



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 1, 2019

VIA E-MAIL

Applicant

DRYWOOD RANCH, LLC
c/o ARTHUR OLSEN
6425 LAKESHORE DRIVE
SELMA, OR 97538

SUBJECT: Water Right Transfer Application T-13056

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13056. 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 Grants Pass Courier 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-13056
Scott C. Ceciliani, District 14 Watermaster *(via e-mail)*
Kenna Clay Jordan, CWRE #431 *(via e-mail)*

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13056, Josephine County)	PROPOSING APPROVAL OF A CHANGE
)	IN POINT OF DIVERSION AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

ORS 540.532 establishes the process in which a water right holder may submit a request for a change in point of diversion to reflect historical use under an existing water right. OAR Chapter 690-380-2120 implements the statute and provides the Department's procedures and criteria for evaluating historic point of diversion/appropriation transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

DRYWOOD RANCH, LLC
c/o ARTHUR OLSEN
6425 LAKESHORE DRIVE
SELMA, OR 97538

Findings of Fact

1. On November 5, 2018, Drywood Ranch, LLC filed an application to change the point of diversion under Certificate 57729. Along with the application, the applicant submitted a voluntary cancellation affidavit for the cancellation of a portion of Certificate 57729 and is further described below in Finding No. 12. The Department assigned the application number T-13056.
2. Notice of the application for transfer was published on November 13, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 17, 2018, a change in point of diversion to reflect historical use application T-13046 in the name of C. Todd Ogletree was filed. T-13046 proposes to modify Certificate 57729. Certificate 57729 shall be cancelled after T-13046 and T-13056 are processed.

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. On May 21, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13056 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 20, 2019, for the applicant to respond. On June 17, 2019, the applicant requested an additional two weeks to send in the report of ownership. On July 8, 2019, the applicant agreed to the terms and conditions of the draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 57729 in the name of HOWARD BARBER (confirmed by Illinois River decree of the Circuit Court of the State of Oregon for Josephine County)

Use: IRRIGATION OF 21.2 ACRES

Priority Date: MAY 15, 1886

Rate: 0.423 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, SW¼ NW¼, SECTION 14, T38S, R7W, WM; HARMON DITCH – 1130 FEET NORTH AND 1150 FEET EAST FROM THE W¼ CORNER OF SECTION 14.

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-FIFTIETH of one cubic foot per second per acre for each acre irrigated during the irrigation season FROM APRIL 1 TO NOVEMBER 1 of each year.

Source: DEER CREEK, a tributary of the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	7 W	WM	14	SW NW	1100 FEET NORTH AND 600 FEET EAST FROM THE W¼ CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	7 W	WM	14	SW NW	0.8
38 S	7 W	WM	15	SW NE	7.0
38 S	7 W	WM	15	SE NE	13.4
Total					21.2

6. Transfer Application T-13056 proposes to change the point of diversion for the above described right downstream approximately 1800 feet to a diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	7 W	WM	15	SE NE	945 FEET NORTH AND 935 FEET WEST FROM THE W¼ CORNER OF SECTION 14

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

7. Water has been used within the five-year period prior to submittal of the transfer application 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 ditches 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-13056.
9. The proposed change would not result in enlargement of the right.
10. The proposed changes would not result in injury to other water rights.
11. All other application requirements are met.

Partial Cancellation of a Water Right

12. On November 5, 2018, the agent for the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of water right Certificate 57729. The applicant has abandoned any and all interest in this portion of the water right for primary irrigation and is described as follows:

Certificate: 57729 in the name of the name of HOWARD BARBER (confirmed by Decree of the circuit court for Josephine County)

Use: IRRIGATION OF 1.1 ACRES

Priority Date: MAY 15, 1886

Rate: 0.02 CUBIC FOOT PER SECOND, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION, SW¼ NW¼, SECTION 14, T38S, R7W, WM; HARMON DITCH – 1130 FEET NORTH AND 1150 FEET EAST FROM THE W¼ CORNER OF SECTION 14.

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-FIFTIETH of one cubic foot per second per acre for each acre irrigated during the irrigation season APRIL 1 TO NOVEMBER 1 of each year.

Source: DEER CREEK, a tributary of the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	7 W	WM	14	SW NW	1100 FEET NORTH AND 600 FEET EAST FROM THE W¼ CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	7 W	WM	15	SW NE	0.9
38 S	7 W	WM	15	SE NE	0.2
Total					1.1

Conclusions of Law

The proposed change in point of diversion in Transfer Application T-13056 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of water right Certificate 57729 is cancelled.

Now, therefore, it is ORDERED:

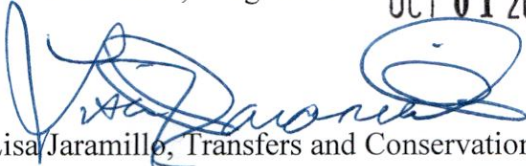
1. *The change in point of diversion proposed in Transfer Application T-13056 is approved. The portion of the right that has been abandoned is cancelled.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 57729 and any related decree.*
3. *Water right certificate 57729 is cancelled.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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 new point of diversion.*
 - 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 device(s); provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. *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 changes and full beneficial use of the water.*

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

Dated in Salem, Oregon on

OCT 01 2019



Lisa Jaramillo, Transfers and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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.