



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 8, 2015

WHITE DEER RANCH
ULUPALUKUA RANCH, INC.
PO BOX 901
KULA, HI 96790

SUBJECT: Water Right Transfer Application T-11836

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11836. 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, 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 Department's notice.

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@wrdd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11836
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)
Robert Baxter, CWRE #015 (via e-mail)
Bureau of Reclamation, (via e-mail)

encs

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-11836, Crook County) **PROPOSING APPROVAL OF A**
) **CHANGE IN PLACE OF USE**

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

WHITE DEER RANCH/
ULUPALUKUA RANCH INC.
PO BOX 901
KULA, HI 96790

Findings of Fact

1. On June 11, 2014, WHITE DEER RANCH / ULUPALAKUA RANCH, INC. filed an application to change the place of use under Certificates 80854 and 80855. The Department assigned the application number T-11836.
2. Notice of the application for transfer was published on June 17, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Permit Amendment Application T-11889 in the name of ULUPALAKUA RANCH LLC, which was accepted by the Department on September 15, 2014, is to be worked concurrently with T-11836 to resolve the layered water rights present at the location of the lands being transferred.
4. On April 22, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11836 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 23, 2015, for the applicants to respond. The applicants 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.

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.

5. The first right to be transferred is as follows:

Certificate: 80854 in the name of WHITE DEER RANCH C/O J. FREEDMAN AND BOBBY KENNEDY (perfected under Permit S-25991)

Use: IRRIGATION of 14.8 ACRES and SUPPLEMENTAL IRRIGATION of 65.0 ACRES

Priority Date: APRIL 8, 1914

Rate: 1.99 CUBIC FEET PER SECOND (if available at the original point of diversion at Bowman Dam and People's Ditch diversion described as being located within the NW1/4 SW1/4, Section 8, Township 15 South, Range 16 East, W.M.; 1920 feet North and 340 feet East from the SW Corner, Section 8)

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-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. The use of stored water under this right is subject to the water user having a contract for the stored water between the Bureau of Reclamation, or owners of the reservoir, and the water user.

Source: CROOKED RIVER and PRINEVILLE RESERVOIR (constructed under Permit R-2223), tributaries of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	16 E	WM	8	NW SW		CROOKED RIVER (KENNEDY PUMP) - 1870 FEET NORTH AND 400 FEET EAST FROM THE SW CORNER OF SECTION 8
16 S	15 E	WM	1	NW NE	2	RICE BALDWIN DITCH - 300 FEET SOUTH AND 470 FEET EAST FROM THE N1/4 CORNER OF SECTION 1
17 S	16 E	WM	11	SW NW		BOWMAN DAM - 1650 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	15 E	WM	13	SE SE	10.9
15 S	16 E	WM	18	SW SW	3.9
Total					14.8

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	15 E	WM	13	SE SE	1.2
15 S	15 E	WM	24	NE NE	35.7
15 S	15 E	WM	24	NW NE	2.7
15 S	15 E	WM	24	SW NE	9.0
15 S	15 E	WM	24	SE NE	15.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	16 E	WM	18	SW SW	0.1
15 S	16 E	WM	19	NW NW	1.3
Total					65.0

6. Transfer Application T-11836 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	16 E	WM	19	SW SW	L-4	3.4
15 S	16 E	WM	30	NE NW		2.9
15 S	16 E	WM	30	NW NW	L-1	8.5
Total						14.8

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	15 E	WM	13	SE SE		0.5
15 S	15 E	WM	24	NE NE		30.0
15 S	15 E	WM	24	NW NE		3.4
15 S	15 E	WM	24	SW NE		4.9
15 S	15 E	WM	24	SE NE		13.2
15 S	15 E	WM	25	NE NE		0.7
15 S	15 E	WM	25	NW NE		6.5
15 S	16 E	WM	19	SW SW	L-4	1.3
15 S	16 E	WM	19	SE SW		4.5
Total						65.0

7. The portion of the second right to be transferred is as follows:

Certificate: 80855 in the name of WHITE DEER RANCH C/O J. FREEDMAN AND BOBBY KENNEDY (confirmed by decree of the Circuit Court of the State of Oregon for Crook County)

Use: LIVESTOCK and IRRIGATION of 65.0 ACRES

Priority Date: 1893

Rate: 0.81 CUBIC FOOT PER SECOND (if available at the original point of diversion at Bowman Dam and People's Ditch diversion described as being located within the NW1/4 SW1/4, Section 8, Township 15 South, Range 16 East, W.M.; 1920 feet North and 340 feet East from the SW Corner, Section 8)

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

Source: CROOKED RIVER, a tributary of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
15 S	16 E	WM	8	NW SW		CROOKED RIVER (KENNEDY PUMP) - 1870 FEET NORTH AND 400 FEET EAST FROM THE SW CORNER OF SECTION 8
16 S	15 E	WM	1	NW NE	2	RICE BALDWIN DITCH - 300 FEET SOUTH AND 470 FEET EAST FROM THE N1/4 CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	15 E	WM	13	SE SE	1.2
15 S	15 E	WM	24	NE NE	35.7
15 S	15 E	WM	24	NW NE	2.7
15 S	15 E	WM	24	SW NE	9.0
15 S	15 E	WM	24	SE NE	15.0
15 S	16 E	WM	18	SW SW	0.1
15 S	16 E	WM	19	NW NW	1.3
					65.0

8. Application T-11836 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
15 S	15 E	WM	13	SE SE		0.5
15 S	15 E	WM	24	NE NE		30.0
15 S	15 E	WM	24	NW NE		3.4
15 S	15 E	WM	24	SW NE		4.9
15 S	15 E	WM	24	SE NE		13.2
15 S	15 E	WM	25	NE NE		0.7
15 S	15 E	WM	25	NW NE		6.5
15 S	16 E	WM	19	SW SW	L-4	1.3
15 S	16 E	WM	19	SE SW		4.5
						65.0

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

9. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11836.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11836 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11836 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-11836 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 Certificates 80854 and 80855 and any related decree.*
- 3. Water right Certificates 80854 and 80855 are cancelled.*
- 4. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 5. 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.*
- 6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 8 day of May, 2015.



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

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

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