# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11556, Marion County	)	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 Applicant

A & R SPADA FARMS, LLC NORTHWEST FARM CREDIT SERVICES PO BOX 157 PO BOX 13309 SAINT PAUL, OR 97137 SALEM, OR 97309-9831

## **Findings of Fact**

- 1. On March 26, 2013, A & R SPADA FARMS, LLC. filed an application to change a point of appropriation under Certificate 85663. The Department assigned the application number T-11556.
- 2. Notice of the application for transfer was published on April 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On January 21, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11556 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2014, 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.
- 4. On April 2, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11556 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 15, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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.

5. The right to be transferred is as follows:

Certificate: 85663 in the name of A & R SPADA FARMS and NORTHWEST FARM

CREDIT SERVICES (perfected under Permit G-11028)

Use: NURSERY OPERATIONS on 12.6 ACRES **Priority Date:** NOVEMBER 29, 1989

Rate: 0.29 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a

diversion of 0.15 cubic foot per second per acre. For the irrigation of

containerized nursery plants, the amount diverted is limited to

ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime of the year that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation

season of each year.

Source:

A WELL within the CHAMPOEG CREEK BASIN

### **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q DLC		Measured Distances
4 S	2 W	WM	15	SE NW	84	WELL 2: 1320 FEET NORTH AND 4220 FEET WEST FROM THE NE CORNER OF DLC 84

#### **Authorized Place of Use:**

NURSERY USES							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
4 S	2 W	WM	14	NE SW	101	0.2	
4 S	2 W	WM	14	NW SW	101	11.6	
4 S	2 W	WM	14	SW SW	101	0.8	

6. Transfer Application T-11556 proposes to move the authorized point of appropriation approximately 35 feet North and 40 feet East from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q DLC		Measured Distances
4 S	2 W	WM	15	SE NW	84	WELL 3: 1355 FEET NORTH AND 4180 FEET WEST FROM THE NE CORNER OF DLC 84

#### 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. There is no information in the record that would demonstrate that the right is 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 right were present within the five-year period prior to submittal of Transfer Application T-11556.
- 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.
- 11. All other application requirements are met.

#### **Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-11556 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-11556 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 85663 and any related decree.
- 3. Water right certificate 85663 is cancelled.
- 4. The quantity of water diverted at the new point of appropriation, together with that diverted at the original point 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 at each new 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 is located within a private structure, the Watermaster shall request access upon reasonable notice. 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, 2015**. 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.

7. After satisfactory proof of beneficial use is received, a new certificate confirming the right