

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13535, Deschutes County)	PROPOSING APPROVAL OF ADDITIONAL
)	POINTS OF APPROPRIATION, CHANGE IN
)	PLACES OF USE AND CHARACTER 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

BLACK BUTTE RANCH CORPORATION
BLACK BUTTE RANCH ASSOCIATION
PO BOX 8000
BLACK BUTTE RANCH, OR 97759

Findings of Fact

1. On October 5, 2020, BLACK BUTTE RANCH CORPORATION AND BLACK BUTTE RANCH ASSOCIATION filed an application for additional points of appropriation, to change the places of use, and character of use under Certificates 76002, 86708, 92269, and 92271, and for additional points of appropriation under Certificate 92270. The Department assigned the application number T-13535.
2. Notice of the application for transfer was published on October 20, 2020, pursuant to OAR 690-380-4000. One timely comment was filed in response to the notice.
3. A timely comment was submitted to the Department in response to the notice. The issues raised by the comment focused primarily on concerns that:

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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- a) Black Butte Ranch demonstrate that their groundwater withdrawals are not compromising local ecosystems on public lands, specifically Wells #2 and #5.
 - b) Water rights for fish propagation should be forfeited, based on the commenter having no knowledge of Black Butte Ranch having fish operations.
 - c) The decline and ecological collapse of Glaze Meadow has caused the commenter, and the public at large, harm.
4. Not all the issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Many of the issues noted in Finding of Fact #3, though important to the residents and water resources of the area, do not directly relate to the transfer review criteria. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
- a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in injury to other water rights.
5. If approved, the Final Order for T-13535 will contain conditions retaining the current rate limit of the right. The measurement devices in place will be monitored to ensure that enlargement of the right does not occur.
6. On February 20, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13535 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 22, 2021, 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.
7. Further review of Transfer Application T-13535 revealed that the draft preliminary Determination inadvertently did not specify the rate and quantity of water that would have been used under the original rights. The REVISED draft Preliminary Determination, therefore, is issued to correctly reflect the rate and quantity of water being transferred.
8. On April 6, 2021, the Department mailed a copy of the REVISED draft Preliminary Determination proposing to approve Transfer Application T-13535 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 7, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

9. The portion of the first right to be transferred is as follows:

Certificate: 76002 in the name of BLACK BUTTE RANCH PROPERTY MANAGEMENT CORP. (perfected under Permit G-8503)
Use: GROUP DOMESTIC
Priority Date: FEBRUARY 2, 1979
Rate: 1.65 CUBIC FEET PER SECOND
Source: WELL 3, in the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	22	NW NW	WELL 3 - 250 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 22

Authorized Place of Use:

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	ALL
14 S	9 E	WM	10	W ½ NE ¼
14 S	9 E	WM	10	NW ¼
14 S	9 E	WM	10	N ½ SW ¼
14 S	9 E	WM	10	SW ¼ SW ¼
14 S	9 E	WM	15	W ½
14 S	9 E	WM	16	E ½ NE ¼
14 S	9 E	WM	21	NE ¼
14 S	9 E	WM	21	E ½ NW ¼
14 S	9 E	WM	21	NE ¼ SW ¼
14 S	9 E	WM	21	N ½ SE ¼
14 S	9 E	WM	22	N ½ N ½
14 S	9 E	WM	22	NE NW
14 S	9 E	WM	23	NW ¼ NW ¼

10. Transfer Application T-13535 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation in miles (mi.)
14 S	9 E	WM	9	SW SW	WELL 1 - 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9	1.6 mi.
14 S	9 E	WM	9	SW SW	WELL 4 - 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9	1.5 mi.
14 S	9 E	WM	16	SE NE	WELL 2 - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16	0.8 mi.
14 S	9 E	WM	16	SE NE	WELL 5 - 1570 FEET SOUTH AND 1292 FEET WEST FROM THE NE CORNER OF SECTION 16	0.8 mi.

