

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11373, Crook County)	PROPOSING APPROVAL OF
)	CHANGES IN PLACE OF USE OF
)	WATER RIGHTS

Authority

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

Applicant

BUTLER RANCH INC.
5294 NW LONE PINE RD.
TERREBONNE, OR 97760

Findings of Fact

1. On March 19, 2012, Butler Ranch Inc. filed an application to change the place of use under Certificates 83850 and 2734 and to diminish a portion of Certificate 2734. The Department assigned the application number T-11373.
2. Notice of the application for transfer was published on March 27, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Instream Transfer Application T-11347 was filed on January 27, 2012, by BUTLER RANCH INC. to change the place of use and character of use for a portion of Certificates 87331 and 2734 from irrigation and supplemental irrigation to instream use. The water rights to be changed under Transfer Application T-11347 are appurtenant to some of the same lands to be modified in T-11373. The two transfers are being processed concurrently.
4. On multiple occasions between October 14, 2015, and September 21, 2016, the Department contacted the applicant's agent by telephone and written correspondence (email) to notify and discuss deficiencies in the application. Clarification was requested for the quarter-quarters with remaining rights, and for the certificates involved in the transfer.
5. Between November 4, 2015, and September 21, 2016, information was received resolving the deficiencies. A September 21, 2016, email confirms that as part of the clarification, it was determined and agreed that Certificate 2734 will be a part of Transfer Application T-11347 and not a part of Transfer Application T-11373. The request to diminish a portion

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.

of Certificate 2734 has been withdrawn. In addition, 14.3 acres of supplemental irrigation under Certificate 87331 (supplemental to Certificate 2734) is requested to be added to this transfer and moved to a different primary water right similar to Certificate 2734.

6. On January 11, 2017, the Department mailed a copy of the Draft Preliminary Determination (DPD) proposing to approve Transfer Application T-11373 to the applicant. The DPD cover letter set forth a deadline of February 9, 2017, for the applicant to respond. On February 9, 2017, the agent, on behalf of the applicant, requested additional time to respond to the DPD and provide the additional information requested.
7. On December 18, 2017, Philip and Penelope Knight filed a permanent Transfer Application T-12795 to change the place of use of a portion of Certificate 87331. The 20 acres of irrigation use proposed for transfer to a new place of use under Transfer Application T-12795 is all but 1.7 acres of irrigation use proposed for transfer to instream use under Transfer Application T-11347. The place of use from which Certificate 87331 is proposed to be moved from under Transfer Application T-12795 also involves a portion of Certificate 2734 proposed for transfer under Transfer Application T-11373. Transfer Application T-12795 is being processed concurrently with this transfer application and Instream Transfer Application T-11347.
8. On January 29, 2018, Philip and Penelope Knight filed Temporary Transfer Application T-12834, which proposed to temporarily transfer the same acreage as requested under Permanent Transfer Application T-12795. This temporary transfer was approved by the Department on April 25, 2018, as evidenced by Special Order Volume 107, Page 1180, and is to expire on October 31, 2022. The agent (John Short, Water Right Services) for Permanent Transfer Application T-12795 and Temporary Transfer T-12834 is also the agent for Instream Transfer Application T-11347 and Regular Transfer Application T-11373.
9. Both the Permanent Transfer Application T-12795 and Temporary Transfer Application T-12834 conflict with the proposed actions under Instream Transfer Application T-11347 and Permanent Place of Use Transfer Application T-11373.
10. On February 28, 2018, the Department contacted the agent for both transfer applicants to resolve the conflict between the four transfer applications. On March 16, 2018, the agent submitted a request to amend Instream Transfer Application to transfer 1.7 acres of primary irrigation under Certificate 87331 and 14.3 acres primary irrigation under certificate 2734 to instream use. Based on the amendment to Transfer Application T-11347, no changes need to be made to Transfer Application T-11373. The agent also requested that all three transfers be processed concurrently to avoid any inadvertent transfer issues.
11. Amended application materials were received from the applicant's agent on March 31, 2018.
12. Based upon review of the materials provided, on September 26, 2018, the Department sent an additional deficiency letter to the transfer applicant requesting revisions to the transfer application map (consistent with application mapping requirements under OAR 690-380-3100) and revised application materials to clearly describe the portion of each right to be transferred, including clarification of the existing delivery system. The Department

requested that this information be provided by October 25, 2018. On October 9, 2018, the agent (John Short, Water Right Services) for the transfer applicant provided revised application maps and a description of the water rights and delivery system sufficient to meet Department application requirements.

