

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12864, 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

WHITBY BROTHERS LAND AND LIVESTOCK LLC
JEB WHITBY
62 W JUNIPER RD
MESA, WA 99343
jeb@whitbyfarms.com

Findings of Fact

1. On March 8, 2018, WHITBY BROTHERS LAND AND LIVESTOCK LLC AND JEB WHITBY filed an application for additional points of appropriation under Certificates 66774, 66775, 67893, 67894, and 93575. The Department assigned the application number T-12864.
2. Notice of the application for transfer was published on March 13, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 7, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12864 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 8, 2018, for the applicant 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.

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

Certificate: 66774 in the name of RICHTRON FINANCIAL CORPORATION
(perfected under Permit G-9115)
Use: IRRIGATION of 124.8 ACRES
Priority Date: SEPTEMBER 12, 1980
Rate: 1.56 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: A WELL within the ROCK CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	31 E	WM	9	NE NE	WELL 1 - 1320 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	31 E	WM	9	NE NE	32.0
33 S	31 E	WM	9	NW NE	32.4
33 S	31 E	WM	9	SW NE	30.0
33 S	31 E	WM	9	SE NE	30.4
Total					124.8

5. The table below describes the proposed additional points of appropriation with the approximate distances from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)
33 S	31 E	WM	3	SE NW	WELL 2 - 60 FEET NORTH AND 1340 FEET EAST FROM THE W¼ CORNER OF SECTION 3	4884
33 S	31 E	WM	4	NW SE	WELL 3 - 1225 FEET SOUTH AND 1412 FEET WEST FROM THE E¼ CORNER OF SECTION 4	2706
33 S	31 E	WM	4	SE NE	WELL 4 - 60 FEET NORTH AND 1340 FEET WEST FROM THE E¼ CORNER OF SECTION 4	4026
33 S	31 E	WM	10	NE NW	WELL 5 - 1307 FEET SOUTH AND 1339 FEET EAST FROM THE NW CORNER OF SECTION 10	2442
33 S	31 E	WM	10	SE SW	WELL 6 - 1320 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 10	3564
33 S	31 E	WM	8	SW NE	WELL 9 - 2650 FEET SOUTH AND 1320 FEET EAST FROM THE N¼ CORNER OF SECTION 8	5610

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)
33 S	31 E	WM	9	SW NW	WELL 11 - 2730 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 9	3570
33 S	31 E	WM	10	NW NW	WELL 12 - 860 FEET EAST FROM THE NW CORNER OF SECTION 10	2428

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

Certificate: 66775 in the name of RICHTRON FINANCIAL CORPORATION
(perfected under Permit G-9116)

Use: IRRIGATION of 524.6 ACRES

Priority Date: SEPTEMBER 12, 1980

Rate: 5.57 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: A WELL within the ROCK CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	31 E	WM	4	SE NE	WELL 4 - 60 FEET NORTH AND 1340 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
33 S	31 E	WM	3	NE NW	3	31.2
33 S	31 E	WM	3	NW NW	4	37.2
33 S	31 E	WM	3	SW NW		34.0
33 S	31 E	WM	3	SE NW		28.8
33 S	31 E	WM	3	NE SW		32.6
33 S	31 E	WM	3	NW SW		34.0
33 S	31 E	WM	3	SW SW		32.8
33 S	31 E	WM	3	SE SW		32.4
33 S	31 E	WM	4	NE NE	1	33.2
33 S	31 E	WM	4	NW NE	2	34.4
33 S	31 E	WM	4	SW NE		32.0
33 S	31 E	WM	4	SE NE		31.2
33 S	31 E	WM	4	NE SE		32.8
33 S	31 E	WM	4	NW SE		34.4
33 S	31 E	WM	4	SW SE		32.0
33 S	31 E	WM	4	SE SE		31.6
Total						524.6

