

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

In the Matter of Transfer Application)	FINAL ORDER
T-12651, Deschutes County)	APPROVING A CHANGE FROM A
)	SURFACE WATER POINT OF
)	DIVERSION TO GROUNDWATER
)	POINTS OF APPROPRIATION

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

BIG FALLS RANCH
ATTN: REX BARBER
PO BOX 434
TERREBONNE OR 97760

Findings of Fact

1. On April 21, 2017, BIG FALLS RANCH, ATTN: REX BARBER, filed an application to change the surface water point of diversion to groundwater points of appropriation under Certificates 76371, 87655, and 88027. The Department assigned the application number T-12651.
2. Notice of the application for transfer was published on May 2, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 11, 2018, the Department contacted the applicant and agent regarding a deficiency in the application. The application lacks a completed Land-use form.
4. On July 6, 2018, the applicant's agent submitted a completed Land Use Form that shows that the land use served by the water use from the proposed groundwater points of appropriation is allowed outright.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On July 25, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12651 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 23, 2018, 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 September 20, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12651 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 25, 2018, and in the Redmond Spokesman newspaper on October 3 and 10, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The first right to be transferred is as follows:

Certificate: 76371 in the name of DESCHUTES VALLEY FARMS (perfected under Permit S-32049)
Use: IRRIGATION OF 157.1 ACRES
Priority Date: APRIL 13, 1967
Rate: 1.81 CUBIC FEET 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 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.
Source: DEEP CANYON CREEK, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	9	SW SE	4440 FEET SOUTH AND 3020 FEET EAST FROM THE NW CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	3	SW SW	1.4
14 S	12 E	WM	4	SW SE	7.7
14 S	12 E	WM	8	NE SE	3.3
14 S	12 E	WM	8	SE SE	7.6
14 S	12 E	WM	9	NW NE	20.2
14 S	12 E	WM	9	SE NE	10.3
14 S	12 E	WM	9	NE NW	9.8
14 S	12 E	WM	9	NE SW	35.0
14 S	12 E	WM	9	NW SW	40.0
14 S	12 E	WM	9	NE SE	1.6
14 S	12 E	WM	9	NW SE	13.6
14 S	12 E	WM	17	NE NE	6.6
Total					157.1

8. Transfer Application T-12651 proposes to move the authorized point of diversion to wells located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approx. distance from authorized point of diversion (feet)
14 S	12 E	WM	9	SE NW	WELL 7 - 1571.4 FEET SOUTH AND 2862.6 FEET WEST FROM THE NE CORNER OF SECTION 9	2956.8
14 S	12 E	WM	17	SW NE	WELL 3 - 1772.1 FEET SOUTH AND 1706.6 FEET WEST FROM THE NE CORNER OF SECTION 17	5491.2
14 S	12 E	WM	17	NW NW	WELL 4 - 240.7 FEET SOUTH AND 32.2 FEET EAST FROM THE NW CORNER OF SECTION 17	8395.2
14 S	12 E	WM	18	SW SE	WELL 1 - 1154.2 FEET NORTH AND 1680.6 FEET WEST FROM THE SE CORNER OF SECTION 18	11246.4

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

Certificate: 87655 in the name of BIG FALLS RANCH CO. (perfected under Permit S-37392)

Use: SUPPLEMENTAL IRRIGATION OF 206.6 ACRES

Priority Date: OCTOBER 23, 1973

Rate: 4.5 CUBIC FEET PER SECOND (CFS), PROVIDED THE TOTAL QUANTITY DIVERTED BY ALL RIGHTS PERFECTED UNDER PERMIT S-37392 DOES NOT EXCEED 4.5 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: AN UNNAMED STREAM (McKENZIE CANYON), a tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	4	NW SE	1592.5 FEET NORTH AND 1610.6 FEET WEST FROM THE SE CORNER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	8	NE SW	1.2
14 S	12 E	WM	8	NW SW	0.2
14 S	12 E	WM	8	SW SW	32.7
14 S	12 E	WM	8	SE SW	3.1
14 S	12 E	WM	8	NW SE	2.2
14 S	12 E	WM	8	SW SE	1.1
14 S	12 E	WM	17	NW NE	9.3
14 S	12 E	WM	17	SW NE	16.4
14 S	12 E	WM	17	SE NE	32.4
14 S	12 E	WM	17	NW NW	32.9
14 S	12 E	WM	17	SE NW	0.4
14 S	12 E	WM	17	NE SW	5.1
14 S	12 E	WM	17	SE SW	23.8
14 S	12 E	WM	17	NE SE	14.8
14 S	12 E	WM	17	NW SE	24.9
14 S	12 E	WM	17	SW SE	6.1
Total					206.6

