

Water Resources Department

725 Summer St NE, Suite A Salem, OR 97301 (503) 986-0900 Fax (503) 986-0904

August <u>24</u>, 2015

PHASE 3 FARMS INC 41771 SODHOUSE LANE PRINCETON, OR 97721

SUBJECT: Water Right Transfer Application T-12062

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12062. 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 503-986-0890 or <u>Sarah.A.Henderson@wrd.state.or.us</u> if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist

Transfer and Conservation Section

Sank Henderson

cc:

T-12062

J R. Johnson, District 10 Watermaster (via e-mail) John A. Short, Agent for the applicant (via e-mail)

Gary L. DeJarnett, CWRE #033

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BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12062, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE

Authority

Oregon Revised Statute (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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

PHASE 3 FARMS INC 41771 SODHOUSE LANE PRINCETON, OR 97721

Findings of Fact

- 1. On May 20, 2015, PHASE 3 FARMS INC filed an application to change the place of use under Certificate 27019. The Department assigned the application number T-12062.
- 2. Notice of the application for transfer was published on June 2, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On July 7, 2015, the Department contacted the Harney County Assessor's office to determine current ownership of the lands involved in Transfer T-12062. The Assessor's office reported that Valorie Davis is the current owner of record for the land appurtenant to Certificate 27019 ("from" land Tax Lot 7500, SW¼ of Section 35, Township 26 South, Range 33 East, W.M.) An Affidavit of Consent from Valorie Davis will be provided with the ownership report.
- 4. On July 9, 2015, the Department contacted John Short by written correspondence to notify the applicant's agent of deficiencies in the transfer application. On July 9, 2015, the applicant's agent submitted an amended application page, resolving the deficiencies.
- 5. On July 22, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12062 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 22, 2015, 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, including an Affidavit of Consent from Valorie Davis.

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.

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

Certificate: 27019 in the name of E. A. WING (perfected under Permit U-724)

Use: IRRIGATION of 22.6 ACRES

Priority Date: APRIL 29, 1955

Rate: 0.28 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 3.0 acre feet per acre for each acre irrigated during the irrigation

season of each year.

Source: WELL 1 w

WELL 1 within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	
27 S	33 E	WM	2	NW NW	4	690 FEET EAST AND 325 FEET SOUTH OF THE NW CORNER OF SECTION 2	

Authorized Place of Use:

	IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	
26 S	33 E	WM	35	NW SW		2.2	
26 S	33 E	WM	35	SW SW		7.8	
27 S	33 E	WM	2	NW NW	4	12.6	
					Total	22.6	

7. Transfer Application T-12062 proposes to change a portion of the place of use of the right to:

	IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres		
27 S	33 E	WM	2	NW NW	4	12.6		
27 S	33 E	WM	2	NW NW		10.0		
					Total	22.6		

Transfer Review Criteria (OAR 690-380-4010)

- 8. Water has been used within the last five years prior to the submittal of Transfer Application T-12062 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 9. 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-12062.
- 10. The proposed change would not result in enlargement of the right.
- 11. The proposed change would not result in injury to other water rights.
- 12. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12062 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-12062 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12062 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 27019 and any related decree.
- 3. Water right Certificate 27019 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.
- 4. 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 5. The former place of use of the transferred right shall no longer receive water under the right.
- 6. 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.

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

Dated at Salem, Oregon this 29

2day of August, 2015.

Dwight French Water Right Services Administrator, for

Thomas M Byler, Director

Oregon Water Resources Department

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or Sarah.A.Henderson@wrd.state.or.us.

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