



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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October 24, 2014

VIA E-MAIL

PUEBLO MOUNTAIN LAND
COMPANY, LLC
707 E 600 N
RUPERT, ID 83350-9466

SUBJECT: Water Right Transfer Application T-11700

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11700. 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 Times 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 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist
Transfer and Conservation Section

cc: T-11700
JR Johnson, District 10 Watermaster (*via e-mail*)
Nancy Rorick Consulting, Agent and 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)	PRELIMINARY DETERMINATION
T-11700, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN 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

PUEBLO MOUNTAIN LAND COMPANY, LLC
707 E 600 N
RUPERT, ID 83350-9466

Findings of Fact

1. On December 18, 2013, LORIN D. AND KATHARINE J. SHERBURN filed a transfer application for authorization of historic points of appropriation under Certificate 31859. The Department assigned the application number T-11700.
2. Notice of the application for transfer was published on December 31, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 5, 2014, the Department approved an assignment of Transfer Application T-11700, to PUEBLO MOUNTAIN LAND COMPANY, LLC.
4. On March 20, 2014, the Department contacted Nancy Rorick by email to notify the applicant's agent that additional documentation was needed to show evidence of use. On March 21, 2014, the applicant's agent emailed the additional documentation resolving the deficiency.
5. On May 28, 2014, the Department mailed a copy of a draft final order proposing to approve Historic Transfer Application T-11700 to the applicant. The applicant requested that the Department proceed with issuance of a Final Order and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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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6. On July 24, 2014, the Department contacted the new applicant and the applicant's agent, also Nancy Rorick, by email and phone, to let them know that the historic transfer application would no longer be consistent with the requirements of OAR 690-380-2120 (7). The application would need to be amended to a regular permanent transfer application to proceed.
7. On July 24, 2014, the Department received an email from the applicant and agent, requesting the application to be amended to a regular permanent transfer application.
8. On August 1, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Regular Permanent Transfer Application T-11700 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 31, 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.
9. The right to be transferred is as follows:

Certificate: 31859 in the name of WARREN McLEAN (perfected under Permit G-23)
Use: IRRIGATION of 79.4 ACRES and SUPPLEMENTAL IRRIGATION of 20.0 ACRES

Priority Date: AUGUST 25, 1955

Rate: 1.24 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: McLEAN WELL NO. 1 a tributary of TROUT CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	35 E	WM	22	NE SE	MCLEAN WELL NO. 1: 1 CHAIN SOUTH AND 1.5 CHAINS WEST FROM THE E1/4 CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	35 E	WM	23	NE SW	3.8
39 S	35 E	WM	23	SE SW	24.7
39 S	35 E	WM	23	NW SE	26.0
39 S	35 E	WM	23	SW SE	20.0
39 S	35 E	WM	26	NE NW	4.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	35 E	WM	23	SW SE	20.0

10. Transfer Application T-11700 proposes to move the authorized point of appropriation to two points of appropriation with the approximate distances from the existing point of appropriation identified as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the Authorized POD
39 S	35 E	WM	23	SE SW	WELL 1: 280 FEET NORTH AND 1620 FEET EAST OF THE SW CORNER OF SECTION 23	0.51 mile
39 S	35 E	WM	26	NW NE	WELL 9: 100 FEET SOUTH AND 3530 FEET EAST OF THE NW CORNER OF SECTION 26	0.72 mile

Transfer Review Criteria (OAR 690-380-4010)

11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11700 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-11700 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11700 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 31859 and any related decree.*
3. *Water right Certificate 31859 is cancelled.*
4. *The quantity of water diverted at the new points 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 23 day of October 2014.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrdd.state.or.us.

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