11. Transfer Application T-13535 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL USE
Service Area of Black Butte Ranch

12. Transfer Application T-13535 proposes to change the character of use to Quasi-Municipal Use.

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

Certificate: 86708 in the name of BLACK BUTTE RANCH ASSOCIATION (perfected under Permit G-6797)
Use: GROUP DOMESTIC
Priority Date: JUNE 25, 1975
Rate: 1.8 CUBIC FEET PER SECOND
Source: BLACK BUTTE RANCH WELL 1, in the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	9	SW SW	BLACK BUTTE RANCH WELL 1 - 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9

Authorized Place of Use:

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	NE NE
14 S	9 E	WM	9	NW NE
14 S	9 E	WM	9	SW NE
14 S	9 E	WM	9	SE NE
14 S	9 E	WM	9	NE NW
14 S	9 E	WM	9	NW NW
14 S	9 E	WM	9	SW NW
14 S	9 E	WM	9	SE NW
14 S	9 E	WM	9	NE SW
14 S	9 E	WM	9	NW SW
14 S	9 E	WM	9	SW SW
14 S	9 E	WM	9	SE SW
14 S	9 E	WM	9	NE SE
14 S	9 E	WM	9	NW SE
14 S	9 E	WM	9	SW SE
14 S	9 E	WM	9	SE SE
14 S	9 E	WM	10	NW NE
14 S	9 E	WM	10	SW NE
14 S	9 E	WM	10	NW NW
14 S	9 E	WM	10	SE NW

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	10	NE SW
14 S	9 E	WM	10	NW SW
14 S	9 E	WM	10	SW SW
14 S	9 E	WM	15	NE NW
14 S	9 E	WM	15	NW NW
14 S	9 E	WM	15	SW NW
14 S	9 E	WM	15	SE NW
14 S	9 E	WM	15	NE SW
14 S	9 E	WM	15	NW SW
14 S	9 E	WM	15	SW SW
14 S	9 E	WM	15	SE SW
14 S	9 E	WM	16	NE NE
14 S	9 E	WM	16	SE NE
14 S	9 E	WM	21	NE NE
14 S	9 E	WM	22	NE NE
14 S	9 E	WM	22	NW NE
14 S	9 E	WM	22	NE NW
14 S	9 E	WM	22	NW NW
14 S	9 E	WM	23	NW NW

14. Transfer Application T-13535 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation in miles (mi.), *except where noted in feet (ft.)
14 S	9 E	WM	9	SW SW	WELL 4 – 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9	1.0 mi.
14 S	9E	WM	16	SE NE	WELL 2 – 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16	0.8 mi.
14 S	9 E	WM	16	SE NE	WELL 5 – 1570 FEET SOUTH AND 1292 FEET WEST FROM THE NE CORNER OF SECTION 16	152.5ft.*
14 S	9 E	WM	22	NW NW	WELL 3 – 250 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 22	1.6 mi.

15. Transfer Application T-13535 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL USE
Service Area of Black Butte Ranch

16. Transfer Application T-13535 proposes to change the character of use to Quasi-Municipal Use.

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

Certificate: 92269 in the name of BLACK BUTTE RANCH ASSOCIATION
(perfected under Permit G-8501)
Use: GROUP DOMESTIC FOR 155 FAMILIES
Priority Date: FEBRUARY 2, 1979
Rate: 0.27 CUBIC FOOT PER SECOND
Source: THREE WELLS IN THE DESCHUTES BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	9	SW SW	WELL 1 (ORIGINAL) - 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9
14 S	9 E	WM	16	SE NE	WELL 2 (ORIGINAL) - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16
14 S	9 E	WM	16	SE NE	WELL 5 (ADDITIONAL) - 1570 FEET SOUTH AND 1292 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

