



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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June 3, 2013

VIA E-MAIL

BLACK BUTTE RANCH CORPORATION
SWEN PETTERSON
PO BOX 8000
BLACK BUTTE RANCH, OR 97759

SUBJECT: Water Right Transfer Applications T-11380 and T-11381

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve applications T-11380 and T-11381. 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 Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determinations. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determinations 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 Final Orders consistent with the Preliminary Determinations. You should receive copies of the Final Orders 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 Determinations 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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist

cc: T-11380, T-11381
Jeremy Giffin, District 11 Watermaster (*via e-mail*)
Sean C. Comstock, CWRE/Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11381, Deschutes County) **PROPOSING APPROVAL 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 CORPORATION AND
BLACK BUTTE RANCH ASSOCIATION
SWEN PETTERSON
PO BOX 8000
BLACK BUTTE RANCH, OR 97759**

Findings of Fact

Background

1. On March 21, 2012, BLACK BUTTE RANCH CORPORATION AND BLACK BUTTE RANCH ASSOCIATION filed an application for an additional point of appropriation under Certificate 85315. The Department assigned the application number T-11381.

2. The right to be transferred is as follows:

Certificate: 85315 in the name of BLACK BUTTE RANCH CORPORATION AND BLACK BUTTE RANCH ASSOCIATION (perfected under Permit G-11710)

Use: QUASI-MUNICIPAL USE

Priority Date: NOVEMBER 18, 1991

Rate: 4.8 CUBIC FEET PER SECOND (CFS), BEING 2.1 CFS FROM WELL 2 AND 2.7 CFS WELL 4

Sources: WELLS 2 AND 4 within the WHYCHUS CREEK BASIN

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.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	16	SE NE	WELL 2 - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16
14 S	9 E	WM	9	SW SW	WELL 4 - 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9

Authorized Place of Use:

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	NE NE
14 S	9 E	WM	9	NW NE
14 S	9 E	WM	9	SW NE
14 S	9 E	WM	9	SE NE
14 S	9 E	WM	9	NE NW
14 S	9 E	WM	9	NW NW
14 S	9 E	WM	9	SW NW
14 S	9 E	WM	9	SE NW
14 S	9 E	WM	9	NE SW
14 S	9 E	WM	9	NW SW
14 S	9 E	WM	9	SW SW
14 S	9 E	WM	9	SE SW
14 S	9 E	WM	9	NE SE
14 S	9 E	WM	9	NW SE
14 S	9 E	WM	9	SW SE
14 S	9 E	WM	9	SE SE
14 S	9 E	WM	10	NW NE
14 S	9 E	WM	10	SW NE
14 S	9 E	WM	10	NE NW
14 S	9 E	WM	10	NW NW
14 S	9 E	WM	10	SW NW
14 S	9 E	WM	10	SE NW
14 S	9 E	WM	10	NE SW
14 S	9 E	WM	10	NW SW
14 S	9 E	WM	10	SW SW
14 S	9 E	WM	15	NE NW
14 S	9 E	WM	15	NW NW
14 S	9 E	WM	15	SW NW
14 S	9 E	WM	15	SE NW
14 S	9 E	WM	15	NE SW
14 S	9 E	WM	15	NW SW
14 S	9 E	WM	15	SW SW
14 S	9 E	WM	15	SE SW
14 S	9 E	WM	16	NE NE
14 S	9 E	WM	16	SE NE
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

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	21	NE SE
14 S	9 E	WM	21	NW SE
14 S	9 E	WM	22	NE NE
14 S	9 E	WM	22	NW NE
14 S	9 E	WM	22	NE NW
14 S	9 E	WM	22	NW NW
14 S	9 E	WM	23	NW NW

3. Transfer Application T-11381 proposes an additional point of appropriation 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

4. 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.
5. 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.
6. On May 6, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11381 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.

Transfer Review Criteria (OAR 690-380-4010)

7. Water has been used within the last five years 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.
8. 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-11381.
9. The proposed change, as conditioned, would not result in enlargement of the right.
10. The proposed change, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action


The additional point of appropriation proposed in Transfer Application T-11381 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11381 is approved, the final order will include the following:

- 1. The additional point of appropriation proposed in Transfer Application T-11381 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 Certificate 85315 and any related decree.*
- 3. Water right certificate 85315 is cancelled.*
- 4. 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.*
- 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 points of appropriation.*
- 7. 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.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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.*

9. *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 June 2013.



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@wrд.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.