



Oregon
Kate Brown, Governor

Water Resources Department
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October 14, 2020

CURT BLACKBURN
BLACKBURN RANCHES, LLC
707 PONDEROSA VILLAGE
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-12892

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12892. 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly legible.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12892
J R. Johnson, District 10 Watermaster (*via e-mail*)
Scott D. Montgomery, Agent 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-12892, Harney County)	PROPOSING APPROVAL FOR
)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	POINTS OF APPROPRIATION, AND
)	CHANGES IN PLACES OF USE

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

CURT BLACKBURN
BLACKBURN RANCHES, LLC
707 PONDEROSA VILLAGE
BURNS, OR 97720

Findings of Fact

1. On April 9, 2018, CURT BLACKBURN, BLACKBURN RANCHES, LLC AND KENNETH AND LINDA LAMB filed an application for additional points of appropriation and a change in place of use under Certificate 92312, for additional points of appropriation, a change in points of appropriation, and a change in place of use under Certificate 93308, and a change in places of use under Certificates 93309 and 93310. The Department assigned the application number T-12892.
2. Notice of the application for transfer was published on April 17, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 28, 2019, the Department determined the proposed points of appropriation under Certificates 92312 and 93308, would not develop the same aquifer as the existing authorized points of appropriation, and the proposed changes at the maximum allowed rate of use would likely result in another groundwater right not receiving the water to which it is legally entitled.

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.

4. On January 31, 2020, the applicant's agent submitted a revised application, removing Certificate 92312 from Transfer Application T-12892.
5. On July 23, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12892 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 24, 2020, for the applicant to respond. The applicant requested that 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.
6. On July 31, 2020, the applicant's agent submitted a revised Table 1 and map for Certificate 93308, providing further clarification on the location of proposed Wells T5 and T6. The agent also requested to extend the date for completion to October 1, 2023.
7. On August 6, 2020, the applicant's attorney submitted additional information to justify the request for more time to complete the changes under T-12892, pursuant to OAR 690-380-5140(3).
8. The portion of the first right to be transferred is as follows:

Certificate: 93308 in the name of BLACKBURN RANCHES LLC (perfected under Permit G-10340)

Use: IRRIGATION of 100.0 ACRES

Priority Date: JANUARY 20, 1984

Rate: 1.25 CUBIC FEET PER SECOND (CFS), IF AVAILABLE AT THE ORIGINAL WELL (WELL 1), FURTHER LIMITED TO NO MORE THAN 1.25 CFS FROM WELL 2 AND 1.21 CFS FROM WELL 3, AND SHALL NOT EXCEED A MAXIMUM CUMULATIVE TOTAL OF 1.25 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 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: 2 WELLS in the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32.5 E	WM	30	SE SE	WELL 3 (NEW) - 27 FEET NORTH AND 655 FEET WEST FROM THE SE CORNER OF SECTION 30
24 S	32.5 E	WM	31	NE NE	WELL 2 (NEW) - 811 FEET SOUTH AND 1151 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	32.5 E	WM	30	NE SW	3	17.9
24 S	32.5 E	WM	30	SE SW	4	16.0
24 S	32.5 E	WM	30	NW SE		16.5
24 S	32.5 E	WM	30	SW SE		14.7
24 S	32.5 E	WM	30	SE SE		5.4
24 S	32.5 E	WM	31	NE NE		0.2
24 S	32.5 E	WM	31	NW NE		15.2
24 S	32.5 E	WM	31	NE NW	1	14.1
					Total	100.0

9. Transfer Application T-12892 proposes to move the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of appropriation in miles (mi.)	
24 S	32.5 E	WM	28	SE NW	T2 - 1355 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 28	WELL 2	WELL 3
						1.7 mi.	1.6 mi.

10. Transfer Application T-12892 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of appropriation in miles (mi.)	
24 S	32.5 E	WM	20	NE SE	T5 - 2258 FEET NORTH AND 2609 FEET EAST FROM THE S1/4 CORNER OF SECTION 20	WELL 2	WELL 3
						2.0 mi.	1.8 mi.
24 S	32.5 E	WM	21	NE SE	T6 - 1120 FEET SOUTH AND 50 FEET WEST FROM THE E1/4 CORNER OF SECTION 21	2.6 mi.	2.5 mi.
24 S	32.5 E	WM	21	SE SE	T3 - 50 FEET NORTH AND 160 FEET WEST FROM THE SE CORNER OF SECTION 21	2.5 mi.	2.3 mi.
24 S	32.5 E	WM	29	NE NE	T1 - 1335 FEET NORTH AND 1395 FEET EAST FROM THE C1/4 CORNER OF SECTION 29	1.3 mi.	1.2 mi.
24 S	32.5 E	WM	29	NE SE	T4 - 410 FEET SOUTH AND 2490 FEET EAST FROM THE C1/4 CORNER OF SECTION 29	1.3 mi.	1.2 mi.

