



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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September 15, 2016

RATTLESNAKE CREEK LAND AND CATTLE CO. LLC  
524 HWY 20 N  
HINES OR 97738

SUBJECT: Water Right Transfer Application T-12169

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12169. 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@wr.d.state.or.us](mailto:Patrick.K.Starnes@wr.d.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12169  
J.R. Johnson, Watermaster 10 District (*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-12169, Harney County                         )    PROPOSING APPROVAL OF  
  )    ADDITIONAL POINTS OF  
  )    APPROPRIATION

**Authority**

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

**Applicant**

RATTLESNAKE CREEK LAND AND CATTLE CO. LLC  
C/O ANDY ROOT  
524 HWY 20 N  
HINES, OR 97738

**Findings of Fact**

1. On September 28, 2015, RATTLESNAKE CREEK LAND AND CATTLE CO LLC filed an application for additional points of appropriation under Certificates 89122 and 90456. The Department assigned the application number T-12169.
2. Notice of the application for transfer was published on October 6, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 11, 2016 the applicant submitted a revised application.
4. On June10, 2016, the applicant submitted a revised application and map.
5. On June 14, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12169 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 14, 2016, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2016 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.

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.

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

**Certificate:** 89122 in the name of RATTLESNAKE CREEK LAND AND CATTLE CO. LLC (perfected under Permit G-16165)  
**Use:** IRRIGATION OF 393.6 ACRES  
**Priority Date:** MAY 16, 2005  
**Rate:** 4.92 CUBIC FEET PER SECOND (CFS), BEING 3.79 CFS FROM WELL 5 (HARN 51146) AND 1.13 CFS FROM WELL 8 (HARN 1096)  
**Limit/Duty:** The amount of water used for irrigation under this right, 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 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  
**Sources:** TWO WELLS within the HARNEY LAKE BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	30 E	WM	33	SE SW	WELL 5 - 4195 FEET SOUTH AND 2672 FEET WEST FROM THE NE CORNER OF SECTION 33
25 S	30 E	WM	34	NW NW	WELL 8 - 502 FEET SOUTH AND 536 FEET EAST FROM THE NW CORNER OF SECTION 34

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	POA
25 S	30 E	WM	33	SW NE		27.2	Well 5
25 S	30 E	WM	33	SE NE		32.0	Well 5
25 S	30 E	WM	33	NE SE		39.3	Well 5
25 S	30 E	WM	33	NW SE		36.2	Well 5
25 S	30 E	WM	33	SW SE		24.0	Well 5
25 S	30 E	WM	33	SE SE		30.6	Well 5
25 S	30 E	WM	34	NE NW		28.3	Well 8
25 S	30 E	WM	34	NW NW		22.2	Well 8
25 S	30 E	WM	34	SW NW		17.5	Well 8
25 S	30 E	WM	34	SW NW		1.6	Well 5
25 S	30 E	WM	34	SE NW		22.7	Well 8
25 S	30 E	WM	34	NW SW		3.9	Well 5
25 S	30 E	WM	34	SW SW		0.8	Well 5
26 S	30 E	WM	3	NW NW	4	6.0	Well 5
26 S	30 E	WM	4	NE NE	1	40.0	Well 5
26 S	30 E	WM	4	NW NE	2	38.0	Well 5
26 S	30 E	WM	4	SW NE		9.8	Well 5
26 S	30 E	WM	4	SE NE		13.5	Well 5
Total						393.6	

