



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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October 16, 2014

ANDY J. ROOT  
RATTLESNAKE CREEK LAND & CATTLE CO., LLC  
524 HWY 20 N  
HINES, OR 97738

SUBJECT: Water Right Transfer Application T-11733

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11733. 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 Burns 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 503-986-0827 or Tracy.L.Fox@wrp.state.or.us if I may be of assistance.

Sincerely,

Ms. Tracy Fox  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-11733  
JR Johnson, District 10 Watermaster (*via e-mail*)  
Scott D. Montgomery, CWRE/Agent for the applicant (*via e-mail*)

enclosures

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

In the Matter of Transfer Application            )    **PRELIMINARY DETERMINATION**  
T-11733, Harney County                         )    **PROPOSING APPROVAL OF**  
  )    **ADDITIONAL POINTS 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**

ANDY ROOT  
RATTLESNAKE CREEK LAND & CATTLE CO., LLC  
524 HWY 20 N  
HINES, OR 97738

**Findings of Fact**

1. On January 29, 2014, ANDY ROOT/RATTLESNAKE CREEK LAND & CATTLE CO., LLC filed an application for additional points of appropriation under Certificate 88990. The Department assigned the application number T-11733.
2. Notice of the application for transfer was published on February 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 29, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11733 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 29, 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. The right to be transferred is as follows:

**Certificate:** 88990 in the name of RATTLESNAKE CREEK LAND AND CATTLE CO  
  LLC (perfected under Permit G-12841)  
**Use:**                    IRRIGATION of 393.5 ACRES  
**Priority Date:** JULY 20, 1995

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.

**Rate:** 4.92 CUBIC FEET 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), and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** A WELL in the HARNEY LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	30 E	WM	33	NE NW	1317 FEET SOUTH AND 1355 FEET EAST FROM THE NW CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	30 E	WM	28	NW SW	30.8
25 S	30 E	WM	28	SW SW	33.6
25 S	30 E	WM	29	NE SE	33.6
25 S	30 E	WM	29	NW SE	2.6
25 S	30 E	WM	29	SW SE	3.5
25 S	30 E	WM	29	SE SE	38.0
25 S	30 E	WM	32	NE NE	34.9
25 S	30 E	WM	32	NW NE	31.1
25 S	30 E	WM	32	SW NE	31.0
25 S	30 E	WM	32	SE NE	31.2
25 S	30 E	WM	33	NE NW	30.0
25 S	30 E	WM	33	NW NW	32.9
25 S	30 E	WM	33	SW NW	30.2
25 S	30 E	WM	33	SE NW	30.1

5. Transfer Application T-11733 proposes to add nine authorized points of appropriation, described as follows, with approximate distances from the existing point of appropriation as identified below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1
25 S	30 E	WM	33	SE SW	WELL 5 - 4195 FEET SOUTH AND 2672 FEET WEST FROM THE NE CORNER OF SECTION 33	0.6 mile
25 S	30 E	WM	34	SE SW	WELL 7 - 4725 FEET SOUTH AND 1877 FEET EAST FROM THE NW CORNER OF SECTION 34	1.3 miles
25 S	30 E	WM	33	SE SW	WELL 9 - 4423 FEET SOUTH AND 2750 WEST FROM THE NE CORNER OF SECTION 33	0.6 mile
26 S	30 E	WM	3	NW NW	WELL 10 - 6310 FEET SOUTH AND 415 FEET EAST FROM THE NW CORNER OF SECTION 34	1.2 miles
26 S	30 E	WM	3	NW NW	WELL 11 - 6340 FEET SOUTH AND 330 FEET EAST FROM THE NW CORNER OF SECTION 34	1.2 miles
25 S	30 E	WM	33	SE NW	WELL 12 - 2690 FEET SOUTH AND 2890 FEET WEST FROM THE NE CORNER OF SECTION 33	0.3 mile

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1
26 S	30 E	WM	4	NE NW	WELL 13 - 6415 FEET SOUTH AND 2745 FEET WEST FROM THE NE CORNER OF SECTION 33	1.0 mile
25 S	30 E	WM	33	SE SE	WELL 14 - 1000 FEET NORTH AND 10 FEET WEST FROM THE SE CORNER OF SECTION 33	0.9 mile
25 S	30 E	WM	33	SE SE	WELL 15 - 1000 FEET NORTH AND 30 FEET WEST FROM THE SE CORNER OF SECTION 33	0.9 mile

***Transfer Review Criteria (OAR 690-380-4010)***

6. 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.
7. 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-11733.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

**Determination and Proposed Action**

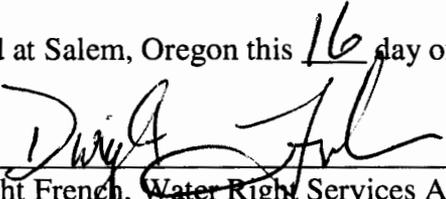
The additional points of appropriation proposed in Transfer Application T-11733 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11733 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-11733 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 88990 and any related decree.*
3. *Water Right Certificate 88990 is cancelled.*
4. *The quantity of water diverted at the additional points 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 16 day of October, 2014.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Tracy Fox. If you have any questions about the information in this document, you may reach me at 503-986-0827 or Tracy.L.Fox@wr.d.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.*