



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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February 17, 2016

VIA E_MAIL

CURT BLACKBURN
32055 HWY 20E
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-11906

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11906. 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 503-986-0886 or 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-11906
J.R. Johnson, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, 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)	PRELIMINARY DETERMINATION
T-11906, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION AND ADDITIONAL
)	POINTS OF APPROPRIATION

Authority

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

Applicant

CURT BLACKBURN
32055 HWY 20E
BURNS, OR 97720
curtjettblackburn@centurytel.net

Findings of Fact

1. On October 17, 2014, CURT BLACKBURN filed an application to change the points of appropriation and add additional points of appropriation under Certificates 35135, 36880, 49683, 83994, and 89445. The Department assigned the application number T-11906.
2. Notice of the application for transfer was published on October 28, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 4, 2014, the Department emailed the agent notifying them of the deficiencies in the application.
4. On November 19, 2014, the agent submitted a revised application and map correcting the deficiencies.
5. On July 21, 2015, the Department emailed the agent notifying them of the deficiencies in the application.
6. On July 22, 2015, the agent submitted a revised application and map correcting the deficiencies.

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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7. On December 2, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11906 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 4, 2016, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2022 and for 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.

8. The portion of the first right to be transferred is as follows:

Certificate: 35135 in the name of BURTT and JOSEPHINE SCRODER; (perfected under Permit G-2316)
Use: SUPPLEMENTAL IRRIGATION OF 108.5 ACRES
Priority Date: DECEMBER 19, 1962
Rate: 1.3 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 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SCHRODER WELL 1 within the POISON CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
22 S	31 E	WM	34	SW SW

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	34	SW SW	32.0
22 S	31 E	WM	34	SE SW	39.0
22 S	31 E	WM	34	SW SE	37.5
Total					108.5

9. The proposed additional points of appropriation are described in the table below with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location
22 S	31 E	WM	33	SW SW	WELL #14 (HARN 129) - 530 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33	4200 ft.
22 S	31 E	WM	34	SE SW	WELL B (HARN 132) - 969.6 FEET NORTH AND 2641.7 FEET WEST FROM THE SE CORNER OF SECTION 34	2500 ft.
22 S	31 E	WM	33	SE SE	WELL C - 1165 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 33	260 ft.

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

Certificate: 36880 in the name of HARRY PON C/O BRADEEN BROTHERS
(perfected under Permit G-2880)
Use: SUPPLEMENTAL IRRIGATION OF 86.3 ACRES
Priority Date: APRIL 21, 1965
Rate: 1.08 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: PON WELL NO. 20 within the FOLEY SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	31 E	WM	33	NE NW	PON WELL NO. 20 (HARN 106): 230 FEET SOUTH AND 860 FEET EAST FROM THE NW CORNER OF NENW OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	33	NE SW	1.0
22 S	31 E	WM	33	SW SW	4.0
22 S	31 E	WM	33	SE SW	29.0
22 S	31 E	WM	33	NW SE	0.5
22 S	31 E	WM	33	SW SE	32.4
22 S	31 E	WM	33	SE SE	19.4
Total					86.3

11. The proposed points of appropriation are described in the table below with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location
22 S	31 E	WM	33	SW SW	WELL #14 (HARN 129) - 530 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33	4400 ft.
22 S	31 E	WM	34	SW SW	WELL A (HARN 130) - 1120 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34	5000 ft.
22 S	31 E	WM	34	SE SW	WELL B (HARN 132) - 969.6 FEET NORTH AND 2641.7 FEET WEST FROM THE SW CORNER OF SECTION 34	7000 ft.
22 S	31 E	WM	33	SE SE	WELL C - 1165 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 33	4800 ft.

12. The portion of the third right to be transferred is as follows:

Certificate: 49683 in the name of HARRY PON (perfected under Permit G-1808)
Use: SUPPLEMENTAL IRRIGATION OF 167.3 ACRES
Priority Date: APRIL 3, 1961
Rate: 2.09 CUBIC FEET PER SECOND (CFS), BEING 1.06 CFS FROM WELL 5 AND 1.03 CFS FROM WELL 14
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.
Sources: WELLS 5 AND 14, within the FOLEY SLOUGH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	31 E	WM	28	SE SE	WELL #5 (HARN 107) - 100 FEET SOUTH AND 620 FEET WEST FROM THE NE CORNER OF THE SESE OF SECTION 28
22 S	31 E	WM	33	SW SW	WELL #14 (HARN 129) - 530 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION WELL 5					
Twtp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	33	NE SW	4.0
22 S	31 E	WM	33	SE SW	7.0
22 S	31 E	WM	33	NE SE	22.1
22 S	31 E	WM	33	NW SE	28.5
22 S	31 E	WM	33	SW SE	5.2
22 S	31 E	WM	33	SE SE	18.2
Total					85.0

SUPPLEMENTAL IRRIGATION WELL 14					
Twtp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	33	NE SW	1.0
22 S	31 E	WM	33	SE SW	29.0
22 S	31 E	WM	33	NW SE	0.5
22 S	31 E	WM	33	SW SE	32.4
22 S	31 E	WM	33	SE SE	19.4
Total					82.3

13. The proposed points of appropriation and additional points of appropriation are described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location	
						Well 5	Well 14
22 S	31 E	WM	34	SW SW	WELL A (HARN 130) - 1120 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34	5400 ft.	4200 ft.
22 S	31 E	WM	34	SE SW	WELL B (HARN 132) - 969.6 FEET NORTH AND 2641.7 FEET WEST FROM THE SW CORNER OF SECTION 34	6400 ft.	6750 ft.
22 S	31 E	WM	33	SE SE	WELL C - 1165 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 33	5300 ft.	4000 ft.