7. The table below describes the proposed additional points of appropriation with the approximate distances from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)
33 S	31 E	WM	9	NE NE	WELL 1 - 1320 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 9	4026
33 S	31 E	WM	3	SE NW	WELL 2 - 60 FEET NORTH AND 1340 FEET EAST FROM THE W ¼ CORNER OF SECTION 3	2746
33 S	31 E	WM	4	NW SE	WELL 3 - 1225 FEET SOUTH AND 1412 FEET WEST FROM THE E¼ CORNER OF SECTION 4	1320
33 S	31 E	WM	10	NE NW	WELL 5 - 1307 FEET SOUTH AND 1339 FEET EAST FROM THE NW CORNER OF SECTION 10	4752
33 S	31 E	WM	10	SE SW	WELL 6 - 1320 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 10	7075
33 S	31 E	WM	8	SW NE	WELL 9 - 2650 FEET SOUTH AND 1320 FEET EAST FROM THE N¼ CORNER OF SECTION 8	7524
33 S	31 E	WM	9	SW NW	WELL 11 - 2730 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 9	6204
33 S	31 E	WM	10	NW NW	WELL 12 - 860 FEET EAST FROM THE NW CORNER OF SECTION 10	3432

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

Certificate: 67893 in the name of CARL THOMAS (perfected under Permit G-10872)

Use: IRRIGATION of 112.0 ACRES

Priority Date: OCTOBER 10, 1988

Rate: 1.4 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 (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: A WELL within the CATLOW VALLEY BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	31 E	WM	10	NE NW	WELL 5 - 1307 FEET SOUTH AND 1339 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	31 E	WM	10	NE NW	28.0
33 S	31 E	WM	10	NW NW	28.0
33 S	31 E	WM	10	SW NW	28.0
33 S	31 E	WM	10	SE NW	28.0
Total					112.0

9. The table below describes the proposed additional points of appropriation with the approximate distances from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)
33 S	31 E	WM	9	NE NE	WELL 1 - 1320 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 9	2442
33 S	31 E	WM	3	SE NW	WELL 2 - 60 FEET NORTH AND 1340 FEET EAST FROM THE W¼ CORNER OF SECTION 3	4092
33 S	31 E	WM	4	NW SE	WELL 3 - 1225 FEET SOUTH AND 1412 FEET WEST FROM THE E¼ CORNER OF SECTION 4	3825
33 S	31 E	WM	4	SE NE	WELL 4 - 60 FEET NORTH AND 1340 FEET WEST FROM THE E¼ CORNER OF SECTION 4	4750
33 S	31 E	WM	10	SE SW	WELL 6 - 1320 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 10	2640
33 S	31 E	WM	8	SW NE	WELL 9 - 2650 FEET SOUTH AND 1320 FEET EAST FROM THE N¼ CORNER OF SECTION 10	8052
33 S	31 E	WM	9	SW NW	WELL 11 - 2730 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 9	5950
33 S	31 E	WM	10	NW NW	WELL 12 - 860 FEET EAST FROM THE NW CORNER OF SECTION 10	1382

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

Certificate: 67894 in the name of CARL THOMAS (perfected under Permit G-10873)

Use: IRRIGATION of 224.0 ACRES

Priority Date: OCTOBER 10, 1988

Rate: 2.8 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, or its equivalent and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the CATLOW VALLEY BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	31 E	WM	8	SW NE	WELL 9 - 2650 FEET SOUTH AND 1320 FEET EAST FROM THE N¼ CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	31 E	WM	8	NE NE	28.0
33 S	31 E	WM	8	NW NE	28.0
33 S	31 E	WM	8	SW NE	28.0
33 S	31 E	WM	8	SE NE	28.0
33 S	31 E	WM	8	NE SE	28.0
33 S	31 E	WM	8	NW SE	28.0
33 S	31 E	WM	8	SW SE	28.0
33 S	31 E	WM	8	SE SE	28.0
Total					224.0

11. The table below describes the proposed additional points of appropriation with the approximate distances from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)
33 S	31 E	WM	9	NE NE	WELL 1 - 1320 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 9	5610
33 S	31 E	WM	3	SE NW	WELL 2 - 60 FEET NORTH AND 1340 FEET EAST FROM THE W¼ CORNER OF SECTION 3	9715
33 S	31 E	WM	4	NW SE	WELL 3 - 1225 FEET SOUTH AND 1412 FEET WEST FROM THE E¼ CORNER OF SECTION 4	6600
33 S	31 E	WM	4	SE NE	WELL 4 - 60 FEET NORTH AND 1340 FEET WEST FROM THE E¼ CORNER OF SECTION 4	6204
33 S	31 E	WM	10	NE NW	WELL 5 - 1307 FEET SOUTH AND 1339 FEET EAST FROM THE NW CORNER OF SECTION 10	8052
33 S	31 E	WM	10	SE SW	WELL 6 - 1320 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 10	7986
33 S	31 E	WM	9	SW NW	WELL 11 - 2730 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 9	2112
33 S	31 E	WM	10	NW NW	WELL 12 - 860 FEET EAST FROM THE NW CORNER OF SECTION 10	7925

