

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

In the Matter of Transfer Application            )  
T-11201, Deschutes County                    )  
  )  
  )     FINAL ORDER APPROVING  
  )     CHANGES IN POINT OF  
  )     APPROPRIATION AND CHARACTER  
  )     OF USE

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

RICHARD MORROW  
DBA R&B RANCH, LLC  
3705 BALLYNTYNE RD  
SALEM, OR 97302

**Agent**

RANDALL GARDNER  
P.O. BOX 1671  
SISTERS, OR 97759

**Findings of Fact**

**Background**

1. On February 15, 2011, RICHARD MORROW, dba R & B RANCH, LLC, filed an application to change the point of appropriation and to change the character of use from supplemental to primary under Certificates 85431, 85432, and 85430, and to cancel a portion of the primary irrigation under Certificate 85387. The Department assigned the application number T-11201.
2. On November 28, 2011, Randall Gardner, agent for the applicant, submitted a letter withdrawing the voluntary cancellation of 19.3 acres under Certificate 85387 and the proposed change in character of use under Certificates 85432 and 85430 from supplemental to primary irrigation. Therefore, the applicant only proposes to change the point of appropriation. This order reflects the elimination of the change in character of use and partial cancellation from the transfer application.

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.

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

**Certificate:** 85431 in the name of R & B Ranch, LLC (perfected under Permit G-4841)  
**Use:** IRRIGATION of 12.1 ACRES  
**Priority Date:** AUGUST 25, 1970  
**Rate:** 0.151 CUBIC FOOT PER SECOND (if available at the original point of appropriation, being within the NW ¼ NW ¼, Section 14, Township 15 South, Range 10 East, W.M.; 290 Feet South and 140 Feet East from the NW Corner of Section 14), or its equivalent in case of rotation, measured at the well.  
**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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** WELL 2 within the WHYCHUS CREEK BASIN

**Authorized Point of Appropriation:**

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
Well 2	15 S	10 E	WM	14	NW NW	1900	290 FEET SOUTH AND 140 FEET EAST FROM THE NW CORNER OF SECTION 14

**Authorized Place of Use:**

IRRIGATION – R & B RANCH							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	11	NW SW	1300	10.0
Well 2	15 S	10 E	WM	11	SW SW	1300	2.1

4. Transfer Application T-11201 proposes to move the authorized point of appropriation approximately 2,500 feet from the existing point of appropriation to:

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
R & B Well	15 S	10 E	WM	11	NW SW	1300	410 FEET SOUTH AND 470 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 11

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

**Certificate:** 85432 in the name of R & B RANCH, LLC (perfected under Permit G-8148)  
**Use:** SUPPLEMENTAL IRRIGATION of 3.0 ACRES  
**Priority Date:** NOVEMBER 25, 1977  
**Rate:** 0.04 CUBIC FOOT PER SECOND (if available at the original point of appropriation, being within the SW ¼ SE ¼, Section 10, Township 15

South, Range 10 East, W.M.; 1290 Feet North and 20 Feet East from the S ¼ Corner of Section 10), or its equivalent in case of rotation, measured at the well.

**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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.

**Source:** WELL 2 within the WHYCHUS CREEK BASIN

**Authorized Point of Appropriation:**

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
Well 2	15 S	10 E	WM	14	NW NW	1900	290 FEET SOUTH AND 140 FEET EAST FROM THE NW CORNER OF SECTION 14

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION – R & B RANCH, LLC							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	11	SW SW	1300	3.0

6. Transfer Application T-11201 proposes to move the authorized point of appropriation approximately 2,500 feet from the existing point of appropriation to:

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
R & B Well	15 S	10 E	WM	11	NW SW	1300	410 FEET SOUTH AND 470 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 11

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

**Certificate:** 85430 in the name of R & B RANCH, LLC (perfected under Permit G-3095)

**Use:** SUPPLEMENTAL IRRIGATION of 13.3 ACRES

**Priority Date:** MAY 13, 1966

**Rate:** 0.166 CUBIC FOOT PER SECOND (if available at the original point of appropriation, being within the SW ¼ SE ¼, Section 10, Township 15 South, Range 10 East, W.M.; 1290 Feet North and 20 Feet East from the S ¼ Corner of Section 10), or its equivalent in case of rotation, measured at the well.

**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, or its equivalent for each

acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

**Source:** WELL 2 within the WHYCHUS CREEK BASIN

**Authorized Point of Appropriation:**

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
Well 2	15 S	10 E	WM	14	NW NW	1900	290 FEET SOUTH AND 140 FEET EAST FROM THE NW CORNER OF SECTION 14

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION – R & B RANCH, LLC							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	11	NW SW	1300	10.0
Well 2	15 S	10 E	WM	11	SW SW	1300	3.3

8. Transfer Application T-11201 proposes to move the authorized point of appropriation approximately 2,500 feet from the existing point of appropriation to:

Well	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
R & B Well	15 S	10 E	WM	11	NW SW	1300	410 FEET SOUTH AND 470 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 11

9. On April 26, 2011, the Department contacted the applicant by email and requested that the applicant provide evidence establishing the quantity of water used under the two supplemental water rights proposed for transfer.
10. On June 20, 2011, Bruce Estes, CWRE, submitted documentation on behalf of R & B Ranch, LLC, establishing the quantity of water historically used under the supplemental water rights. The evidence establishes that full measure of the groundwater right (3.0 acre-feet per year) has been historically used for supplemental irrigation, as no more than 1.0 acre-foot of water (of the 5.0 acre-feet allowed by the primary right) from the surface water source has been available, even in the wettest years.
11. Notice of the application for transfer was published on February 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On July 6, 2011, the Department mailed a copy of a draft Preliminary Determination proposing to approve Transfer Application T-11201 to the applicant. The Preliminary Determination cover letter set forth a deadline of August 8, 2011, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and on October 4, 2011, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

13. On October 5, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11201 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 11, 2011, and in The Nugget newspaper on October 19 and 26, and November 2, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

14. 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.
15. A pump, pipeline, and sprinkler system 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-11201.
16. The proposed change would not result in enlargement of the rights.
17. The Department determined that the proposed POA likely develops water from the same aquifer as the existing, authorized POA under Certificates 85432, 85431, and 85430; that the proposed change likely will result in an increase in interference with another ground water right, but that it will not result in the right failing to receive the water to which it is legally entitled. It is possible that the proposed change will cause some increase in interference with the springs adjacent to McKinney Butte due to the closer proximity of the proposed POA to the springs. This may result in changes in the seasonal pattern of baseflow in Whychus Creek, but will not result in a decrease the annual volume. Therefore, this would not deprive water rights of water to which they are entitled and that they previously have accessed.
18. The proposed change would not be expected to result in injury to other water rights.

**Conclusions of Law**

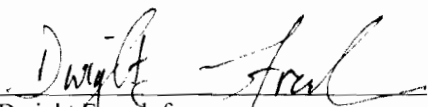
The change in point of appropriation proposed in Transfer Application T-11201 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in point of appropriation proposed in application T-11201 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 85430, 85431, and 85432, and any related decree.
3. Water right certificates 85430, 85431 and 85432 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 new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
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 the new point of appropriation.
  - 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.
8. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 9 day of December, 2011.

  
Dwight French for  
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 13 2011