

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

In the Matter of Transfer Applications)	PRELIMINARY DETERMINATION
T-10323 and T-10324, Harney County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF
)	APPROPRIATION AND A CHANGE IN
)	PLACE OF USE

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Blackburn Family Trust
Jett C. and Dorothy Blackburn, Co-Trustees
707 Ponderosa Village
Burns, Oregon 97720

Agent

Steven Applegate Consulting
3395 Huckleberry Court South
Salem, Oregon 97302

Findings of Fact

1. On February 21, 2007, Blackburn Family Trust (Jett C. and Dorothy Blackburn, Co-Trustees), filed an application to change points of appropriation and place of use under Certificate 50593. The Department assigned the application number T-10323.
2. On February 21, 2007, Blackburn Family Trust (Jett C. and Dorothy Blackburn, Co-Trustees), filed an application to change points of appropriation under Certificate 60713. The Department assigned the application number T-10324.
3. The right to be transferred by T-10323 is as follows:

Certificate: 50593 in the name of Donovan F. Wohlers (perfected under Permit G-6264)

Use: Irrigation of 313.6 Acres

Priority Date: November 22, 1974

Rate: 3.1 cubic feet per second (cfs); being 0.90 cfs from Well 1, 1.35 cfs from Well 2, and 0.85 cfs from Well 3

Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year

Source: 3 Wells in the Malheur Lake Basin

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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Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	SE NE	Well 1 - 1320 feet South and 40 feet West from the NW Corner of Section 27
25 S	31 E	WM	27	SW NW	Well 2 - 1330 feet South and 1280 feet East from the NW Corner of Section 27
25 S	31 E	WM	28	NE NE	Well 3 - 170 feet South and 970 feet West from the NW Corner of Section 27

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Change in POA only Acres	Change in POA and POU Acres
25 S	31 E	WM	27	NW NE	39.8	
25 S	31 E	WM	27	SW NE	36.0	3.8
25 S	31 E	WM	27	NE NW	39.6	
25 S	31 E	WM	27	NW NW	39.4	
25 S	31 E	WM	27	SW NW	32.1	7.3
25 S	31 E	WM	27	SE NW	26.2	13.4
25 S	31 E	WM	28	NE NE	37.0	
25 S	31 E	WM	28	SE NE	25.7	13.3

4. The applicant has provided a current survey that correctly describes the points of appropriation for Certificate 50593 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	NE NE	Well 1 - 1304 feet South and 14 feet West from the NE Corner of Section 28
25 S	31 E	WM	27	SW NW	Well 2 - 1365 feet South and 1277 feet East from the NE Corner of Section 27
25 S	31 E	WM	28	NE NE	Well 3 - 159 feet South and 994 feet West from the NE Corner of Section 28

5. Application T-10323 proposes to change the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	NW NE	Well 4 - 1295 feet South and 2504 feet West from the NE Corner of Section 28
25 S	31 E	WM	28	NE NE	Well 5 - 64 feet South and 985 feet West from the NE Corner of Section 28
25 S	31 E	WM	28	NE NE	Well 6 - 1271 feet South and 2 feet West from the NE Corner of Section 28
25 S	31 E	WM	27	NW NW	Well 7 - 51 feet South and 1030 feet East from the NW Corner of Section 27
25 S	31 E	WM	27	SW NW	Well 8 - 1341 feet South and 1292 feet East from the NW Corner of Section 27

6. Application T-10323 also proposes to change the place of use of 37.8 acres of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	27	NE NE	17.8
25 S	31 E	WM	27	SE NE	20.0

7. The portion of the right to be transferred by T-10324 is as follows:

Certificate: 60713 in the name of Donovan F. Wohlers (perfected under Permit G-8550)

Use: Irrigation of 59.6 acres

Priority Date: April 9, 1979

Rate: 0.745 cubic foot per second

Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year

Source: 3 Wells in the Malheur Lake Basin

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	NE NE	Well 1 - 160 feet South and 970 feet West from the NE Corner of Section 28
25 S	31 E	WM	27	NW NW	Well 2 - 1300 feet South and 10 feet East from the NE Corner of Section 28
25 S	31 E	WM	27	SW NW	Well 3 - 1330 feet South and 1320 feet East from the NE Corner of Section 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	28	NW NE	39.6
25 S	31 E	WM	28	NE NW	20.0

8. The applicant has provided a current survey that correctly describes the points of appropriation for Certificate 60713 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	NE NE	Well 1 - 1304 feet South and 14 feet West from the NE Corner of Section 28
25 S	31 E	WM	27	SW NW	Well 2 - 1365 feet South and 1277 feet East from the NE Corner of Section 27
25 S	31 E	WM	28	NE NE	Well 3 - 159 feet South and 994 feet West from the NE Corner of Section 28

9. Application T-10324 proposes to move the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	31 E	WM	28	NW NE	Well 4 - 1295 feet South and 2504 feet West from the NE Corner of Section 28
25 S	31 E	WM	28	NE NE	Well 5 - 64 feet South and 985 feet West from the NE Corner of Section 28
25 S	31 E	WM	28	NE NE	Well 6 - 1271 feet South and 2 feet West from the NE Corner of Section 28
25 S	31 E	WM	27	NW NW	Well 7 - 51 feet South and 1030 feet East from the NW Corner of Section 27
25 S	31 E	WM	27	SW NW	Well 8 - 1341 feet South and 1292 feet East from the NW Corner of Section 27

10. Notice of the applications for transfer was published on February 27, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On June 28, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Applications T-10323 and T-10324 to the applicants. The draft Preliminary Determination set forth a deadline of July 12, 2007, for the applicants to respond. The applicants 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.
12. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of applications T-10323 and T-10324.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action


The changes in place of use and points of appropriation proposed in application T-10323 and the change in points of appropriation proposed in application T-10324 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 applications will be approved.

If applications T-10323 and 10324 are approved, the final order will include the following:

1. *The changes in place of use and points of appropriation proposed in application T-10323 are approved.*
2. *The change in points of appropriation proposed in application T-10324 is approved.*

3. *Water right certificates 50593 and 60713 are cancelled. A new certificate will be issued describing that portion of Certificate 60713 not affected by application T-10324.*
4. *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 50593 and 60713.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*
7. *The former place of use of the transferred right under application T-10323 shall no longer receive water under the right.*
8. *When required by the Department, the water user shall install, maintain and operate an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights 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. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 27th day of July 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Kelly Starnes. If you have any questions about the information in this document, you may reach me at (503) 986-0886 or Patrick.K.Starnes@ wrd.state.or.us

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.