

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

In the Matter of Transfer Application	)	FINAL ORDER
T-11929, Malheur County	)	APPROVING ADDITIONAL POINTS
	)	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**

NEDEREND FARMS LLLP  
4998 HOGG RD  
HOMEDALE, ID 83628  
hansnederend@aol.com

**Findings of Fact**

1. On September 17, 2014, NEDEREND FARMS LLLP filed an application for additional points of appropriation under Certificates 55554 and 55555. The Department assigned the application number T-11929.
2. Notice of the application for transfer was published on September 23, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 27, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11929 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 27, 2015, for the applicant to respond. The applicant's agent 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.

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.

4. On October 9, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11929 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 13, 2015, and in the Argus Observer newspaper on October 18 and 25, 2015 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
5. The first right to be transferred is as follows:

**Certificate:** 55554 in the name of VICTORIO LAND & CATTLE COMPANY AND THE TRAVELERS INSURANCE COMPANY (perfected under Permit G-5269)

**Use:** SUPPLEMENTAL IRRIGATION OF 192.8 ACRES, FEED LOT AND FEED MILL

**Priority Date:** JUNE 6, 1973

**Rate:** 1.75 CUBIC FEET PER SECOND (CFS), BEING 0.02 CFS FOR FEED MILL FROM WELL 1; 1.3 CFS FOR SUPPLEMENTAL IRRIGATION FROM WELL 2 AND 0.43 CFS FOR FEED LOT FROM WELL 6.

**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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitations allowed herein.

**Source:** WELLS 1, 2, AND 6, within the SHEEP CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	46 E	WM	21	NE NW	WELL 1 – 1160 FEET SOUTH AND 2480 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NE NE	WELL 2 (MALH 1897) – 1200 FEET SOUTH AND 4930 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NE NW	WELL 6 (MALH 1898) – 1080 FEET SOUTH AND 2430 FEET EAST FROM THE NW CORNER OF SECTION 21

**Authorized Place of Use:**

FEED MILL WELL 1				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	21	SW NE

FEED LOT WELL 6				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	16	SW SW
19 S	46 E	WM	21	SW NE
19 S	46 E	WM	21	NE NW
19 S	46 E	WM	21	NW NW
19 S	46 E	WM	21	SW NW
19 S	46 E	WM	21	SE NW
19 S	46 E	WM	21	NE SW
19 S	46 E	WM	21	NW SW

SUPPLEMENTAL IRRIGATION WELL 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	46 E	WM	16	NE SW	7.9
19 S	46 E	WM	16	NW SW	27.9
19 S	46 E	WM	16	SW SW	24.0
19 S	46 E	WM	16	SE SW	38.4
19 S	46 E	WM	16	SW SE	36.5
19 S	46 E	WM	16	SE SE	4.3
19 S	46 E	WM	21	NE NE	37.2
19 S	46 E	WM	21	NW NE	16.6
Total					192.8

6. The proposed additional points of appropriation are described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)		
						WELL 1	WELL 2	WELL 6
19 S	46 E	WM	21	SE SW	WELL 8 (MALH 777) – 5020 FEET SOUTH AND 2180 FEET EAST FROM THE NW CORNER OF SECTION 21	3870 ft.	4700 ft.	3970 ft.
19 S	46 E	WM	21	NW SW	WELL 9 (MALH 1899) – 3660 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 21	2900 ft.	4600 ft.	3000 ft.
19S	46 E	WM	21	SE NE	WELL 10 (MALH 54178) – 1355 FEET SOUTH AND 4955 FEET EAST FROM THE NW CORNER OF SECTION 21	2500 ft.	190 ft.	2600 ft.

7. The second right to be transferred is as follows:

**Certificate:** 55555 in the name of VICTORIO LAND & CATTLE COMPANY  
(perfected under Permit G-7761)

**Use:** SUPPLEMENTAL IRRIGATION OF 73.6 ACRES AND FEED LOT;  
BEING 0.92 CUBIC FEET PER SECOND (CFS) FROM WELL 2 FOR  
SUPPLEMENTAL IRRIGATION AND 1.08 CFS FROM WELLS 8  
AND 9 FOR USE IN A FEED LOT, INCLUDING DUST CONTROL

**Priority Dates:** SEPTEMBER 16, 1976 FOR IRRIGATION AND JULY 8, 1977 FOR  
FEED LOT

**Rate:** 2.0 CUBIC FEET PER SECOND (CFS); BEING 0.92 CFS FROM WELL  
2; 0.72 CFS FROM WELL 8 AND 0.36 CFS FROM WELL 9

**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 3.0 acre-feet per acre for each acre irrigated during the irrigation  
season of each year, provided further that the right allowed herein shall be  
limited to any deficiency in the available supply of any prior right existing  
for the same land and shall not exceed the limitation allowed herein.

**Sources:** WELLS 2, 8, and 9 within the SHEEP CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	46 E	WM	21	NE NE	WELL 2 (MALH 1897) - 1200 FEET SOUTH AND 4930 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	SE SW	WELL 8 (MALH 777) - 5020 FEET SOUTH AND 2180 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NW SW	WELL 9 (MALH 1899) - 3660 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 21

**Authorized Place of Use:**

FEED LOT WELLS 8 AND 9				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	16	SW SW
19 S	46 E	WM	21	SW NE
19 S	46 E	WM	21	NE NW
19 S	46 E	WM	21	NW NW
19 S	46 E	WM	21	SW NW
19 S	46 E	WM	21	SE NW
19 S	46 E	WM	21	NE SW
19 S	46 E	WM	21	NW SW

SUPPLEMENTAL IRRIGATION WELL 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	46 E	WM	21	SW NE	8.9
19 S	46 E	WM	21	SE NE	27.4
19 S	46 E	WM	21	NE NW	5.8
19 S	46 E	WM	22	NW NW	9.9
19 S	46 E	WM	22	SW NW	21.6
Total					73.6

8. The proposed additional points of appropriation are described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)		
						WELL 2	WELL 8	WELL 9
19 S	46 E	WM	21	SE SW	WELL 1 – 1160 FEET SOUTH AND 2480 FEET EAST FROM THE NW CORNER OF SECTION 21	2400 ft.	3870 ft.	2900 ft.
19 S	46 E	WM	21	NW SW	WELL 6 (MALH 1898) – 1080 FEET SOUTH AND 2430 FEET EAST FROM THE NW CORNER OF SECTION 21	2500 ft.	3970 ft.	3000 ft.
19S	46 E	WM	21	SE NE	WELL 10 (MALH 54178) – 1355 FEET SOUTH AND 4955 FEET EAST FROM THE NW CORNER OF SECTION 21	190 ft.	4600 ft.	4600 ft.

**Transfer Review Criteria (OAR 690-380-4010)**

9. 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.
10. A pump, pipeline, pressurized system 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-11929.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

**Conclusions of Law**

The additional points of appropriation proposed in Transfer Application T-11929 are 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 additional points of appropriation proposed in Transfer Application T-11929 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 55554 and 55555 and any related decree.
3. Water right certificates 55554 and 55555 are cancelled.
4. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points 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 (new and existing).
  - 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.
6. Prior to using water from any well listed on this transfer application, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.
7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.

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

Dated at Salem, Oregon this 3 day of December, 2015.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: DEC 04 2015