



Oregon

Tina Kotek, Governor

Water Resources Department

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April 5, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

BIG FALLS RANCH

ATTN: REX BARBER PO BOX 434 TERREBONE,
OR 97760

SUBJECT: Water Right Transfer Application T-14066

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14066. 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 don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance

Sincerely,

Arla L Davis

Arla L Davis

Transfer Specialist

Transfer and Conservation Section

cc: T-14066
Jeremy T. Giffin, District 11 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-14066, Deschutes County)	PROPOSING APPROVAL OF CHANGES 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

REX BARBER JR.
BIG FALLS RANCH CO.
PO BOX 434
TERREBONE, OR 97760

Findings of Fact

1. On August 5, 2022, REX BARBER JR., BIG FALLS RANCH CO., filed an application to change the places of use under Certificates 96191 and 96192. The Department assigned the application number T-14066.
2. Notice of the application for transfer was published on August 16, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The Land Use Form submitted with the application is not filled out or approved by Deschutes County. Transfer Application T-14066 does not indicate the applicant is exempt from submitting an approved land use form. Pursuant to OAR 690-380-3000(19) applications for transfer of a water right require “Land use information as outlined in the Department’s Land Use Planning Procedures Guide except for those transfer that meet the following four requirements; (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts; (b) That involve changes in place of use only; (c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and (d) That involve irrigation water uses only.

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 February 15, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-14066 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 17, 2023, 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 and amended the application
5. On February 17, 2023, the Department received an amended application page indicating that the lands proposed under Transfer Application T-14066 for Certificates 96191 and 96192, are located entirely within lands zoned for exclusive farm use as provided in ORS 215.203, involve a change in place of use only, do not involve the placement or modification of structures, and involve irrigation water uses only.
6. The first right to be transferred is as follows:

Certificate: 96191 in the name of BIG FALLS RANCH CO., ATTN: REX BARBER
(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) IN ANY COMBINATION FROM THE WELLS, FURTHER LIMITED TO 4.44 CFS FROM WELL #1, 3.33 CFS FROM WELL #3, 4.5 CFS FROM WELL #4, AND 2.23 CFS FROM WELL #7, 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	9	SE NW	WELL 7 – 1571.4 FEET SOUTH AND 2862.6 FEET WEST FROM THE NE CORNER OF SECTION 9
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
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
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

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

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
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

7. Transfer Application T-14066 proposes to change the place of use of the right to:

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	NW NW	32.9
14 S	12 E	WM	17	NE SW	24.5
14 S	12 E	WM	17	NW SW	19.8
14 S	12 E	WM	17	SW SW	27.7
14 S	12 E	WM	17	SE SW	35.4
14 S	12 E	WM	17	NW SE	1.0
14 S	12 E	WM	17	SW SE	6.1
14 S	12 E	WM	20	NE NW	6.9
14 S	12 E	WM	20	NW NW	2.5
Total					206.6

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

Certificate: 96192 in the name of BIG FALLS RANCH CO., ATTN: REX BARBER
(perfected under Permit S-32049)

Use: SUPPLEMENTAL IRRIGATION OF 2.2 ACRES

Priority Date: APRIL 13, 1967

Rate: 0.025 CUBIC FEET PER SECOND, IN ANY COMBINATION FROM THE WELLS,
FURTHER LIMITED TO 0.025 CFS FROM WELL #1, 0.022 CFS FROM WELL
#3, 0.025 CFS FROM WELL #4, AND 0.015 CFS FROM WELL #7, or it in case
of rotation measured at the points of appropriation.

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	SE NW	WELL 7 – 1571.4 FEET SOUTH AND 2862.6 FEET WEST FROM THE NE CORNER OF SECTION 9
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
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
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

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	17	NW NW	2.2

9. Transfer Application T-14066 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	20	NW NW	2.2

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

10. 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.
11. 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-14066.
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The changes in places of use proposed in Transfer Application T-14066 appear 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-14066 is approved, the final order will include the following:

1. *The changes in places of use proposed in Transfer Application T-14066 are 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 96191 and 96192 and any related decree.*
3. *Water right Certificates 96191 is cancelled.*
4. *Water right Certificates 96192 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer*
5. *The former places of use of the transferred rights shall no longer receive water under the rights.*
6. *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.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **APR 05 2023**



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

This Preliminary Determination was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at 503-979-3129 or Arla.L.Davis@water.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.