

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11315, HARNEY, MALHEUR, County)	PROPOSING DENIAL OF
)	CHANGES IN PLACE OF USE,
)	AND CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

BTAZ NEVADA, LLC
224 N PARK AVENUE
FREMONT, NEBRASKA 68025

Findings of Fact

1. On November 7, 2011, WHITEHORSE RANCH filed an application to change the place of use and to change the character of use under Certificate 64221. The Department assigned the application number T-11315.
2. Notice of the application for transfer was published on November 15, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 19, 2015, the Department approved an assignment of Transfer T-11315 to BTAZ NEVADA, LLC.
4. On September 4, 2018, the Department contacted the Applicant by mail regarding deficiencies in the application, specifically the change in character of use from Irrigation to Storage is not permitted and the application and map need to be amended to reflect this or the application would be denied. The letter set forth a deadline of October 4, 2018 for the applicant to respond. The applicant did not respond by the deadline.
5. On February 8, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11315 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 8, 2019, for the applicant to respond. The applicant did not respond by the deadline.

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 portion of the right to be transferred is as follows:

Certificate: 64221 in the name of WHITEHORSE RANCH (confirmed by Decree of the Circuit Court of the State of Oregon for Harney County. The decree is of record at Salem, in the Order Record of the Water Resources Director, in Volume 18, at page 502.

Use: IRRIGATION of 4232.2 ACRES and STOCK USE.

Priority Date: 1883

Rate: 106.0 CUBIC FEET 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, shall be limited ONE-FORTIETH 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.

Period of Use: The right is limited to not more than 106.0 CFS from March 1 to September 1 of each year

Source: WHITEHORSE CREEK, a tributary to the ALVORD DESERT

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	GLot	Measured Distances
37 S	37 E	WM	31	16	2450 FEET NORTH AND 3050 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION AND STOCK USE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
37 S	36 E	WM	25	SE SE		4.2
37 S	37 E	WM	30		19	15.9
37 S	37 E	WM	30		20	4.5
37 S	37 E	WM	31		5	14.0
37 S	37 E	WM	31		6	6.7
37 S	37 E	WM	31		4	0.5
37 S	37 E	WM	31		5	16.7
37 S	37 E	WM	31		8	7.1
37 S	37 E	WM	31		9	6.5
Total						76.1

7. Transfer Application T-11315 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	37 E	WM	15	SW NE	10.0
37 S	37 E	WM	15	SE NW	2.5
37 S	37 E	WM	15	NE SW	28.3
37 S	37 E	WM	15	NW SW	3.0
37 S	37 E	WM	15	SW SW	0.4
37 S	37 E	WM	15	SE SW	0.3
37 S	37 E	WM	15	NW SE	0.8
Total					45.3

8. Transfer Application T-11315 proposes to change the character of use of 30.8 acres of IRRIGATION to STORAGE as follows:

CONVERT FROM IRRIGATION TO STORAGE					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	37 E	WM	15	SW NE	15.4
37 S	37 E	WM	15	SE NE	15.4
Total					30.8

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

9. Water has been used within the last five years.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11315.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.
13. The requested change from irrigation of 30.8 acres to storage in Airport Reservoir cannot be approved by the Department. The Department is not authorized to change the type of water right, in this case, an irrigation right to a storage right.

Determination and Proposed Action

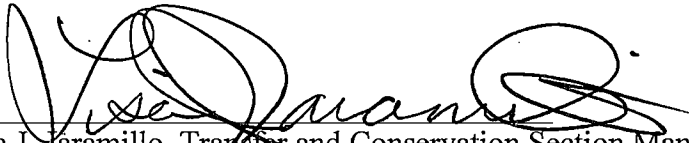
The change in place of use and change in character of use proposed by Transfer Application T-11315 appear to **NOT** be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The Department does not have the authority to change the type of water right. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be denied.

If the request to change the type of water right is removed and Transfer Application T-11315 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11315 is 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 Certificate 64221 and any related decree.*
3. *Water right Certificate 64221 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*

5. *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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this **MAY 13 2019** ,



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

This Preliminary Determination was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@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

May 8, 2019

BTAZ NEVADA, LLC
224 N PARK AVENUE
FREMONT, NEBRASKA 68025

SUBJECT: Water Right Transfer Application T-11315

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to NOT approve T-11315. This document is an intermediate step in the denial process. 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 503-986-0806 or arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11315
JR Johnson, District 10 Watermaster (via e-mail)
Ivan Gall, Field Services Administrator (via e-mail)
Jason Spriet, Eastern Region Manager (via e-mail)

encs