13. However, the revised application maps still needed some modification.
14. On October 22, 2018, the Department sent the applicant's agent a request for additional revisions to the transfer application map, specifically the map showing the place of use from which the portion of Certificate 87331 is being transferred and the remaining portion of that certificate not being transferred. The Department requested that the revised application map be provided to the Department by November 20, 2018.
15. Transfer Application T-11373 proposes to transfer a portion of Certificate 83850 held by the Bureau of Reclamation (BOR). The Department identified, for the portion of Certificate 83850 proposed for transfer, the applicant needed to obtain consent from the U.S. Bureau of Reclamation, the holder of that water right. A request that consent be obtained was sent to the applicant's agent on October 11, 2018. The request identified that the consent should be provided to the Department by November 9, 2018.
16. On December 3, 2018, the Department received notice that the BOR has provided consent to the proposed transfer application.
17. On December 10, 2018, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11373 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of December January 18, 2019, for the applicant to respond. The applicant's agent requested that the Department proceed with issuance of a Preliminary Determination and provided the reports of ownership requested by the Department. However, upon review of the reports of ownership, the Department identified several deficiencies in the reports and additional information necessary to complete review.
18. Revised reports of ownership were received by the department on February 28, 2019. The revised reports were sufficient to demonstrate that the applicant is authorized to pursue the transfer.
19. The portion of the first right to be transferred is as follows:
 - Certificate:** 83850 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-25991)
 - Use:** IRRIGATION of 25.2 ACRES
 - Priority Date:** APRIL 8, 1914
 - Rate:** 0.64 CUBIC FOOT PER SECOND (CFS)
 - 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-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 from Prineville Reservoir. Use of the water requires the existence of a current contract between the landowners and the United States Bureau of Reclamation.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM THE NE CORNER OF SECTION 22

Authorized Place of Use:

PRIMARY IRRIGATION WITHOUT STORED WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	15	NE SW	15.1
14 S	14 E	WM	15	NE SE	8.8
14 S	14 E	WM	15	NW SE	1.3
Total:					25.2

20. Transfer Application T-11373 proposes to change the place of use of the right to:

PRIMARY IRRIGATION WITHOUT STORED WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	15	NE SE	2.2
14 S	14 E	WM	15	NW SE	0.8
14 S	14 E	WM	15	SE SE	22.2
Total:					25.2

21. The proposed place of use for Certificate 83850 has a pre-existing water right for irrigation under Certificate 87331 that is proposed to be transferred to instream use under Transfer Application T-11347 and is being processed concurrently with this transfer application.

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

Certificate: 87331 in the name of CLAUDE BUTLER (perfected under Permit S-17167)

Use: SUPPLEMENTAL IRRIGATION of 14.3 ACRES

Priority Date: JULY 23, 1946

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-FORTIETH of one cubic foot per second per acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet for each acre irrigated during the irrigation season of each year. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: CROOKED RIVER, a tributary of the DESCHUTES RIVER

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	22	NW NW	14.3

23. Transfer Application T-11373 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	15	SE SE	14.3

24. Certificate 87331 does not describe the measured distances of the point of diversion, however information is available from the applicant's agent and Certified Water Right Examiner (CWRE) indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM THE NE CORNER OF SECTION 22

25. Certificate 87331 appears to be a partially deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 22), the total rate and duty for the water right would be exceeded.

However, upon review of the water right record, Certificate 87331 (previously Certificate 22454) was to provide a full 1/40th CFS per acre for primary irrigation of lands in Section 15. In addition, water use for irrigation in Section 22 was originally intended to be supplemental to Certificate 2734 (priority date of 1911). Certificate 2734 allows the equivalent diversion of 1/80th CFS per acre. Water use under Certificate 87331 could then be used to bring the rate of water that may be applied to supplemental acreage in Section 22 up to a full 1/40th CFS per acre with the equivalent of an additional 1/80th CFS per acre.

