



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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August 14, 2012

BUTLER RANCH INC.  
5294 NW LONE PINE RD  
TERREBONNE, OR 97760

SUBJECT: Water Right Transfer Application T-11023

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11023. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Redmond Spokesman newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or [Patrick.K.Starnes@wrd.state.or.us](mailto:Patrick.K.Starnes@wrd.state.or.us) if I may be of assistance.

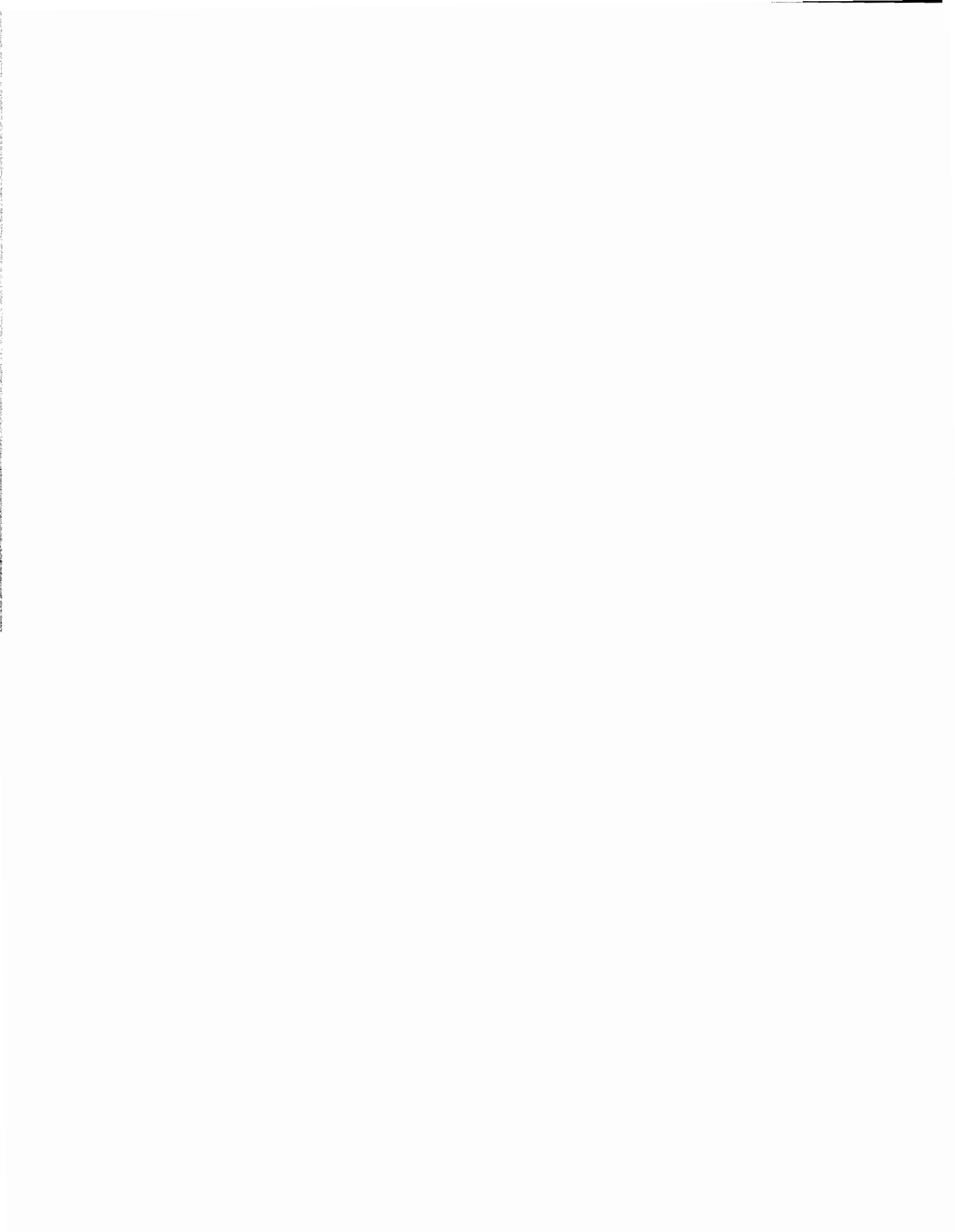
Sincerely,

Kelly Starnes  
Transfer Specialist

cc: File T-11023  
Jeremy T. Giffin, District 11 Watermaster  
John Short, Agent for the applicant

