



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

April 2, 2014

VIA E-MAIL

A & R SPADA FARMS
PO BOX 157
SAINT PAUL, OR 97137

NORTHWEST FARM CREDIT SERVICES
PO BOX 13309
SALEM, OR 97309-9831

SUBJECT: Water Right Transfer Application T-11556

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11556. 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 Tracy.L.Fox@wr.d.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox

Transfer Specialist
Transfer and Conservation Section

cc: T-11556
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Jeanne Boatwright, Agent for the applicant (*via e-mail*)
Corbey Boatwright, CWRE #206 (*via e-mail*)

enclosure



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

In the Matter of Transfer Application)
T-11556, 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

A & R SPADA FARMS, LLC
PO BOX 157
SAINT PAUL, OR 97137

Applicant

NORTHWEST FARM CREDIT SERVICES
PO BOX 13309
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. The portion of 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

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.

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

- 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)

- 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.
- 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.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Determination and Proposed Action


The change in point of appropriation proposed in Transfer Application T-11556 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-11556 is approved, the final order will include the following:

- 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 transferred will be issued.*

Dated at Salem, Oregon this 2 day of April 2014.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to Water Rights Division, Water Resources Department, 725 Summer St NE Suite A, Salem, OR 97301-1266.