



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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BERRY PRO LLC  
PO BOX 379  
WOODBURN, OR 97071

MARCH 4, 2014

SUBJECT: Water Right Transfer Application T-11659

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11659. 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 Canby Herald 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 Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11659  
Amy Kim, District 20 Watermaster (*via e-mail*)  
James M. Schuette, Agent/CWRE 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            )  
T-11659, Clackamas County                    )  
  )  
  )    **PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF 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**

BERRY PRO LLC  
PO BOX 379  
WOODBURN, OR 97071

**Findings of Fact**

1. On September 3, 2013, BERRY PRO LLC filed an application for an additional point of appropriation under Certificate 88216. The Department assigned the application number T-11659.
2. Notice of the application for transfer was published on September 10, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 31, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11659 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
4. On February 11, 2014, the applicant's agent, Jim Schuette, acting for the applicant, has requested to amend the preliminary determination to change the date of completion from October 1, 2015 to October 1, 2016.

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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5. The right to be transferred is as follows:

**Certificate:** 88216 in the names of JAMES C. BROWN, CAROL M. BROWN, LEROY L. BROWN, AND CYNTHIA BROWN (perfected under Permit G-10114)

**Use:** IRRIGATION OF 22.3 ACRES

**Priority Date:** MAY 31, 1983

**Rate:** 0.15 CUBIC FOOT PER SECOND

**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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL, within the BEAR CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 E	WM	27	SW SW	43	340 FEET NORTH AND 1170 FEET EAST FROM THE SW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	1 E	WM	34	NE NW	1	0.1
4 S	1 E	WM	34	SE NW	2	22.2

6. Transfer Application T-11659 proposes an additional point of appropriation approximately 2290 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 E	WM	34	SW NW	43	WELL 5 - 50 FEET NORTH AND 980 FEET WEST FROM THE SE CORNER OF DLC 43

**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 was present within the five-year period prior to submittal of Transfer Application T-11659.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

## **Determination and Proposed Action**


The additional point of appropriation proposed in Transfer Application T-11659 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-11659 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-11659 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 88216 and any related decree.*
3. *Water right certificate 88216 is cancelled.*
4. *The quantity of water diverted at the additional 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 (new and existing).*
  - 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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. *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 March, 2014.



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@ wrd.state.or.us](mailto:Patrick.K.Starnes@ 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.*