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

In the Matter of Transfer Application            )  
T-11023, Crook County                            )  
  )  
  )     PRELIMINARY DETERMINATION  
  )     PROPOSING APPROVAL OF A  
  )     CHANGE IN POINT OF DIVERSION  
  )     AND PLACE OF USE

**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.

**Applicant**

BUTLER RANCH INC.  
5294 NW LONE PINE RD  
TERREBONNE, OR 97760

**Findings of Fact**

***Background***

1. On February 24, 2010, BUTLER RANCH INC. filed an application to change the point of diversion and to change the place of use under Certificate 83850. The Department assigned the application number T-11023.
2. On July 16, 2012, the agent for the applicant requested to amend the completion date of the transfer from October 1, 2013 to October 1, 2017.
3. The portion of the right to be transferred is as follows:

**Certificate:** 83850 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-25991)  
**Use:** IRRIGATION OF 20.0 ACRES  
**Priority Date:** APRIL 8, 1914  
**Rate:** 0.5052 CUBIC FOOT PER SECOND

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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**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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage. Use of the water requires the existence of a current contract between the landowners and the United States Bureau of Reclamation.

**Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM NE CORNER OF SECTION 22

**Authorized Place of Use:**

PRIMARY IRRIGATION WITHOUT STORED WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	15	NE SW	7.5
14 S	14 E	WM	15	NW SW	1.0
14 S	14 E	WM	15	SW SW	3.0
14 S	14 E	WM	15	SE SW	8.5
TOTAL					20.0

4. Transfer Application T-11023 proposes to move the authorized point of diversion approximately 2.4 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	20	SW SE	45 FEET NORTH AND 1465 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 20

5. Transfer Application T-11023 also proposes to change the place of use of the right to:

PRIMARY IRRIGATION WITHOUT STORED WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	20	SE SW	7.0
14 S	14 E	WM	20	SW SE	10.0
14 S	14 E	WM	29	NW NE	1.6
14 S	14 E	WM	29	NE NW	1.4
TOTAL					20.0

6. Notice of the application for transfer was published on March 2, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. On June 26, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11023 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 26, 2012, for the applicant to respond. The applicant requested that the Department amend the completion date of the transfer to October 1, 2017 and to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

9. Water has been used within the last five years prior to submittal of the transfer application 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.
10. 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-11023.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

***Re-Description of a Water Right***

13. Certificate 11698 describes the authorized place of use as 7.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and 23.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 20, T 14 S, R 14 E, Willamette Meridian, Crook County, Oregon.
  - a. The transfer applicant and landowner submitted documents depicting the place of use under Certificate 11698 as always being 12.0 acres in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  and 18.0 acres in the SE $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 20, T 14 S, R 14 E, Willamette Meridian, Crook County, Oregon.

- b. The following table lists the place of use as described in existing Certificate 11698 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	¼-¼	Acres	¼-¼	Acres	Current Tax Lot
11698	SW¼ SE¼	7.0	SW¼ SE¼	12.0	100
11698	SE¼ SE¼	23.0	SE¼ SE¼	18.0	100
Section 20, T 14 S, R 14 E, W.M.					

### Determination and Proposed Action

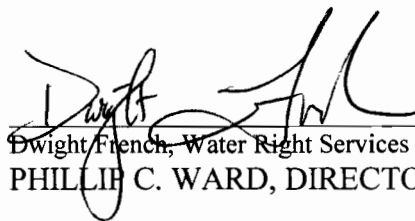
The change in point of diversion and change in place of use proposed in Transfer Application T-11023 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 the right requested to be re-described should be re-described. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the right will be re-described.

*If Transfer Application T-11023 is approved, the final order will include the following:*

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11023 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 83850 and any related decree.*
3. *Water right certificate 83850 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point 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 a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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. *After satisfactory proof of beneficial use is received a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 13 day of August 2012.

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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or [Patrick.K.Starnes@wrds.state.or.us](mailto:Patrick.K.Starnes@wrds.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.*

