LP, PO Box 707, Beavercreek, OR 97004.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On June 25, 2015, the Department mailed a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-11135 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of July 27, 2015, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
6. On October 5, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11135 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 6, 2015, and in the Central Oregonian newspaper on October 9, 16, and 23, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
7. The portion of the first right to be transferred is as follows:

**Certificate:** 75205 in the name of OREGON AND WESTERN COLONIZATION CO.  
(confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 23.6 ACRES

**Priority Date:** 1868

**Rate:** 0.29 CUBIC FOOT 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-EIGHTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NW NE	5.0
14 S	17 E	WM	15	SW NE	9.1
14 S	17 E	WM	15	NW SE	7.0
14 S	17 E	WM	15	SW SE	2.5
Total					23.6

8. The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
					WEST OF THE SE CORNER OF SECTION 10

9. Transfer Application T-11135 proposes two additional points of diversion for Certificate 75205 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Point of Diversion (approximately)
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15	2307 feet
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15	4103 feet

10. The second right to be transferred is as follows:

**Certificate:** 76366 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 0.9 ACRE

**Priority Date:** 1868

**Rate:** 0.01 CUBIC FOOT 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-EIGHTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to the CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	SW NE	0.9

11. Certificate 76366 lists Mill Creek as a tributary of the Crooked River. Mill Creek is a tributary of Ochoco Creek, which is a tributary of the Crooked River.
12. The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

13. Transfer Application T-11135 proposes an additional point of diversion for Certificate 76366 approximately 2307 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15

14. The third right to be transferred is as follows:

**Certificate:** 83370 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 108.6 ACRES

**Priority Date:** 1868

**Rate:** 1.36 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 a diversion of ONE-EIGHTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Ditches
14 S	17 E	WM	10	SE SE	STANTON DITCH
14 S	17 E	WM	11	SW NW	STANTON AND EVANS DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE NE	32.0
14 S	17 E	WM	15	SE NE	38.0
14 S	17 E	WM	15	NE SE	27.4
14 S	17 E	WM	15	SE SE	11.2
Total					108.6

15. The Department has received information that better describes the location of one of the original points of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

16. Transfer Application T-11135 proposes two additional points of diversion for Certificate 83370 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Stanton Ditch (approximately)
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15	2307 feet
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15	4103 feet

17. The fourth right to be transferred is as follows:

**Certificate:** 83371 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 30.7 ACRES, DOMESTIC, AND LIVESTOCK

**Priority Date:** 1868

**Rate:** 0.38 CUBIC FOOT PER SECOND and a reasonable amount for domestic and stock use.

**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 ONE-EIGHTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE SE	10.6
14 S	17 E	WM	15	SE SE	20.1
Total					30.7

18. The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

19. Transfer Application T-11135 proposes an additional point of diversion for Certificate 83371 approximately 4103 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15

20. 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 eligible for screening cost-share funds.

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

21. 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.
22. 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-11135.
23. The proposed changes would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.
25. All other application requirements are met.

**Conclusions of Law**

The additional points of diversion proposed in Transfer Application T-11135 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The additional points of diversion proposed in Transfer Application T-11135 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 Certificates 75205, 76366, 83370, 83371, and any related decree.
3. Water Right Certificates 75205, 76366, 83370 and 83371 are cancelled. A new certificate will be issued describing that portion of the right under Certificate 75205 not affected by this transfer.
4. The quantity of water diverted at the 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 **totalizing flow meter**, or, with prior approval of the Director, another suitable measuring device, at each 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. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 29 day of November, 2015.

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

Mailing date: NOV 30 2015