11. Transfer Application T-12892 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32.5 E	WM	21	NE SE	5.9
24 S	32.5 E	WM	21	NW SE	5.9
24 S	32.5 E	WM	21	SW SE	6.0

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32.5 E	WM	21	SE SE	5.9
24 S	32.5 E	WM	28	NE NE	19.1
24 S	32.5 E	WM	28	NW NE	19.0
24 S	32.5 E	WM	28	SW NE	19.1
24 S	32.5 E	WM	28	SE NE	19.1
Total					100.0

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

Certificate: 93309 in the name of BLACKBURN RANCHES LLC (perfected under Permit G-10512)

Use: IRRIGATION of 53.5 ACRES

Priority Date: APRIL 23, 1985

Rate: 0.67 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) and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that although declared herein to be for primary irrigation, the supplemental right perfected under Permit S-49406 may, in the interest of conserving the ground water resources, be exercised at times when water is available from ground water provided that the total quantity diverted from both sources shall not exceed the limitation allowed herein.

Source: TWO WELLS within the EAST FORK SILVIES RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32.5 E	WM	30	SE SE	WELL 3 (NEW) - 27 FEET NORTH AND 655 FEET WEST FROM SE CORNER, SECTION 30
24 S	32.5 E	WM	31	NE NE	WELL 2 (NEW) - 811 FEET SOUTH AND 1151 FEET WEST FROM NE CORNER, SECTION 31

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	32.5 E	WM	31	NE NE		17.9
24 S	32.5 E	WM	31	NW NE		1.9
24 S	32.5 E	WM	31	SE NE		5.9
24 S	32.5 E	WM	31	NE NW	1	1.7
24 S	32.5 E	WM	32	NW NW		9.2
24 S	32.5 E	WM	32	SW NW		16.9
Total						53.5

13. Transfer Application T-12892 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32.5 E	WM	31	NE NE	13.0
24 S	32.5 E	WM	31	SE NE	25.9

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32.5 E	WM	32	NW NW	5.8
24 S	32.5 E	WM	32	SW NW	8.8
Total					53.5

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

Certificate: 93310 in the name of BLACKBURN RANCHES LLC (perfected under Permit S-49406)

Use: SUPPLEMENTAL IRRIGATION of 9.2 ACRES

Priority Date: JUNE 5, 1985

Rate: 0.12 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, 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, provided further that although declared herein to be for supplemental irrigation, the right may, in the interest of conserving the ground water supplies, be exercised at times when water is available in the ground water supply appropriated under the right perfected under Permit G-10512, provided that the total quantity diverted from both sources of supply shall not exceed the limitation allowed herein.

Source: UNNAMED SLOUGH, A TRIBUTARY OF EAST FORK SILVIES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32.5 E	WM	31	NE NE	UNNAMED SLOUGH - 1800 FEET NORTH AND 1240 FEET WEST FROM THE E1/4 CORNER OF SECTION 31

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	32.5 E	WM	31	NW NE		1.9
24 S	32.5 E	WM	31	SE NE		0.6
24 S	32.5 E	WM	31	NE NW	1	1.7
24 S	32.5 E	WM	32	SW NW		5.0
Total						9.2

15. Transfer Application T-12892 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	32.5 E	WM	31	NE NE	2.5
24 S	32.5 E	WM	31	SE NE	3.4
24 S	32.5 E	WM	32	NW NW	1.5
24 S	32.5 E	WM	32	SW SW	1.8
Total					9.2

Transfer Review Criteria (OAR 690-380-4010)

16. 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.
17. 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-12892.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.
20. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation, change in points appropriation, and change in places of use proposed in Transfer Application T-12892 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.

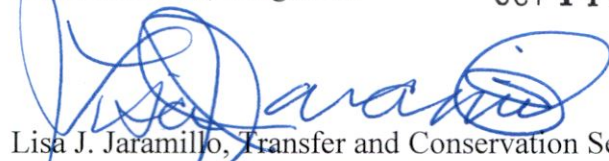
If Transfer Application T-12892 is approved, the final order will include the following:

1. *The additional points of appropriation, change in points of appropriation, and change in places of use proposed in Transfer Application T-12892 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 93308, 93309, and 93310, and any related decree.*
3. *Water right Certificates 93308, 93309, and 93310 are cancelled. A new certificate will be issued describing that portion of Certificate 93308 not affected by this transfer.*
4. *The quantity of water diverted under Certificate 93308 at the new point of appropriation (T2), shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 2 (new) and Well 3 (new)).*
5. *The quantity of water diverted under Certificate 93308 at the new additional points of appropriation (T1, T3, T4, T5, and T6), together with that diverted at the original points of appropriation (Well 2 (new) and Well 3 (new)), shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 2 (new) and Well 3 (new)).*
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. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation under Certificate 93308.*
8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

OCT 14 2020



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.