GROUP DOMESTIC FOR 155 FAMILIES				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	21	NE NE
14 S	9 E	WM	21	NW NE
14 S	9 E	WM	21	SW NE
14 S	9 E	WM	21	SE NE
14 S	9 E	WM	21	NE NW
14 S	9 E	WM	21	SE NW
14 S	9 E	WM	21	NE SW
14 S	9 E	WM	21	NE SE
14 S	9 E	WM	21	NW SE

18. Transfer Application T-13535 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Appropriation in miles (mi.), *except where noted in feet (ft.)		
						WELL 1	WELL 2	WELL 5
14 S	9 E	WM	9	SW SW	WELL 4 – 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9	152.5 ft. *	0.8 mi.	0.8 mi.
14 S	9 E	WM	22	NW NW	WELL 3 – 250 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 22	1.6 mi.	0.8 mi.	0.8 mi.

19. Transfer Application T-13535 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL USE
Service Area of Black Butte Ranch

20. Transfer Application T-13535 proposes to change the character of use to Quasi-Municipal Use.

21. The fourth water right to be transferred is as follows:

Certificate: 92270 in the name of BLACK BUTTE RANCH CORPORATION AND BLACK BUTTE RANCH ASSOCIATION (perfected under Permit G-11710)
Use: QUASI-MUNICIPAL USE
Priority Date: NOVEMBER 18, 1991
Rate: 4.8 CUBIC FEET PER SECOND, FURTHER LIMITED TO 2.1 CFS FROM WELL 2 AND 2.7 CFS FROM WELL 4
Source: THREE WELLS IN WHYCHUS CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	9	SW SW	WELL 4 (ORIGINAL) - 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9
14 S	9 E	WM	16	SE NE	WELL 2 (ORIGINAL) - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16
14 S	9 E	WM	16	SE NE	WELL 5 (ADDITIONAL) - 1570 FEET SOUTH AND 1292 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	NE NE
14 S	9 E	WM	9	NW NE
14 S	9 E	WM	9	SW NE
14 S	9 E	WM	9	SE NE
14 S	9 E	WM	9	NE NW
14 S	9 E	WM	9	NW NW
14 S	9 E	WM	9	SW NW
14 S	9 E	WM	9	SE NW
14 S	9 E	WM	9	NE SW
14 S	9 E	WM	9	NW SW
14 S	9 E	WM	9	SW SW
14 S	9 E	WM	9	SE SW
14 S	9 E	WM	9	NE SE
14 S	9 E	WM	9	NW SE
14 S	9 E	WM	9	SW SE
14 S	9 E	WM	9	SE SE
14 S	9 E	WM	10	NW NE
14 S	9 E	WM	10	SW NE
14 S	9 E	WM	10	NE NW
14 S	9 E	WM	10	NW NW
14 S	9 E	WM	10	SW NW
14 S	9 E	WM	10	SE NW
14 S	9 E	WM	10	NE SW

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	10	NW SW
14 S	9 E	WM	10	SW SW
14 S	9 E	WM	15	NE NW
14 S	9 E	WM	15	NW NW
14 S	9 E	WM	15	SW NW
14 S	9 E	WM	15	SE NW
14 S	9 E	WM	15	NE SW
14 S	9 E	WM	15	NW SW
14 S	9 E	WM	15	SW SW
14 S	9 E	WM	15	SE SW
14 S	9 E	WM	16	NE NE
14 S	9 E	WM	16	SE NE
14 S	9 E	WM	21	NE NE
14 S	9 E	WM	21	NW NE
14 S	9 E	WM	21	SW NE
14 S	9 E	WM	21	SE NE
14 S	9 E	WM	21	NE NW
14 S	9 E	WM	21	SE NW
14 S	9 E	WM	21	NE SW
14 S	9 E	WM	21	NE SE
14 S	9 E	WM	21	NW SE
14 S	9 E	WM	22	NE NE
14 S	9 E	WM	22	NW NE

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	22	NE NW
14 S	9 E	WM	22	NW NW

QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	23	NW NW

22. Transfer Application T-13535 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Appropriation in miles (mi.), *except where noted in feet (ft.)		
						WELL 2	WELL 4	WELL 5
14 S	9 E	WM	9	SW SW	WELL 1 – 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9	0.8 mi.	1.0 mi.	152.5 ft.*
14 S	9 E	WM	22	NW NW	WELL 3 – 250 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 22	0.8 mi.	1.5 mi.	0.8 mi.

