

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13749, Deschutes County)	PROPOSING APPROVAL OF A CHANGE
)	FROM A SURFACE WATER POINT OF
)	DIVERSION TO GROUNDWATER POINTS
)	OF APPROPRIATION

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.

Additional findings and conditions are required for surface water point of diversion to groundwater point of appropriation transfers pursuant to ORS 540.531 and OAR 690-380-2130.

Applicant

BIG FALLS RANCH
ATTN: REX BARBER
PO BOX 434
TERREBONNE OR 97760

Findings of Fact

1. On June 23, 2021, BIG FALLS RANCH, ATTN: REX BARBER, filed an application to change the surface water point of diversion to groundwater points of appropriation under Certificate 76372. The Department assigned the application number T-13749.
2. Notice of the application for transfer was published on July 13, 2021, pursuant to OAR 690-380-4000. Two comments were filed timely in response to the notice.
3. The issues raised by the commenter do not address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. The statutory basis for approving a water right transfer application is relatively narrow and confined to the department finding or determining:
 - a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610.

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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- c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.
4. On January 20, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13749 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 20, 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.
5. The right to be transferred is as follows:

Certificate: 76372 in the name of DESCHUTES VALLEY FARMS (perfected under Permit S-37392)

Use: SUPPLEMENTAL IRRIGATION OF 149.8 ACRES

Priority Date: OCTOBER 23, 1973

Rate: 1.89 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 ONE-FORTIETH 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: UNNAMED STREAM (McKENZIE CANYON), a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	4	NW SE	1870 FEET NORTH AND 3700 FEET EAST FROM THE SW CORNER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	8	NE SW	0.4
14 S	12 E	WM	8	SE SW	34.0
14 S	12 E	WM	8	NW SE	28.0
14 S	12 E	WM	8	SW SE	39.0
14 S	12 E	WM	17	NW NE	13.6
14 S	12 E	WM	17	NE NW	34.8
Total					149.8

6. Transfer Application T-13749 proposes to move the authorized point of diversion to wells located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approx. distance from authorized point of diversion (feet)
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	0.7 mile
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	2.0 miles
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	2.2 miles
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	3.0 miles

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 rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-13749.
9. The proposed wells meet the requirements of ORS 540.531(3a.-c.).
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change from a surface water point of diversion to groundwater points of appropriation proposed in Transfer Application T-13749 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

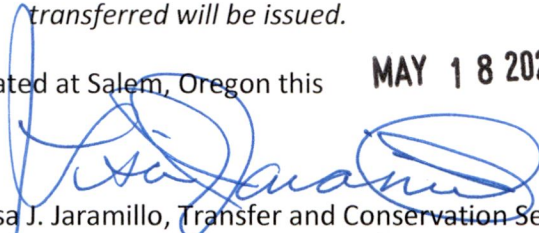
If Transfer Application T-13749 is approved, the final order will include the following:

1. *The change from surface water points of diversion to groundwater points of appropriation proposed in Transfer Application T-13749 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 Certificates 76372 and any related decree.*

3. *Water right Certificate 76372 is cancelled.*
4. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.*
6. *If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the wells, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.*
7. *The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.*
8. *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 proposed well.*
 - 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.*
9. *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 change and full beneficial use of the water.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this **MAY 18 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 any 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 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>