



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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Salem, OR 97301-1271
503-986-0900
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January 14, 2013

VIA E-MAIL

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

SUBJECT: Water Right Transfer Application T-11434

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11434. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

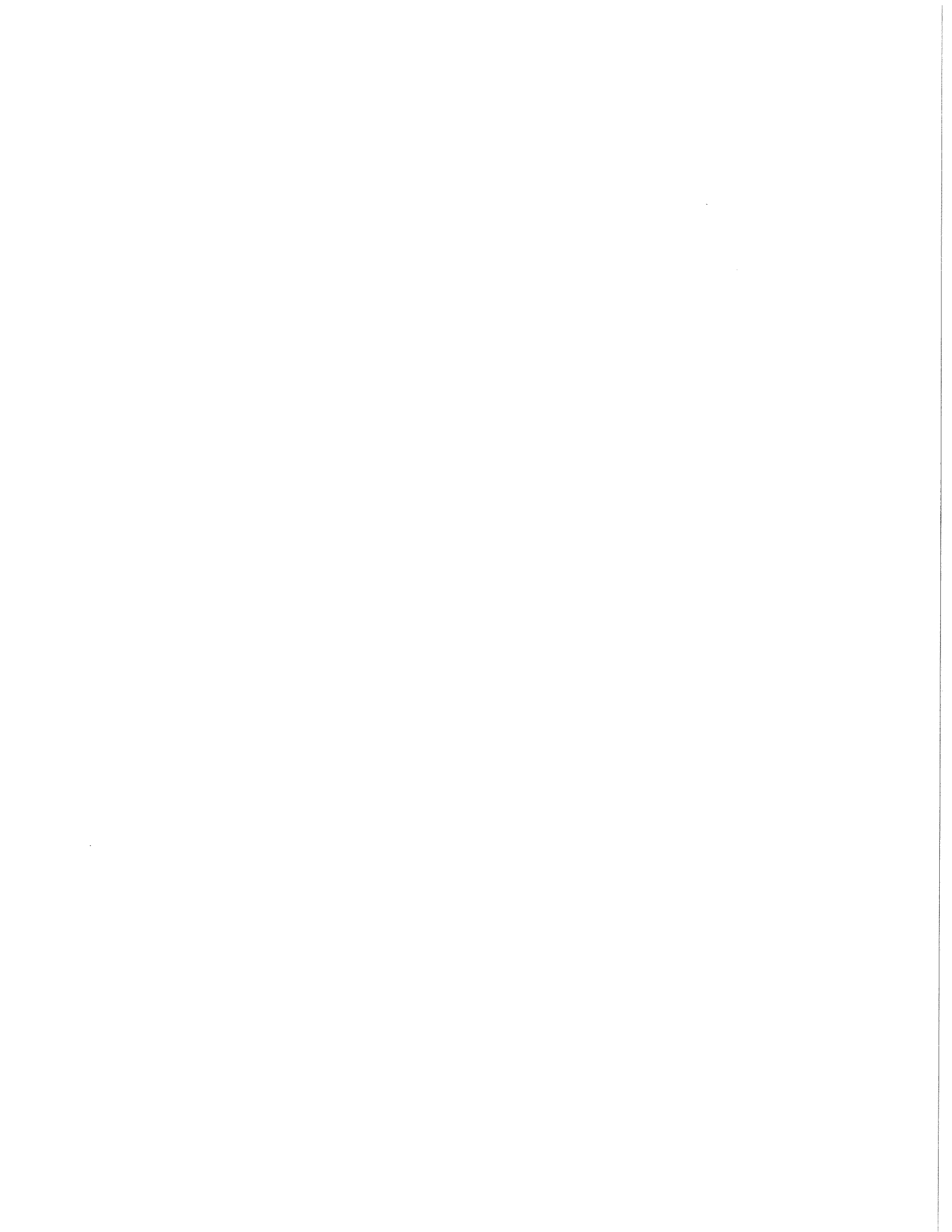
Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@wrds.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist

cc: T-11434
Mike McCord, District 16 Watermaster (*via e-mail*)
James M. Schuette, CWRE/Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)
T-11434, Marion County)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF 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

1. 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.
2. 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.

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

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.

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

- 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

- 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.
- 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.

Transfer Review Criteria (OAR 690-380-4010)

- Water has been used within the last five years according to the terms and conditions of the right.
- 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.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11434 appears to be 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.

If Transfer Application T-11434 is approved, the final order will include the following:

- 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 11 day of January 2013.



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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrds.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

**Notice of Preliminary Determination for
Water Right Transfer T-11434**

T-11434 filed by Pan American Berry Growers LLC, 6826 55th Avenue NE, Salem, OR 97305, proposes a change in point of appropriation under Certificate 28242. The right allows the use of 0.66 cubic foot per second from Van Cleave Well 2 in Sec. 32, T 6 S, R 2 W, W.M. for irrigation in Sec. 32. The applicant proposes to move the point of appropriation within Sec. 32, T 6 S, R 2 W, W.M. The Water Resources Department proposes to approve the transfer, based on the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may protest the preliminary determination or may file a standing statement. Pursuant to OAR 690-380-4030(3) and OAR 690-382-9000, protests must raise all reasonably ascertainable issues and include all reasonably available arguments supporting the person's position. In addition, protests must be accompanied by a \$600 protest fee for non-applicant, or \$300 protest fee for applicant. A Water Right Transfer Protest Form is available at http://www.oregon.gov/OWRD/PUBS/docs/forms/TransferProtestForm09_09.pdf, or by calling 503-986-0888. Protests must be received by the Department on or before [30 days after WRD notice], or within 30 days of the last date of publication in a newspaper, whichever is later. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