7. Transfer Application T-12169 proposes additional points of appropriation so that water can be diverted from any one or a combination of the 14 wells. The proposed 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 locations measured in miles (mi)	
						Well 5	Well 8
25 S	30 E	WM	29	NE SE	WELL 16 - 1200 FEET NORTH AND 900 FEET WEST FROM THE S1/16 CORNER OF SECTION 28 AND 29	1.43 mi.	1.4 mi.
25 S	30 E	WM	29	NE SE	WELL 18 - 1200 FEET NORTH AND 850 FEET WEST FROM THE S1/16 CORNER OF SECTION 28 AND 29	1.41 mi.	1.39 mi.
25 S	30 E	WM	33	NE NW	WELL 1 - 1317 FEET SOUTH AND 1355 FEET EAST FROM THE NW CORNER OF SECTION 33	0.58 mi	0.88 mi.
25 S	30 E	WM	33	NE SW	WELL 12 - 2690 FEET SOUTH AND 2890 FEET WEST FROM THE NE CORNER OF SECTION 33	0.29 mi.	0.78 mi.
25 S	30 E	WM	33	SE SW	WELL 9 - 4423 FEET SOUTH AND 2750 FEET WEST FROM THE NE CORNER OF SECTION 33	0.05 mi.	0.98 mi
25 S	30 E	WM	33	SE SE	WELL 14 - 4314 FEET SOUTH AND 870 FEET WEST FROM THE NE CORNER OF SECTION 33	0.36 mi.	0.76 mi.
25 S	30 E	WM	33	SE SE	WELL 15 - 4314 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 33	0.35 mi.	0.77 mi.
25 S	30 E	WM	34	SE SW	WELL 7 - 4725 FEET SOUTH AND 1877 FEET EAST FROM THE NW CORNER OF SECTION 34	0.88 mi.	0.85 mi.
26 S	30 E	WM	3	NW NW	WELL 10 - 6310 FEET SOUTH AND 415 FEET EAST FROM THE NW CORNER OF SECTION 34	0.73 mi.	1.1 mi
26 S	30 E	WM	3	NW NW	WELL 11 - 6340 FEET SOUTH AND 330 FEET EAST FROM THE NW CORNER OF SECTION 34	0.70 mi.	1.1 mi.
26 S	30 E	WM	3	NW NW	WELL 17 - 6310 FEET SOUTH AND 440 FEET EAST FROM THE NW CORNER OF SECTION 34	0.74 mi.	1.0 mi.
26 S	30 E	WM	4	NE NW	WELL 13 - 6415 FEET SOUTH AND 2745 FEET WEST FROM THE NE CORNER OF SECTION 33	0.43 mi.	1.3 mi.

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

**Certificate:** 90456 in the name of RATTLESNAKE CREEK LAND AND CATTLE CO. LLC (perfected under Permit G-16150)  
**Use:** IRRIGATION OF 273.8 ACRES  
**Priority Date:** FEBRUARY 21, 2006  
**Rate:** 3.42 CUBIC FEET PER SECOND (CFS), BEING 1.07 CFS FROM WELL 7 (HARN 51272) AND 2.35 CFS FROM WELL 9 (HARN 51448)  
**Limit/Duty:** The amount of water used for irrigation under this right, 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 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  
**Sources:** TWO WELLS within the HARNEY LAKE BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	30 E	WM	34	SE SW	WELL 7 - 4725 FEET SOUTH AND 1877 FEET EAST FROM THE NW CORNER OF SECTION 34
25 S	30 E	WM	33	SE SW	WELL 9 - 4423 FEET SOUTH AND 2750 FEET WEST FROM THE NE CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	POA
25 S	30 E	WM	34	NE SW		0.8	Well 9
25 S	30 E	WM	34	SW SW		28.5	Well 7
25 S	30 E	WM	34	SE SW		23.4	Well 7
25 S	30 E	WM	34	SE SW		1.1	Well 9
25 S	30 E	WM	34	NE SE		30.1	Well 9
25 S	30 E	WM	34	NW SE		33.1	Well 9
25 S	30 E	WM	34	SW SE		36.4	Well 9
25 S	30 E	WM	34	SE SE		34.5	Well 9
26 S	30 E	WM	3	NE NE	1	37.7	Well 9
26 S	30 E	WM	3	NW NE	2	6.2	Well 9
26 S	30 E	WM	3	SW NE		0.3	Well 9
26 S	30 E	WM	3	SE NE		8.0	Well 9
26 S	30 E	WM	3	NE NW	3	15.4	Well 7
26 S	30 E	WM	3	NW NW	4	18.3	Well 7
Total						273.8	

