



# Oregon

Kate Brown, Governor

## Water Resources Department

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July 29, 2019

DAN NICHOLS  
48642 MCCOY CREEK RD  
DIAMOND OR 97722

SUBJECT: Water Right Transfer Application T-12377

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12377. 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 Burns Times Herald 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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12377  
J R. Johnson, District 10 Watermaster *(via e-mail)*  
John A. Short, Agent for the applicant *(via e-mail)*

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12377, Harney County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION, A CHANGE IN
	)	POINT OF APPROPRIATION, A
	)	CHANGE IN PLACE OF USE, AND
	)	CORRECTION OF A SCRIVENER'S
	)	ERROR

**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**

DAN NICHOLS  
48642 MCCOY CREEK RD.  
DIAMOND OR 97722

**Findings of Fact**

1. On May 9, 2016, DAN NICHOLS filed an application for an additional point of appropriation and a change in place of use under Certificate 82608; a change in point of appropriation and change in place of use under Certificate 84831. The Department assigned the application number T-12377.
2. Notice of the application for transfer was published in the Department's weekly notice on May 17, 2016.
3. On September 7, 2016, Certificate 84831 was cancelled by an order approving Transfer Application T-12138, recorded in Special Order Volume 101, Page 781. Certificate 91751 was issued to describe the portions of the right not involved in Transfer Application T-12138 and supersedes Certificate 84831.

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.

4. Notice of the application for transfer was re-published on September 27, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On March 7, 2017, the Department informed the applicant regarding deficiencies in the transfer application with regards to the number of acres available for transfer in the application and on the application maps.
6. On August 14, 2017, the Department received amended transfer application pages and maps.
7. On August 15, 2017, the Department contacted the agent to clarify the number of additional wells being requested in the application.
8. On August 17, 2017, the Department received an amended Table 1 of the transfer application.
9. On September 15, 2017, the Department contacted the agent regarding the total number of acres listed on the amended Table 1 of the application and map. The acreage on the amended Table 1 did not match the acreage mapped.
10. On September 23, 2017, the Department received an amended Table 1 of the application and application map for Certificate 82608.
11. If Permit Amendment T-12379 is not amended to include a proposed change in place of use with contiguous lands to the authorized place of use under water right Application G-14960, Permit G-13387, then portions of the proposed place of use under Transfer Application T-12377, to be confirmed under Certificate 91751, will be layered with the authorized place of use under water right Application G-14960, Permit G-13387.
12. On January 23, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12377 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 23, 2018, for the applicant to respond.
13. On January 31, 2018, the applicant submitted an amended Table 1 requesting a change in the proposed points of appropriation, and an amended map to include a proposed change in place of use with contiguous lands to the authorized place of use under water right Application G-14960, Permit G-13387.
14. On April 17, 2019, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12377 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of May 16, 2019, 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.
15. On May 15, 2019, the applicant requested to extend the completion for full beneficial use of the water 5 years, to October 1, 2025.

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

**Certificate:** 82608 in the name of ROCKING L. RANCH, INC. (perfected under Permit G-9407)  
**Use:** IRRIGATION OF 72.7 ACRES  
**Priority Date:** MAY 19, 1981  
**Rate:** 0.91 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL, in the MALHEUR LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	19	NE NW	WELL 1 - 90 FEET SOUTH AND 30 FEET WEST FROM THE N1/4 CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	19	NE NW	40.0
26 S	33 E	WM	19	SE NW	32.7
Total					72.7

17. Transfer Application T-12377 proposes an additional point of appropriation approximately 1.0 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	19	SW SW	WELL 6 - 280 FEET NORTH AND 10 FEET EAST FROM THE SW CORNER OF SECTION 19

18. Transfer Application T-12377 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	19	NE NW	10.1
26 S	33 E	WM	19	SE NW	31.3
26 S	33 E	WM	19	SW NE	31.3
Total					72.7

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

**Certificate:** 91751 in the name of MARIE WATTS (perfected under Permit G-9324)  
**Use:** IRRIGATION OF 106.3 ACRES  
**Priority Date:** APRIL 7, 1981  
**Rate:** 1.33 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-EIGHTIETH 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

3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL in the MALHEUR LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	28	SE SW	WELL 5 - 6500 FEET NORTH AND 2690 FEET WEST FROM THE SE CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	28	NE SW	11.7
26 S	33 E	WM	28	NW SW	35.2
26 S	33 E	WM	28	SE SW	2.2
26 S	33 E	WM	28	NW SE	9.8
26 S	33 E	WM	28	SW SE	14.1
26 S	33 E	WM	29	NE SE	8.6
26 S	33 E	WM	29	SE SE	11.4
26 S	33 E	WM	33	NW NE	12.8
26 S	33 E	WM	33	NE NW	0.5
Total					106.3

20. Transfer Application T-12377 proposes to move the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation in miles (mi.)
26 S	33 E	WM	19	NE NW	WELL 1 – 90 FEET SOUTH AND 30 FEET WEST FROM THE N1/4 CORNER OF SECTION 19	2.7 miles
26 S	33 E	WM	19	SW SW	WELL 6 – 280 FEET NORTH AND 10 FEET EAST FROM THE SW CORNER OF SECTION 19	2.6 miles

21. Transfer Application T-12377 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	33 E	WM	19	NE SW		31.1
26 S	33 E	WM	19	NW SW	3	24.4
26 S	33 E	WM	19	SW SW	4	22.2
26 S	33 E	WM	19	SE SW		28.6
Total						106.3

22. Upon review of the submitted transfer application document, the agent and the Department determined that there is a scrivener’s error in the total number of acres described in Certificate 91751. Certificate 91751 lists the total number of acres as 481.3. Upon review of the originating Certificate 64340, final proof survey map, and subsequent voluntary partial cancellations, the total number of acres should be 480.5.

The erroneous place of use is as follows:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	34	SE NW	38.8

The correct place of use is:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	34	SE NW	38.0

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

23. 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.
24. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12377.
25. The proposed change would not result in enlargement of the rights.
26. The proposed change would not result in injury to other water rights.
27. All other application requirements are met.

**Determination and Proposed Action**

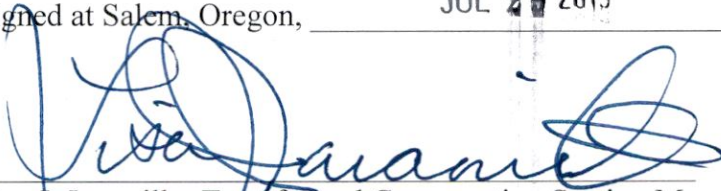
The additional point of appropriation, changes in point of appropriation and place of use proposed in Transfer Application T-12377 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-12377 is approved, the final order will include the following:*

1. *The additional point of appropriation, changes in point of appropriation and places of use proposed in Transfer Application T-12377 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 82608 and 91751 and any related decree.*
3. *Water right Certificate 82608 is cancelled.*
4. *Water right Certificate 91751 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.*

5. *The quantity of water diverted at the additional point of appropriation (Well 6), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
6. *The quantity of water diverted at the new points of appropriation (Well 1 and 6) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 5).*
7. *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.*
8. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
9. *The former places of use of the transferred rights shall no longer receive water under the rights.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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 changes and full beneficial use of the water.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Signed at Salem, Oregon, JUL 29 2019



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 503-986-0825 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.*

**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>