

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13041, Wallowa County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

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

RON AND PAT FOX
73896 BRAMLETT LANE
WALLOWA OR 97885

Findings of Fact

1. On October 12, 2018, RON AND PAT FOX filed an application to change the place of use under Certificate 26916. The Department assigned the application number T-13041.
2. Notice of the application for transfer was published on October 23, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 15, 2019, the Watermaster submitted an amended watermaster review.
4. On January 2, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13041 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 4, 2019, 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 applicants are authorized to pursue the transfer.

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

Certificate: 26916 in the name of FLYING A QUARTER CIRCLE RANCHES, INC.
(perfected under Permit S-21430)
Use: IRRIGATION OF 10.6 ACRES
Priority Date: MAY 26, 1952
Rate: 1.8 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, shall be limited to ONE-SIXTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: THREE UNNAMED SPRINGS, tributary to DRY CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Name
2 N	42 E	WM	33	SW NW	SPRINGS 1, 2, AND 3

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	42 E	WM	32	SE NE	10.6

6. Transfer Application T-13041 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	42 E	WM	32	NE NE	10.6

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

7. 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.
8. A diversion structure and ditch 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-13041.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

Determination and Proposed Action

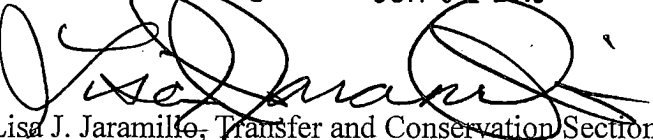
The change in place of use proposed in Transfer Application T-13041 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13041 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-13041 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 26916 and any related decree.*
- 3. Water right Certificate 26916 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 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 on the pump.*
 - b. The water user shall maintain the meter or measuring device in good working order.*
 - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring device 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, 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.*

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

Dated in Salem, Oregon on JUN 04 2019


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext. 228 or marcy.j.osborn@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 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.



Oregon

Kate Brown, Governor

Water Resources Department

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(503) 986-0900

Fax (503) 986-0904

May 31, 2019

RON AND PAT FOX
73896 BRAMLETT LANE
WALLOWA OR 97885

SUBJECT: Water Right Transfer Application T-13041

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13041. 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.

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 T-13041
David Bates, District 7 Watermaster *(via e-mail)*
Bruce Estes, CWRE for the applicant

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