Supplemental Irrigation Location and Proposed Wells						
Twp	Rng	Mer	Sec	Q-Q	Acres	Well No.
22 S	31 E	WM	33	NE SW	4.0	A, B, C
22 S	31 E	WM	33	NE SW	1.0	14, A, B, C
22 S	31 E	WM	33	SE SW	29.0	14, A, B, C
22 S	31 E	WM	33	SE SW	7.0	A, B, C
22 S	31 E	WM	33	NE SE	22.1	A, B, C
22 S	31 E	WM	33	NW SE	28.5	A, B, C
22 S	31 E	WM	33	NW SE	0.5	14, A, B, C
22 S	31 E	WM	33	SW SE	32.4	14, A, B, C
22 S	31 E	WM	33	SW SE	5.2	A, B, C
22 S	31 E	WM	33	SE SE	19.4	14, A, B, C
22 S	31 E	WM	33	SE SE	18.2	A, B, C

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

Certificate: 83994 in the name of CURTIS AND KAEKO BLACKBURN AND NORTHWEST FARM CREDIT SERVICES FLCA (perfected under Permit G-7642)

Use: SUPPLEMENTAL IRRIGATION OF 77.9 ACRES

Priority Date: MAY 19, 1977

Rate: 0.97 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

Source: A WELL within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	31 E	WM	34	SW SE	WELL B (HARN 132) - 969.6 FEET NORTH AND 2641.7 FEET WEST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	34	NW SW	39.7
22 S	31 E	WM	34	SE SW	38.2
Total					77.9

15. The proposed points of appropriation are described in the table below with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location
22 S	31 E	WM	33	SW SW	WELL #14 (HARN 129) - 530 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33	6800 ft.
22 S	31 E	WM	34	SW SW	WELL A (HARN 130) - 1120 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34	2500 ft.
22 S	31 E	WM	33	SE SE	WELL C - 1165 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 33	2800 ft.

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

Certificate: 89445 in the name of CURT BLACKBURN (perfected under Permit G-1808)

Use: IRRIGATION OF 8.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 26.0 ACRES

Priority Date: APRIL 3, 1961

Rate: 0.43 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, 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: WELL 14 within the FOLEY SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	31 E	WM	33	SW SW	Well 14 (HARN 129): 530 FEET NORTH AND 1200 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	33	NE SW	8.2

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	31 E	WM	33	NE SE	10.0
22 S	31 E	WM	33	NW SE	16.0
Total					26.0

17. The proposed points of appropriation are described in the table below with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location
22 S	31 E	WM	34	SW SW	WELL A (HARN 130) - 1120 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 34	4200 ft.
22 S	31 E	WM	34	SE SW	WELL B (HARN 132) - 969.6 FEET NORTH AND 2641.7 FEET WEST FROM THE SW CORNER OF SECTION 34	6750 ft.
22 S	31 E	WM	33	SE SE	WELL C - 325 FEET SOUTH AND 4704 FEET WEST FROM THE SE CORNER OF SECTION 33	4000 ft.

Transfer Review Criteria (OAR 690-380-4010)

18. 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.
19. A pump, pipeline, and sprinkler system 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-11906.
20. The proposed change would not result in enlargement of the rights.
21. The proposed change would not result in injury to other water rights
22. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation and additional points of appropriation proposed in Transfer Application T-11906 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-11906 is approved, the final order will include the following:

- 1. The change in points of appropriation and additional points of appropriation proposed in Transfer Application T-11906 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 35135, 36880, 49683, 83994, and 89445 and any related decree.*
- 3. Water right Certificates 83994 and 89445 are cancelled.*
- 4. Water right Certificates 35135, 36880, and 49683 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 5. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 6. 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.*
- 7. If substantial interference with a senior water right occurs due to withdrawal of water from any well listed in this transfer, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.*
- 8. If the number, location, source, or construction of any well deviates from that proposed in the transfer application or required by permit conditions, this transfer may be subject to cancellation, unless the Department authorizes the change in writing.*
- 9. Prior to using water from any well listed in this transfer, the applicant shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID). A tag showing the Well ID shall be permanently attached to the well. If a well does not have a Well ID, the applicant shall apply for one from the Department and attach it to the well within 60 days of the date the transfer is approved. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.*

10. *Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this transfer, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.*
11. *Before water use may begin, the water user shall install a totalizing flow meter at each point of appropriation. The totalizing flow meter must be installed and maintained in good working order. In addition, the water user shall maintain a record of all water used each month, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be submitted to the Department annually, or more frequently as may be required by the Director, and shall be submitted to the Watermaster upon request.*
12. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
13. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
14. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 17 day of February 2016.



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@ wrd.state.or.us.

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