BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-12546, Marion County)	ADDITIONAL POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement 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

- 1. On December 27, 2016, PAN AMERICAN BERRY GROWERS, LLC filed an application for an additional point of appropriation under Certificates 91929, 91930, and 91931. The Department assigned the application number T-12546.
- 2. Notice of the application for transfer was published on January 10, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On February 28, 2017, the Department contacted Jim Schuette, the agent for the applicant, by email informing him of deficiencies within the transfer application.
- 4. On March 3, 2017 and March 7, 2017, the Department received the necessary information to resolve the deficiencies.
- 5. On May 16, 2017, the Department contacted the Agent in regards to a map clarification.
- 6. On May 19, 2017, the Agent submitted an amended map.

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.

- 7. On May 25, 2017, the Department emailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12546 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 22, 2017 for the applicant to respond.
- 8. On May 25, 2017, the Applicant requested that the Department extend the completion date from October 1, 2018 to October 1, 2021. The applicant also requested to proceed with issuance of a Preliminary Determination and provided necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- 9. On July 5, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12546 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 July 11, 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 10. The portion of the first right to be transferred is as follows:

Certificate: 91929 in the names of PAN AMERICAN BERRY GROWERS LLC and

NORTHWEST FARM CREDIT SERVICES. FLCA

(perfected under Permit G-13304)

Use: IRRIGATION OF 15.0 ACRES AND SUPPLEMENTAL IRRIGATION

OF 144.7 ACRES.

Priority Date: JANUARY 28, 1997

Rate: 0.902 CUBIC FOOT PER SECOND (CFS), BEING 0.187 CFS FOR

IRRIGATION OF 15.0 ACRES AND 0.715 CFS FOR SUPPLEMENTAL IRRIGATION (TO MAKE UP A DEFICIENCY IN RATE) OF 144.7

ACRES

Limit/Duty: The amount of water used for irrigation under this right, together with the

amount secured under any other right existing for the same lands, is limited

to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the

irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Sources: TWO WELLS, in the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL #1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL #2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SW CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION								
Twp Rng Mer Sec Q-Q Acres								
6 S	2 W	WM	28	NW SW	15.0			

	SUPPLEN	/ENTAI	IRRI	GATION				
Twp Rng Mer Sec Q-Q Acre								
6 S	2 W	WM	28	SE NW	19.2			
6 S	2 W	WM	28	NESW	39.7			
6 S	2 W	WM	28	NWSW	10.4			
6 S	2 W	WM	28	SW SW	35.4			
6 S	2 W	WM	28	SE SW	40.0			
				TOTAL	144.7			

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

Certificate: 91930 in the name of PAN AMERICAN BERRY GROWERS, LLC

(perfected under Permit G-55)

Use: IRRIGATION OF 4.8 ACRES

Priority Date: SEPTEMBER 30, 1955

Rate: 0.06 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, is limited to a diversion of ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of

each year.

Sources: TWO WELLS, within the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL 1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL 2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SW CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION								
Twp	Twp Rng Mer Sec Q-Q Acres							
6 S	2 W	WM	33	NW NW	4.8			

12. The portion of the third right to be transferred is as follows:

Certificate: 91931 in the name of PAN AMERICAN BERRY GROWERS, LLC

(perfected under Permit G-163)

Use: IRRIGATION of 144.7 ACRES

Priority Date: MARCH 9, 1956

Rate: 1.09 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, 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Sources:

TWO WELLS, within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL 1 (ORIGINAL) – 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL 2 (ADDITIONAL) – 2157 FEET NORTH AND 1245 FEET EAST FROM SW CORNER OR SECTION 28

Authorized Place of Use:

	IRRIGATION									
Twp	Twp Rng Mer Sec Q-Q									
6 S	2 W	WM	28	SE NW	19.2					
6 S	6 S 2 W WM 28 NE SW									
6 S	2 W	WM	28	NW SW	10.4					
6 S	2 W	WM	28	SW SW	3.0					
6 S	2 W	WM	28	SW SW	35.4					
6 S	2 W	WM	28	SE SW	40.0					
				TOTAL	144.7					

13. Transfer Application T-12546 proposes an additional point of appropriation, for all the rights as described above, located as follows:

7	Гwр	Rng	Mer	Sec	Q-Q	Measured Distance	well lo	rom original ocations in feet (ft) Well #2
	6 S	2 W	WM	28	NW SW	WELL 3 - 1650 FEET NORTH AND 75 FEET EAST FROM THE SW CORNER OF SECTION 28	1175	1170

Transfer Review Criteria (OAR 690-380-4010)

- 14. 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.
- 15. 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-12546.
- 16. The proposed change would not result in enlargement of the rights.
- 17. The proposed change would not result in injury to other water rights.

18. All other application requirements are met.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-12546 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

Now, therefore, it is ORDERED:

- 1. The additional point of appropriation proposed in Transfer Application T-12546 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 91929, 91930, and 91931 and any related decree.
- 3. Water right Certificates 91929, 91930, and 91931 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
- 4. The quantity of water diverted at the additional point 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 shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 at Salem, Oregon this	14	_ day of August, 2	2017.
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Dwight French, Water Right Services Administrator, for

Thomas M. Byler, Director

Oregon Water Resources Department

Mailing date: AUG 2 3 2017