

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

In the Matter of Transfer Application)	FINAL ORDER
T-11434, Marion County)	APPROVING A CHANGE IN POINT OF
)	APPROPRIATION

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

PAN AMERICAN BERRY GROWERS LLC
6826 55TH AVE NE
SALEM, OR 97305

Findings of Fact

Background

- On June 21, 2012, PAN AMERICAN BERRY GROWERS LLC filed an application to change the point of appropriation under Certificate 28242. The Department assigned the application number T-11434.

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

Certificate: 28242 in the name of ALVIN J. VAN CLEAVE (perfected under Permit G-458)

Use: IRRIGATION OF 71.2 ACRES

Priority Date: FEBRUARY 5, 1957

Rate: 0.66 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, shall be limited to ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Source: VAN CLEAVE WELL 2 within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	32	NE NE	72	VAN CLEAVE WELL NO. 2 - 160 FEET SOUTH AND 1190 FEET WEST FROM THE NE CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	32	NE NE	72	29.2
6 S	2 W	WM	32	NW NE	72	19.5
6 S	2 W	WM	32	SW NE	72	13.3
6 S	2 W	WM	32	SE NE	72	9.2

3. Transfer Application T-11434 proposes to move the authorized point of appropriation approximately 1300 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	2 W	WM	32	NE NE	72	WELL 2 - 920 FEET SOUTH AND 90 FEET WEST FROM THE NE CORNER OF SECTION 32

4. Notice of the application for transfer was published on June 26, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On December 20, 2012, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11434 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 22, 2013, for the applicant to respond. The applicant requested that the Department change the completion date of the transfer from October 1, 2014 to October 1, 2016 and to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. On January 11, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11434 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 15, 2013 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

7. Water has been used within the last five years according to the terms and conditions of the right.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11434.

9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-11434 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation proposed in Transfer Application T-11434 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 Certificate 28242 and any related decree.
3. Water right certificate 28242 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
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 point of appropriation.
 - 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; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.

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

Dated at Salem, Oregon this 14 day of February 2013.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: FEB 22 2013