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

Certificate: 93575 in the name of WHITBY BROTHERS LAND AND LIVESTOCK, LLC AND NORTHWEST FARM CREDIT SERVICES, FLCA (perfected under Permit G-16674)

Use: IRRIGATION of 230.4 ACRES

Priority Date: JUNE 2, 2009

Rate: 2.88 CUBIC FEET PER SECOND (CFS), BEING NO MORE THAN 2.23 CFS FROM WELL 11 AND 2.23 CFS FROM WELL 12

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 for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: WELL 11 AND WELL 12 in the ROARING SPRINGS CANYON BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	31 E	WM	9	SW NW	WELL 11 - 2730 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 9
33 S	31 E	WM	10	NW NW	WELL 12 - 860 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	31 E	WM	9	NE NW	25.5
33 S	31 E	WM	9	NW NW	32.0
33 S	31 E	WM	9	SW NW	32.0
33 S	31 E	WM	9	SE NW	25.7
33 S	31 E	WM	9	NE SW	28.3
33 S	31 E	WM	9	NW SW	28.2
33 S	31 E	WM	9	SW SW	29.5
33 S	31 E	WM	9	SE SW	29.2
Total					230.4

13. The table below describes the proposed additional points of appropriation with the approximate distances from the authorized points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the authorized well measured in feet (ft.)	
						WELL 11	WELL 12
33 S	31 E	WM	9	NE NE	WELL 1 - 1320 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 9	3604	2428
33 S	31 E	WM	3	SE NW	WELL 2 - 60 FEET NORTH AND 1340 FEET EAST FROM THE W¼ CORNER OF SECTION 3	8026	2772
33 S	31 E	WM	4	NW SE	WELL 3 - 1225 FEET SOUTH AND 1412 FEET WEST FROM THE E¼ CORNER OF SECTION 4	5150	2640
33 S	31 E	WM	4	SE NE	WELL 4 - 60 FEET NORTH AND 1340 FEET WEST FROM THE E¼ CORNER OF SECTION 4	6138	3432
33 S	31 E	WM	10	NE NW	WELL 5 - 1307 FEET SOUTH AND 1339 FEET EAST FROM THE NW CORNER OF SECTION 10	6006	1382
33 S	31 E	WM	10	SE SW	WELL 6 - 1320 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 10	5940	4025
33 S	31 E	WM	8	SW NE	WELL 9 - 2650 FEET SOUTH AND 1320 FEET EAST FROM THE N¼ CORNER OF SECTION 8	2110	7925

Transfer Review Criteria (OAR 690-380-4010)

14. 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.
15. 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-12864.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.
18. All other application requirements are met.

Determination and Proposed Action

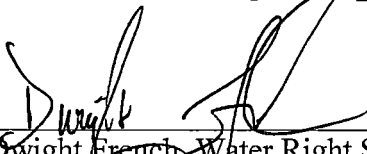
The additional points of appropriation proposed in Transfer Application T-12864 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12864 is approved, the final order will include the following:

- 1. The additional points of appropriation proposed in Transfer Application T-12864 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 66774, 66775, 67893, 67894 and 93575 and any related decree.*
- 3. Water right Certificates 66774, 66775, 67893, 67894 and 93575 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 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 points of appropriation.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 Dec. 27th, 2018,


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@oregon.gov.

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 20, 2018

VIA E-MAIL

WHITBY BROTHERS LAND & LIVESTOCK LLC

JEB WHITBY

62 W JUNIPER RD

MESA, WA 99343

jeb@whitbyfarms.com

SUBJECT: Water Right Transfer Application T-12864

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12864. 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@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12864

J R. Johnson, District 10 Watermaster **(via e-mail)**

Scott D. Montgomery, Agent for the applicant **(via e-mail)**

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