9. Transfer Application T-12169 proposes additional points of appropriation so that water can be diverted from any one or a combination of the 14 wells. The proposed 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 locations measured in miles (mi)	
						Well 7	Well 9
25 S	30 E	WM	29	NE SE	WELL 16 - 1200 FEET NORTH AND 900 FEET WEST FROM THE S1/16 CORNER OF SECTION 28 AND 29	2.0 mi.	1.46 mi.
25 S	30 E	WM	29	NE SE	WELL 18 - 1200 FEET NORTH AND 850 FEET WEST FROM THE S1/16 CORNER OF SECTION 28 AND 29	2.0 mi.	1.45 mi.
25 S	30 E	WM	33	NE NW	WELL 1 - 1317 FEET SOUTH AND 1355 FEET EAST FROM THE NW CORNER OF SECTION 33	1.3 mi	0.63 mi.
25 S	30 E	WM	33	NE SW	WELL 12 - 2690 FEET SOUTH AND 2890 FEET WEST FROM THE NE CORNER OF SECTION 33	0.98 mi.	0.33 mi.
25 S	30 E	WM	33	SE SW	WELL 5 - 4195 FEET SOUTH AND 2672 FEET WEST FROM THE NE CORNER OF SECTION 33	0.88 mi.	0.05 mi.
25 S	30 E	WM	33	SE SE	WELL 14 - 4314 FEET SOUTH AND 870 FEET WEST FROM THE NE CORNER OF SECTION 33	0.51 mi.	0.38 mi.
25 S	30 E	WM	33	SE SE	WELL 15 - 4314 FEET SOUTH AND 920 FEET WEST FROM THE NE CORNER OF SECTION 33	0.53 mi.	0.36 mi.
25 S	30 E	WM	34	NW NW	WELL 8 - 502 FEET SOUTH AND 536 FEET EAST FROM THE NW CORNER OF SECTION 34	0.84 mi.	0.98
26 S	30 E	WM	3	NW NW	WELL 10 - 6310 FEET SOUTH AND 415 FEET EAST FROM THE NW CORNER OF SECTION 34	0.4 mi.	0.7 mi.
26 S	30 E	WM	3	NW NW	WELL 11 - 6340 FEET SOUTH AND 330 FEET EAST FROM THE NW CORNER OF SECTION 34	0.43 mi.	0.68 mi.
26 S	30 E	WM	3	NW NW	WELL 17 - 6310 FEET SOUTH AND 440 FEET EAST FROM THE NW CORNER OF SECTION 34	0.4 mi.	0.71 mi.
26 S	30 E	WM	4	NE NW	WELL 13 - 6415 FEET SOUTH AND 2745 FEET WEST FROM THE NE CORNER OF SECTION 33	0.94 mi.	0.38 mi.

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

10. 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.

11. 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-12169.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

### **Determination and Proposed Action**

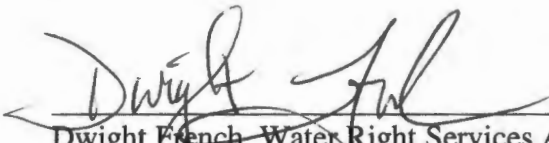
The additional points of appropriation proposed in Transfer Application T-12169 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-12169 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-12169 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 89122 and 90456 and any related decree.*
3. *Water right Certificates 89122 and 90456 are cancelled.*
4. *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.*
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 meter or measuring device in good working order.*
  - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is 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, 2021**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 16 day of September, 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@wrdd.state.or.us](mailto:marcy.j.osborn@wrdd.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.



