



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
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December 21, 2022

VIA CERTIFIED MAIL AND E-MAIL

DALE BINGHAM
14553 TALLEY-DOBBINS LANE
HAINES, OR 97833

SUBJECT: Water Right Transfer Application T-13604

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13604. 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 503-986-0892 or Joan.M.Smith@water.oregon.gov if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-13604
Marcy J. Osborn, District 8 Watermaster (*via e-mail*)
Paul Garvin, 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-13604, Baker and Union Counties)	PROPOSING APPROVAL OF A CHANGE
)	IN PLACES 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

DALE BINGHAM
14553 TALLEY-DOBBINS LANE
HAINES, OR 97833

Findings of Fact

1. On January 27, 2021, DALE BINGHAM filed an application to change the places of use under Certificates 83781 and 83782. The Department assigned the application number T-13604.
2. Notice of the application for transfer was published on February 9, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 18, 2021, the Department received revised application pages and maps correctly describing the places of use.
4. On May 23, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13604 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 23, 2022, 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.

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 first right to be transferred is as follows:

Certificate: 83781 in the name of DANIEL R. AND MARY E. ARRITOLA (confirmed by North Powder River Decree in Volume 3, at Page 252)
Use: IRRIGATION of 12.8 ACRES, LIVESTOCK AND DOMESTIC
Priority Date: 1873, 1895, 1903
Rate: 0.16 CUBIC FOOT PER SECOND
Season of Use: MARCH 1 TO JULY 1
Source: NORTH FORK ANTHONY CREEK, tributary to ANTHONY CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	38 E	WM	5	NW NE	2760 FEET SOUTH AND 2380 FEET WEST FROM THE E1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION, LIVESTOCK, AND DOMESTIC								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot	Tract	Priority Date
7 S	38 E	WM	3	SW NE	2.8	700	2	1873, 1885, 1903
7 S	38 E	WM	3	S NE	2.9	700	2	1873, 1885, 1903
7 S	38 E	WM	3	NE SE	2.4	700	2	1873, 1885, 1903
7 S	38 E	WM	3	NW SE	4.7	700	2	1873, 1885, 1903
Total					12.8			

6. Certificate 83781 contains a scrivener's error, the actual location of the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	5	NW NE	HUTCHINGSON SIDE HILL DITCH- 140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5

7. Transfer Application T-13604 proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
7 S	38 E	WM	3	SW NE	1.1	700
7 S	38 E	WM	3	NE SW	11.7	700
Total					12.8	

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

Certificate: 83782 in the name of HART ESTATE INVESTMENTS (confirmed by North Powder River Decree Volume 3, at Page 252)
Use: IRRIGATION of 18.4 ACRES, LIVESTOCK AND DOMESTIC
Priority Date: 1873, 1888, 1903
Rate: 0.23 CUBIC FOOT PER SECOND
Season of Use: MARCH 1 TO JULY 1
Source: NORTH POWDER RIVER, tributary of the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	38 E	WM	5	NW NE	2760 FEET SOUTH AND 2380 FEET WEST FROM THE E1/4 CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot	Tract	Priority Date
7 S	38 E	WM	2	NW SW	4.6	700		1873, 1888, 1903
7 S	38 E	WM	2	NW SW	3.4	700	4	1873, 1888, 1903
7 S	38 E	WM	2	SW SW	3.8	700	3	1873, 1888, 1903
7 S	38 E	WM	2	SE SW	6.6	700	3	1873, 1888, 1903
Total					18.4			

9. Certificate 83782 contains a scrivener's error, the actual location of the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	38 E	WM	5	NW NE	HUTCHINGSON SIDE HILL DITCH- 140 FEET SOUTH AND 2380 FEET WEST FROM THE NE CORNER OF SECTION 5

10. Transfer Application T-13604 proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK AND DOMESTIC								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot	Tract	Priority Date
7 S	38 E	WM	2	NE SW	6.5	700	3	1873, 1888, 1903
7 S	38 E	WM	2	NW SW	7.9	700	3	1873, 1888, 1903
7 S	38 E	WM	2	SE SW	4.0	700	3	1873, 1888, 1903
Total					18.4			

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

11. 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 rights are subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch 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-13604.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

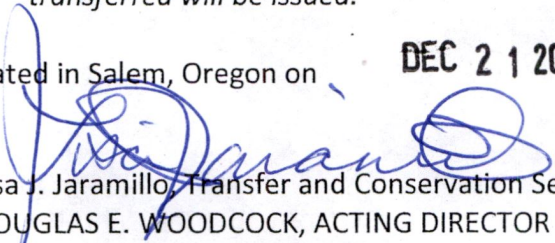
Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13604 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-13604 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-13604 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 83781, 83782, and any related decree.*
- 3. Water right Certificates 83781 and 83782 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer*
- 4. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
- 6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **DEC 21 2022**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.Smith@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.