

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11201, Deschutes County)	PROPOSING APPROVAL OF
)	CHANGES IN POINT OF
)	APPROPRIATION AND CHARACTER
)	OF USE, AND PARTIAL
)	CANCELLATION OF WATER RIGHT
)	CERTIFICATE 85387

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.

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

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. 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

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.
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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

3. 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

4. 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

5. 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

6. Transfer Application T-11201 also proposes to change the character of use from supplemental to primary irrigation.
7. Transfer Application T-11201 also proposes a Partial Cancellation of primary irrigation on these lands under Certificate 85387 (see Finding of Fact # 23).
8. 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

9. 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

10. Transfer Application T-11201 also proposes to change the character of use from supplemental to primary irrigation.
11. Transfer Application T-11201 also proposes a Partial Cancellation of primary irrigation on this land under Certificate 85387 (see Finding of Fact # 23).
12. OAR 690-380-2320 provides that a change in use from supplemental use to primary use may be allowed only to the extent of the quantity of water historically used under the supplemental water right. The primary water right shall be canceled before or at the same time as the issuance of the transfer order changing the supplemental use to primary.
13. 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.
14. 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.

15. The amount of water to be changed from supplemental to primary irrigation: (0.206 cfs; being 0.04 cfs under Certificate 85432 and 0.166 cfs under Certificate 85430), together with the amount secured under any other right existing for the same lands, should be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and should be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated (total of 48.9 acre-feet) during the irrigation season of each year.
16. 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.
17. 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.

Transfer Review Criteria (OAR 690-380-4010)

18. 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.
19. 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.
20. As conditioned in Finding of Fact #15, the proposed change would not result in enlargement of the rights.
21. 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.
22. The proposed change, as conditioned in Finding of Fact #15, would not be expected to result in injury to other water rights.

Partial Cancellation of a Water Right

23. On February 15, 2011, the applicant submitted an Affidavit for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 16.3 acres of primary irrigation use. The right to be cancelled is as follows:

- Certificate:** 85387 in the name of R & B RANCH, LLC (confirmed by decree of the Circuit Court of the State of Oregon for Crook County, Volume 1, Page 471.
- Use:** PRIMARY IRRIGATION of 16.3 ACRES
- Priority Date:** 1908
- Rate:** 0.33 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the point of diversion.
- Limit/Duty:** 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:** WYCHUS CREEK (formerly known as SQUAW CREEK), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use to be Cancelled:

IRRIGATION – R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	11	NW SW	1300	10.0
15 S	10 E	WM	11	SW SW	1300	6.3

Determination and Proposed Action

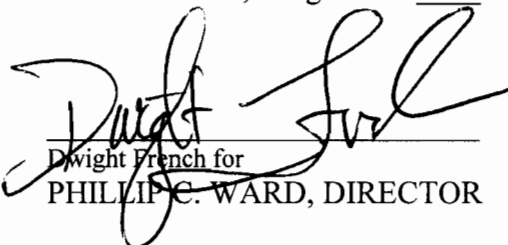
The change in point of appropriation and change in character of use proposed in Transfer Application T-11201 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

If application T-11201 is approved, the final order will include the following:

1. *The change in point of appropriation and change in character of use proposed in application T-11201 are approved. The portion of Certificate 85387 that has been abandoned is cancelled. A new certificate will be issued describing the portion of the right not affected by this partial cancellation.*
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, together with that diverted at the original 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 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.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The amount of water to be changed from supplemental irrigation to primary irrigation: (0.206 cfs; being 0.04 cfs under Certificate 85432 and 0.166 cfs under Certificate 85430), together with the amount secured under any other right existing for the same lands, should be limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and should be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated (total of 48.9 acre-feet) during the irrigation season of each year.*
8. *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 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 5 day of October, 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.