10. Transfer Application T-12651 proposes to move the authorized points of diversion to wells located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approx. distance from authorized point of diversion (feet)
14 S	12 E	WM	9	SE NW	WELL 7 - 1571.4 FEET SOUTH AND 2862.6 FEET WEST FROM THE NE CORNER OF SECTION 9	2956.8
14 S	12 E	WM	17	SW NE	WELL 3 - 1772.1 FEET SOUTH AND 1706.6 FEET WEST FROM THE NE CORNER OF SECTION 17	5491.2
14 S	12 E	WM	17	NW NW	WELL 4 - 240.7 FEET SOUTH AND 32.2 FEET EAST FROM THE NW CORNER OF SECTION 17	8395.2
14 S	12 E	WM	18	SW SE	WELL 1 - 1154.2 FEET NORTH AND 1680.6 FEET WEST FROM THE SE CORNER OF SECTION 18	11246.4

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

Certificate: 88027 in the name of BIG FALLS RANCH CO. (perfected under Permit S-32049)
Use: IRRIGATION OF 307.8 ACRES AND SUPPLEMENTAL IRRIGATION OF 12.6 ACRES
Priority Date: APRIL 13, 1967
Rate: 3.69 CUBIC FEET 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: DEEP CANYON CREEK, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	9	SW SE	4440 FEET SOUTH AND 3020 FEET EAST FROM THE NW CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	3	SW SW	3.7
14 S	12 E	WM	4	SW SE	1.2
14 S	12 E	WM	4	SE SE	29.8
14 S	12 E	WM	8	SE NE	2.9
14 S	12 E	WM	8	NE SE	31.9
14 S	12 E	WM	8	SE SE	32.7
14 S	12 E	WM	9	NW NE	3.9
14 S	12 E	WM	9	SW NE	40.2
14 S	12 E	WM	9	SE NE	2.2
14 S	12 E	WM	9	SW NW	31.5
14 S	12 E	WM	9	SE NW	38.3
14 S	12 E	WM	9	NE SW	1.5
14 S	12 E	WM	9	SW SW	14.3
14 S	12 E	WM	9	SE SW	10.0
14 S	12 E	WM	9	NE SE	1.6
14 S	12 E	WM	9	NW SE	5.0
14 S	12 E	WM	17	NE NE	32.7
14 S	12 E	WM	17	NW NE	16.2
14 S	12 E	WM	17	SW NE	1.4
14 S	12 E	WM	17	SE NE	0.2
14 S	12 E	WM	17	NE NW	5.9
14 S	12 E	WM	17	SE NW	0.7
Total					307.8

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	17	NW NW	2.2
14 S	12 E	WM	17	SW SW	8.1
14 S	12 E	WM	18	SE SE	2.3
Total					12.6

12. Transfer Application T-12651 proposes to move the authorized points of diversion to wells located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approx. distance from authorized point of diversion (feet)
14 S	12 E	WM	9	SE NW	WELL 7 - 1571.4 FEET SOUTH AND 2862.6 FEET WEST FROM THE NE CORNER OF SECTION 9	2956.8
14 S	12 E	WM	17	SW NE	WELL 3 - 1772.1 FEET SOUTH AND 1706.6 FEET WEST FROM THE NE CORNER OF SECTION 17	5491.2
14 S	12 E	WM	17	NW NW	WELL 4 - 240.7 FEET SOUTH AND 32.2 FEET EAST FROM THE NW CORNER OF SECTION 17	8395.2
14 S	12 E	WM	18	SW SE	WELL 1 - 1154.2 FEET NORTH AND 1680.6 FEET WEST FROM THE SE CORNER OF SECTION 18	11246.4

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

13. 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.
14. 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 Transfer Application T-12651.
15. The proposed wells meet the requirements of ORS 540.531(3a.-c.).
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

Conclusions of Law

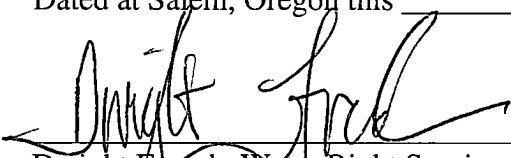
The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-12651 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000.

Now, therefore, it is ORDERED:

1. The change from surface water points of diversion to groundwater points of appropriation proposed in Transfer Application T-12651 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 Certificates 87655, 88027, 76371 and any related decree.
3. Water right Certificates 87655, 88027, and 76371 are cancelled.
4. 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 diversion.
5. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
6. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the wells, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.
7. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
8. 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 proposed well.
 - 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.
9. 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.

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this NOV 20 2018,



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: NOV 21 2018