23. Transfer Application T-13535 also proposes to change the place of use as follows:

QUASI-MUNICIPAL USE
Service Area of Black Butte Ranch

24. The fifth water right to be transferred is as follows:

Certificate: 92271 in the name of BLACK BUTTE RANCH CORPORATION (perfected under Permit G-17023)
Use: GROUP DOMESTIC USE
Priority Date: JUNE 25, 1975
Rate: 2.9 CUBIC FEET PER SECOND
Source: BLACK BUTTE RANCH WELL 2 AND BLACK BUTTE RANCH WELL 5

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	9 E	WM	16	SE NE	WELL 2 (ORIGINAL) - 1530 FEET SOUTH AND 1236 FEET WEST FROM THE NE CORNER OF SECTION 16
14 S	9 E	WM	16	SE NE	WELL 5 (ADDITIONAL) - 1570 FEET SOUTH AND 1292 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	NE NE
14 S	9 E	WM	9	NW NE

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	SW NE
14 S	9 E	WM	9	SE NE

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	9	NE NW
14 S	9 E	WM	9	NW NW
14 S	9 E	WM	9	SW NW
14 S	9 E	WM	9	SE NW
14 S	9 E	WM	9	NE SW
14 S	9 E	WM	9	NW SW
14 S	9 E	WM	9	SW SW
14 S	9 E	WM	9	SE SW
14 S	9 E	WM	9	NE SE
14 S	9 E	WM	9	NW SE
14 S	9 E	WM	9	SW SE
14 S	9 E	WM	9	SE SE
14 S	9 E	WM	10	NW NE
14 S	9 E	WM	10	SW NE
14 S	9 E	WM	10	NE NW
14 S	9 E	WM	10	NW NW
14 S	9 E	WM	10	SW NW
14 S	9 E	WM	10	SE NW
14 S	9 E	WM	10	NE SW

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
14 S	9 E	WM	10	NW SW
14 S	9 E	WM	10	SW SW
14 S	9 E	WM	15	NE NW
14 S	9 E	WM	15	NW NW
14 S	9 E	WM	15	SW NW
14 S	9 E	WM	15	SE NW
14 S	9 E	WM	15	NE SW
14 S	9 E	WM	15	NW SW
14 S	9 E	WM	15	SW SW
14 S	9 E	WM	15	SE SW
14 S	9 E	WM	16	NE NE
14 S	9 E	WM	16	SE NE
14 S	9 E	WM	21	NE NE
14 S	9 E	WM	22	NE NE
14 S	9 E	WM	22	NW NE
14 S	9 E	WM	22	NE NW
14 S	9 E	WM	22	NW NW
14 S	9 E	WM	23	NW NW

25. Transfer Application T-13535 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Appropriation in miles (mi.), *except where noted in feet (ft.)	
						WELL 2	WELL 5
14 S	9 E	WM	9	SW SW	WELL 1 – 469 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 9	0.8 mi.	152.5 ft.*
14 S	9 E	WM	9	SW SW	WELL 4 – 4943 FEET SOUTH AND 412 FEET EAST FROM THE NW CORNER OF SECTION 9	0.8 mi.	0.8 mi.
14 S	9 E	WM	22	NW NW	WELL 3 – 250 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 22	0.8 mi.	0.8 mi.