Based upon the current water right record and Final Proof map for Certificate 22454 (preceding certificate to 87331), there are 103.5 acres of primary irrigation and 101.9 acres of supplemental irrigation under Certificate 87331. Certificate 87331 allows the diversion of up to 3.89 CFS for irrigation and supplemental irrigation but does not specify how much water may be used for each type of irrigation.

It appears that up to 2.59 CFS may be used for primary irrigation (a full 1/40th CFS per acre for irrigation of 103.5 acres) and up to 1.3 CFS for supplemental irrigation (a full additional 1/80th CFS per acre for supplemental irrigation of 101.9 acres).

All acreage proposed for transfer from Certificate 87331 is for supplemental irrigation. The quantity available for transfer is as described in the table below. This rate and duty are also the quantities by which Certificate 87331 shall be reduced if this transfer is approved.

Rate	Duty
0.18 CFS	57.2

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

26. Water has been used within the five-year period prior to submittal of the transfer application 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.

27. 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-11373.
28. Consistent with OAR 690-380-2240(5), the priority dates and sources for the primary irrigation right (Certificate 2734) located at the place of use from which the supplemental irrigation right (Certificate 87731) is being moved are similar in reliability to that of the primary irrigation water right (Certificate 82850) to be located at the proposed place of use.
29. The proposed changes, as modified, would not result in enlargement of the rights.
30. The proposed changes, as modified, would not result in injury to other water rights.
31. After proof of completion, any water right Certificate issued to confirm the changes to Certificate 83850 under Transfer Application T-11373 is to remain in the name of the U.S. Bureau of Reclamation.

Determination and Proposed Action

The changes in place of use proposed in Transfer Application T-11373 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-11373 is approved, the final order will include the following:

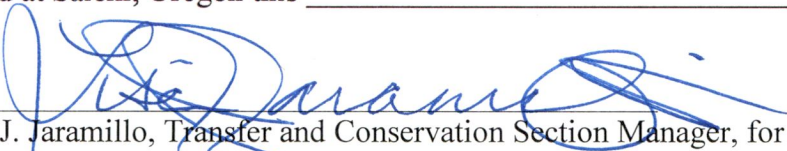
1. *The changes in place of use proposed in Transfer Application T-11373 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 83850 and 87331 and any related decree.*
3. *Water right Certificate 87331 is modified and will be cancelled upon approval of Transfer Applications T-11347, T-11373, and T-12795. A new certificate will be issued describing that portion of the right not affected by this transfer and Transfer Applications T-11347 and T-12795. The rate and volume available for supplemental irrigation at the new place of use will be limited to:*

<i>Rate</i>	<i>Annual Volume</i>
<i>0.18 CFS</i>	<i>57.2 AF</i>

4. *Water right Certificate 83850 is modified. The Department will issue a superseding certificate describing the right when it determines that it is necessary for record keeping.*
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 the point of diversion described in Findings of Fact No. 19 and 24.*
 - 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. *The former place of use of the transferred rights shall no longer receive water under the rights.*
 7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
 8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred (Certificate 87331) will be issued.*
 9. *After satisfactory proof of beneficial use is received, a new superseding confirming-remaining water right certificate confirming the right transferred (Certificate 83850) in the name of the U.S. Bureau of Reclamation will be issued when the Department determines it is necessary for record keeping.*

Dated at Salem, Oregon this MAY 03 2019 .



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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.

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>

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, please contact Laura Wilke, she may be reached at 503 986-0888 or Laura.K.Wilke@oregon.gov.



Oregon

Kate Brown, Governor

Water Resources Department

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(503) 986-0900

Fax (503) 986-0904

May 3, 2019

Applicant

BUTLER RANCH INC.
5294 NW LONE PINE RD
TERREBONNE, OR 97760

SUBJECT: Water Right Transfer Application T-11373

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11373. 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 503-986-0888 or Laura.K.Wilke@oregon.gov if I may be of assistance.

Sincerely,

Laura Wilke
Transfer Specialist
Transfer and Conservation Section

cc: T-11373
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Linda Lee Miller, CWRE # 47708 (*via e-mail*)
US Bureau of Reclamation (*via e-mail*)

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