



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 15, 2021

VIA CERTIFIED MAIL AND E-MAIL

### **Applicant**

BLUE MOUNTAIN CATTLE, INC.

69650 HIGHWAY 205

BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13551

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13551. 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.

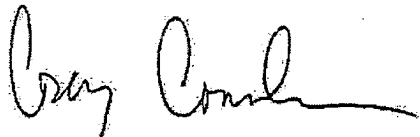
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

**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](mailto:corey.a.courchane@oregon.gov) or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc:

Transfer Application file T-13551  
J R. Johnson, District 10 Watermaster (*via e-mail*)  
John A. Short, Agent for the applicant (*via e-mail*)

encs

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

|                                       |   |                                 |
|---------------------------------------|---|---------------------------------|
| In the Matter of Transfer Application | ) | PRELIMINARY DETERMINATION       |
| T-13551, Harney County                | ) | PROPOSING DENIAL OF A CHANGE IN |
|                                       | ) | PLACE 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**

BLUE MOUNTAIN CATTLE, INC.  
69650 HIGHWAY 205  
BURNS, OR 97720

**Findings of Fact**

1. On November 5, 2020, BLUE MOUNTAIN CATTLE, INC. filed an application to change the point of appropriation and to change the place of use under Certificate 44073, and to change the place of use under Certificate 60731. The Department assigned the application number T-13551.
2. Notice of the application for transfer was published on November 24, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 12, 2021, the Department held a phone conversation with the applicant to discuss transfer application number T-13551. The applicant stated that certain changes included in the application involving Certificate 44073 should not be happening. The applicant indicated there should be no change in point of appropriation, and that more acres were being moved than the applicant wanted. The applicant stated there should only be approximately 2.0 acres being picked up, and then moved to a stock pond for pond maintenance to the SE NW of Sec. 30, T22S, R31E, WM, designated (incorrectly) on the map as 3.5 acres of Pond Maintenance. The applicant indicated that he wants 3.5 acre feet of pond maintenance in that location, not to move 3.5 acres of irrigation to the same

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.

location. Based upon the duty, the applicant figured it should only be about 2.0 acres of irrigation being "moved" to pond maintenance to equal 3.5 acre feet. The applicant indicated there should be no other change in place of use (POU) associated with Certificate 44073.

4. On April 20, 2021, the Department contacted the applicant by telephone to discuss transfer application number T-13551. Upon further discussion of T-13551, the applicant indicated the change in point of appropriation and the change in POU under Certificate 44073 are not to be included. The only change taking place is the change in POU under Certificate 60731.
5. On April 27, 2021, the Department contacted the applicant by written correspondence to clarify the location of the proposed POU under Certificate 60731. During the previous phone discussion, the applicant described a location that does not match the proposed POU map submitted with the application. The Department did not receive a response.
6. On May 11, 2021, the Department contacted the applicant by written correspondence to clarify the location of the proposed POU under Certificate 60731. The Department did not receive a response.
7. On July 27, 2021, the Department contacted the applicant by telephone to clarify the location of the proposed POU under Certificate 60731. The applicant indicated they would submit a hand drawn map to illustrate the location of the proposed POU. The Department did not receive any such submittal.
8. On August 3, 2021, the Department contacted the applicant by written correspondence to clarify the location of the proposed POU under Certificate 60731. The Department also indicated a denial of the application may be issued if the information is not received. The Department did not receive a response.
9. On August 24, 2021, the Department contacted the applicant by telephone to clarify the location of the proposed POU under Certificate 60731. The applicant stated they submitted a map by electronic mail, however, the Department did not receive any electronic mail from the applicant. The applicant indicated they would send a hand drawn map through the mail. The Department did not receive any such submittal.
10. On October 4, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13551 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 3, 2021, for the applicant to respond. The Department did not receive a timely response.

11. The right to be transferred is as follows:

**Certificate:** 60731 in the name of BLUE MOUNTAIN CATTLE, INC. (perfected under Permit G-8911)  
**Use:** SUPPLEMENTAL IRRIGATION of 60.0 ACRES  
**Priority Date:** JANUARY 22, 1980  
**Rate:** 0.75 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 per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.  
**Source:** A WELL in the WEST FORK SILVIES RIVER BASIN

**Authorized Point of Appropriation:**

| Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances  |
|------|------|-----|-----|-------|---|
| 23 S | 31 E | WM  | 30  | NE NE | 1200 FEET SOUTH AND 20 FEET WEST FROM THE NE CORNER OF SECTION 30 |

**Authorized Place of Use:**

| SUPPLEMENTAL IRRIGATION |      |     |     |       |       |
|-------------------------|------|-----|-----|-------|-------|
| Twp                     | Rng  | Mer | Sec | Q-Q   | Acres |
| 23 S                    | 31 E | WM  | 30  | NE NE | 29.4  |
| 23 S                    | 31 E | WM  | 30  | SE NE | 30.6  |
| Total                   |      |     |     |       | 60.0  |

12. Transfer Application T-13551 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION |      |     |     |       |       |
|-------------------------|------|-----|-----|-------|-------|
| Twp                     | Rng  | Mer | Sec | Q-Q   | Acres |
| 23 S                    | 31 E | WM  | 30  | NE NE | 30.0  |
| 23 S                    | 31 E | WM  | 30  | SE NE | 30.0  |
| Total                   |      |     |     |       | 60.0  |

**Transfer Review Criteria (OAR 690-380-4010)**

13. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. A pump, pipeline, and sprinkler system 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-13551.

15. The application is not complete because the applicant has indicated the location of the supplemental irrigation does not match the proposed POU map submitted with the application. The Department made several attempts to retrieve additional information from the applicant necessary to complete the application. Because the necessary information was not submitted, the application is not complete and the Department cannot make a positive determination on the location of the supplemental irrigation. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

#### **Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-13551 appears to be **NOT** 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 denied.

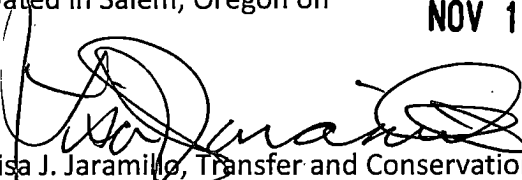
*If the deficiency regarding the location of the supplemental irrigation is resolved, and Transfer Application T-13551 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-13551 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 60731 and any related decree.*
3. *Water-right Certificate 60731 is cancelled.*
4. *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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *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 change and full beneficial use of the water.*

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

Dated in Salem, Oregon on

**NOV 15 2021**

  
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 503-979-3917 or [corey.a.courchane@oregon.gov](mailto: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.*

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**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.**