

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

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-11380, Deschutes County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 89 PAGES 1156-
)	1159, WITHDRAWING A FINAL
)	ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER
)	APPROVING AN ADDITIONAL POINT
)	OF APPROPRIATION

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

BLACK BUTTE RANCH ASSOCIATION
ATTN: SWEN PETTERSON
PO BOX 8000
BLACK BUTTE RANCH OR 97759

Findings of Fact

Background

1. On March 21, 2012, BLACK BUTTE RANCH ASSOCIATION filed an application for an additional point of appropriation under Certificate 86709. The Department assigned the application number T-11380.
2. On July 17, 2013, pursuant to ORS 537.705 and 540.505 to 540 to 580, the Director issued an order approving Transfer Application T-11380. The order is recorded in Special Order Volume 89, Pages 1156-1159.
3. On August 30, 2013, the Department received a petition from Reed Marbut, attorney for the applicant, Black Butte Ranch Association, for reconsideration of the final orders approving Transfer Applications T-11380 and T-11381. The petition describes that the applicant submitted T-11380 and T-11381, along with Permit Amendment T-11382, to add Well #5 to

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.

Water Right Certificates 86907, 85315, and Water Right Permit G-6796. The applicant had expected the completion date of T-11380 and T-11381 to be the same as Permit G-6796, which was October 1, 2015.

4. Transfer Applications T-11380 and T-11381 were submitted without any special request for an extended completion date, and so were assigned a completion date of October 1, 2014.
5. The applicant requested the Department to reconsider the Final Order for Transfer Application T-11380 to allow a completion date of October 1, 2015.
6. The Department has reconsidered the order recorded at Vol. 89, Pages 1156 to 1159, and has considered the request in the applicant's petition for reconsideration.
7. The right to be transferred is as follows:

Certificate: 86709 in the name of BLACK BUTTE RANCH ASSOCIATION (perfected under Permit G-8501)

Use: GROUP DOMESTIC FOR 155 FAMILIES

Priority Date: FEBRUARY 2, 1979

Rate: 0.27 CUBIC FOOT PER SECOND

Sources: WELLS 1 AND 2, within the DESCHUTES BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	9	SW SW	WELL 1 - 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9
14 S	9 E	WM	16	SE NE	WELL 2 - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

GROUP DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	21	NE NE
14 S	9 E	WM	21	NW NE
14 S	9 E	WM	21	SW NE
14 S	9 E	WM	21	SE NE
14 S	9 E	WM	21	NE NW
14 S	9 E	WM	21	SE NW
14 S	9 E	WM	21	NE SW
14 S	9 E	WM	21	NE SE
14 S	9 E	WM	21	NW SE

8. Transfer Application T-11380 proposes an additional point of appropriation between approximately 50 and 4170 feet from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	16	SE NE	WELL 5 - 1480 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16

9. Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. The Department's Groundwater Section has found that in order to prevent significant interference with nearby springs, the proposed additional point of appropriation should be constructed to prevent ground water production from shallower than 300 feet below land surface.
11. On May 6, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11380 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 5, 2013, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
12. On June 3, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11380 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 11, 2013, and in the Bend Bulletin newspaper on June 6 and 19, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. On July 17, 2013, the Department issued a Final Order recorded at Special Order Volume 89, pages 1156 to 1159, and on August 30, 2013 a petition was filed within the 60-day period specified by ORS 536.075 and OAR 137-003-0675, as detailed in Findings No. 3 through 6.

Transfer Review Criteria (OAR 690-380-4010)

14. Water has been used within the last five years prior to the submittal of Transfer Application T-11380 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.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11380.
16. The proposed change, as conditioned, would not result in enlargement of the right.
17. The proposed change, as conditioned would not result in injury to other water rights.

Conclusions of Law

The petition for reconsideration was filed within the 60-day period specified by ORS 536.075 and OAR 137-003-0675.

The additional point of appropriation proposed in Transfer Application T-11380 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 petition for reconsideration of the Final Order for T-11380 is granted. The order recorded at Special Order Volume 89, pages 1156 to 1159 is withdrawn and is of no further force or effect and is superseded by this order.
2. The additional point of appropriation proposed in Transfer Application T-11380 is approved.
3. 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 86709 and any related decree.
4. Water right certificate 86709 is cancelled.
5. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. 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 appropriation.
 - 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.
7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
8. The proposed point of appropriation shall be constructed so as to not allow ground water production from no shallower than 300 feet below land surface.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.

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

Dated at Salem, Oregon this 3 day of September, 2013.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: SEP 05 2013