



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

October 2, 2015

ML BELLA RANCH LLC  
SKIDMORE LP  
PO BOX 707  
BEAVERCREEK OR 97004

SUBJECT: Water Right Transfer Application T-11135

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11135. 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 Central Oregonian 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-11135  
Jeremy Giffen, District 11 Watermaster (*via e-mail*)  
Martha O. Pagel, Schwabe, Williamson and Wyatt  
Mike Hashem, (*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-11135, Crook County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF DIVERSION

**Authority**

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

ML BELLA RANCH LLC  
SKIDMORE LP  
PO BOX 707  
BEAVERCREEK OR 97004

**Findings of Fact**

**Background**

1. On September 22, 2010, JAMES R. AND CHRISTINE R. BAUERSFELD and STEVE AND MONICA MYRIN, filed an application for additional points of diversion under Certificates 75205, 76366, 83370, and 83371. The Department assigned the application number T-11135.
2. Notice of the application for transfer was published on September 28, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 26, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11135 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 25, 2015, for the applicants to respond.
4. On June 19, 2015, the transfer application was assigned to ML Bella Ranch LLC and Skidmore LP, PO Box 707, Beavercreek, OR 97004.

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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- On June 25, 2015, the Department mailed a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-11135 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of July 27, 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 applicants are authorized to pursue the transfer.
- The portion of the first right to be transferred is as follows:

**Certificate:** 75205 in the name of OREGON AND WESTERN COLONIZATION CO.  
(confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 23.6 ACRES

**Priority Date:** 1868

**Rate:** 0.29 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 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NW NE	5.0
14 S	17 E	WM	15	SW NE	9.1
14 S	17 E	WM	15	NW SE	7.0
14 S	17 E	WM	15	SW SE	2.5
Total					23.6

- The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

8. Transfer Application T-11135 proposes two additional points of diversion for Certificate 75205 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Point of Diversion (approximately)
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15	2307 feet
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15	4103 feet

9. The second right to be transferred is as follows:

**Certificate:** 76366 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 0.9 ACRE

**Priority Date:** 1868

**Rate:** 0.01 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 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** MILL CREEK, tributary to the CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	SW NE	0.9

10. Certificate 76366 lists Mill Creek as a tributary of the Crooked River. Mill Creek is a tributary of Ochoco Creek, which is a tributary of the Crooked River.

11. The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

12. Transfer Application T-11135 proposes an additional point of diversion for Certificate 76366 approximately 2307 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15

13. The third right to be transferred is as follows:

**Certificate:** 83370 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 108.6 ACRES

**Priority Date:** 1868

**Rate:** 1.36 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 per acre, 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:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Ditches
14 S	17 E	WM	10	SE SE	STANTON DITCH
14 S	17 E	WM	11	SW NW	STANTON AND EVANS DITCH

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE NE	32.0
14 S	17 E	WM	15	SE NE	38.0
14 S	17 E	WM	15	NE SE	27.4
14 S	17 E	WM	15	SE SE	11.2
Total					108.6

14. The Department has received information that better describes the location of one of the original points of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

15. Transfer Application T-11135 proposes two additional points of diversion for Certificate 83370 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Stanton Ditch (approximately)
14 S	17 E	WM	15	NE NE	APOD NO. 1 - 1310 FEET SOUTH AND 1060 FEET WEST OF THE NE CORNER OF SECTION 15	2307 feet
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15	4103 feet

16. The fourth right to be transferred is as follows:

**Certificate:** 83371 in the name of BILLY L. COFFER (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 30.7 ACRES, DOMESTIC, AND LIVESTOCK

**Priority Date:** 1868

**Rate:** 0.38 CUBIC FOOT PER SECOND and a reasonable amount for domestic and stock use.

**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 per acre, 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:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

IRRIGATION DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE SE	10.6
14 S	17 E	WM	15	SE SE	20.1
Total					30.7

17. The Department has received information that better describes the location of the original point of appropriation by distance and bearing from a recognized, locally established survey monument or corner described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH - 940 FEET NORTH AND 660 FEET WEST OF THE SE CORNER OF SECTION 10

18. Transfer Application T-11135 proposes an additional point of diversion for Certificate 83371 approximately 4103 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	15	NE SE	APOD NO. 2 - 3120 FEET SOUTH AND 1190 FEET WEST OF THE NE CORNER OF SECTION 15

19. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is eligible for screening cost-share funds.

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

20. 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.
21. 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-11135.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. All other application requirements are met.

**Determination and Proposed Action**

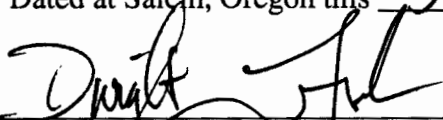
The additional points of diversion proposed in Transfer Application T-11135 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11135 is approved, the final order will include the following:*

1. *The additional points of diversion proposed in Transfer Application T-11135 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 Certificates 75205, 76366, 83370, 83371, and any related decree.*
3. *Water Right Certificates 75205, 76366, 83370 and 83371 are cancelled. A new certificate will be issued describing that portion of the right under Certificate 75205 not affected by this transfer.*
4. *The quantity of water diverted at the additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*

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 diversion.*
  - 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. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*
- The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
7. *The former place of use of the transferred rights shall no longer receive water under the rights.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made 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 changes and full beneficial use of the water.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 5 day of Oct 2015.



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

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