26. Transfer Application T-13535 also proposes to change the place of use as follows:

QUASI-MUNICIPAL USE
Service Area of Black Butte Ranch

27. Transfer Application T-13535 proposes to change the character of use to Quasi-Municipal Use.

Transfer Review Criteria (OAR 690-380-4010)

28. 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.
29. 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-13535.
30. The proposed change, as conditioned, would not result in enlargement of the rights. The use of water under the proposed use could result in enlargement of the original rights unless the proposed use was conditioned to be limited to not exceed the original rates of the rights and further limited to not to exceed the maximum quantity of water per year that could have been used by the rights.
31. The proposed change, as conditioned, would not result in injury to other water rights.
32. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation, changes in place of use and changes in character of use proposed in Transfer Application T-13535 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-13535 is approved, the final order will include the following:


- 1. The additional points of appropriation, changes in place of use, and changes in character of use proposed in Transfer Application T-13535 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 76002, 86708, 92269, 92270, and 92271 and any related decree.*
- 3. Water right Certificate 76002 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
- 4. Water right Certificates 86708, 92269, 92270, and 92271 are cancelled.*
- 5. Under Certificate 76002, the quantity of water diverted at the additional points of appropriation, (Well 1, Well 2, Well 4, and Well 5), together with that diverted at the*

original point of appropriation, (Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation, (Well 3).

6. *Under Certificate 86708, the quantity of water diverted at the additional points of appropriation, (Well 2, Well 3, Well 4, and Well 5), together with that diverted at the original point of appropriation, (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation, (Well 1).*
7. *Under Certificate 92269, the quantity of water diverted at the additional points of appropriation, (Well 3 and Well 4), together with that diverted at the original points of appropriation, (Well 1, Well 2, and Well 5), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 1, Well 2, and Well 5).*
8. *Under Certificate 92270, the quantity of water diverted at the additional points of appropriation, (Well 1 and Well 3), together with that diverted at the original points of appropriation, (Well 2, Well 4, and Well 5), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 2, Well 4, and Well 5).*
9. *Under Certificate 92271, the quantity of water diverted at the additional points of appropriation, (Well 1, Well 3, and Well 4), together with that diverted at the original points of appropriation, (Well 2 and Well 5), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 2 and Well 5).*
10. *The use of water under the right described by Certificate 76002 for the proposed quasi-municipal use shall be limited to a rate of diversion of not to exceed 1.65 cubic feet per second (cfs) and shall be further limited to a quantity of water diverted of not to exceed 1194.6 acre feet per year.*
11. *The use of water under the right described by Certificate 86708 for the proposed quasi-municipal use shall be limited to a rate of diversion of not to exceed 1.80 cubic feet per second (cfs) and shall be further limited to a quantity of water diverted of not to exceed 1303.2 acre feet per year.*
12. *The use of water under the right described by Certificate 92269 for the proposed quasi-municipal use shall be limited to a rate of diversion of not to exceed 0.27 cubic foot per second (cfs) and shall be further limited to a quantity of water diverted of not to exceed 195.5 acre feet per year.*
13. *The use of water under the right described by Certificate 92271 for the proposed quasi-municipal use shall be limited to a rate of diversion of not to exceed 2.9 cubic feet per second (cfs) and shall be further limited to a quantity of water diverted of not to exceed 2099.6 acre feet per year.*

14. *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.*
15. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
16. *The former place of use of the transferred rights shall no longer receive water under the rights.*
17. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*
18. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on JUN 09 2021


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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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 service members have a right to stay these proceedings under the federal service members 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.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

JUNE 9, 2021

VIA E-MAIL

BLACK BUTTE RANCH CORPORATION
BLACK BUTTE RANCH ASSOCIATION
PO BOX 8000
BLACK BUTTE RANCH, OR 97759

SUBJECT: Water Right Transfer Application T-13535

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13535. 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 Bend Bulletin 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 503-986-0864 or tamera.l.smith@oregon.gov if I may be of assistance.

Kindest regards,

A handwritten signature in black ink, appearing to read 'Tamera L. Smith', written over a horizontal line.

Transfer Caseworker
Transfer and Conservation Section

cc: Transfer application file T-13535
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Niall Boggs, Agent for the applicant (*via e-mail*)

encs