

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

In the Matter of Transfer Application)
T-12651, Deschutes County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF 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.

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.

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. 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

7. 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

8. 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

9. 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

10. 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

11. 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)]

12. 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.
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 Transfer Application T-12651.
14. The proposed wells meet the requirements of ORS 540.531(3a.-c.).
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

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. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12651 is approved, the final order will include the following:

- 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 SEP 20 2018,



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

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

September 11, 2018

VIA E-MAIL

Applicant

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

SUBJECT: Water Right Transfer Application T-12651

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12651. 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 Redmond Spokesman 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.

Please do not hesitate to contact me at 503-986-0886 or patrick.k.starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12651
Jeremy T. Giffin, District 11 Watermaster *(via e-mail)*
David J. Newton, Agent for the applicant *(via e-mail)*

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