



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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October 7, 2015

VIA E-MAIL

Nederend Farms LLLP
4998 Hogg Rd
Homedale, Id 83628
hansnederend@aol.com

SUBJECT: Water Right Transfer Application T-11929

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11929. 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 and in the Argus Observer newspaper, 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 last date of newspaper publication.

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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: T-11929
Ronald K. Jacobs, District 9 Watermaster (via e-mail)
SPF Water Engineering, lgraves@spfwater.com
encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11929, Malheur County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS 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

NEDEREND FARMS LLLP
4998 HOGG RD
HOMEDALE, ID 83628
hansnederend@aol.com

Findings of Fact

1. On September 17, 2014, NEDEREND FARMS LLLP filed an application for additional points of appropriation under Certificates 55554 and 55555. The Department assigned the application number T-11929.
2. Notice of the application for transfer was published on September 23, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 27, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11924 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 27, 2015, for the applicant to respond. The applicant's agent 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.

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.
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4. The first right to be transferred is as follows:

Certificate: 55554 in the name of VICTORIO LAND & CATTLE COMPANY AND THE TRAVELERS INSURANCE COMPANY (perfected under Permit G-5269)

Use: SUPPLEMENTAL IRRIGATION OF 192.8 ACRES, FEED LOT AND FEED MILL

Priority Date: JUNE 6, 1973

Rate: 1.75 CUBIC FEET PER SECOND (CFS), BEING 0.02 CFS FOR FEED MILL FROM WELL 1; 1.3 CFS FOR SUPPLEMENTAL IRRIGATION FROM WELL 2 AND 0.43 CFS FOR FEED LOT FROM WELL 6.

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, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitations allowed herein.

Source: WELLS 1, 2, AND 6, within the SHEEP CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	46 E	WM	21	NE NW	WELL 1 - 1160 FEET SOUTH AND 2480 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NE NE	WELL 2 (MALH 1897) - 1200 FEET SOUTH AND 4930 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NE NW	WELL 6 (MALH 1898) - 1080 FEET SOUTH AND 2430 FEET EAST FROM THE NW CORNER OF SECTION 21

Authorized Place of Use:

FEED MILL WELL 1				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	21	SW NE

FEED LOT WELL 6				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	16	SW SW
19 S	46 E	WM	21	SW NE
19 S	46 E	WM	21	NE NW
19 S	46 E	WM	21	NW NW
19 S	46 E	WM	21	SW NW
19 S	46 E	WM	21	SE NW
19 S	46 E	WM	21	NE SW
19 S	46 E	WM	21	NW SW

SUPPLEMENTAL IRRIGATION WELL 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	46 E	WM	16	NE SW	7.9
19 S	46 E	WM	16	NW SW	27.9
19 S	46 E	WM	16	SW SW	24.0
19 S	46 E	WM	16	SE SW	38.4
19 S	46 E	WM	16	SW SE	36.5
19 S	46 E	WM	16	SE SE	4.3
19 S	46 E	WM	21	NE NE	37.2
19 S	46 E	WM	21	NW NE	16.6
Total					192.8

5. The proposed additional points of appropriation are described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)		
						WELL 1	WELL 2	WELL 6
19 S	46 E	WM	21	SE SW	WELL 8 (MALH 777) – 5020 FEET SOUTH AND 2180 FEET EAST FROM THE NW CORNER OF SECTION 21	3870 ft.	4700 ft.	3970 ft.
19 S	46 E	WM	21	NW SW	WELL 9 (MALH 1899) – 3660 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 21	2900 ft.	4600 ft.	3000 ft.
19S	46 E	WM	21	SE NE	WELL 10 (MALH 54178) – 1355 FEET SOUTH AND 4955 FEET EAST FROM THE NW CORNER OF SECTION 21	2500 ft.	190 ft.	2600 ft.

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

Certificate: 55555 in the name of VICTORIO LAND & CATTLE COMPANY (perfected under Permit G-7761)

Use: SUPPLEMENTAL IRRIGATION OF 73.6 ACRES AND FEED LOT; BEING 0.92 CUBIC FEET PER SECOND (CFS) FROM WELL 2 FOR SUPPLEMENTAL IRRIGATION AND 1.08 CFS FROM WELLS 8 AND 9 FOR USE IN A FEED LOT, INCLUDING DUST CONTROL

Priority Dates: SEPTEMBER 16, 1976 FOR IRRIGATION AND JULY 8, 1977 FOR FEED LOT

Rate: 2.0 CUBIC FEET PER SECOND (CFS); BEING 0.92 CFS FROM WELL 2; 0.72 CFS FROM WELL 8 AND 0.36 CFS FROM WELL 9

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, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Sources: WELLS 2, 8, and 9 within the SHEEP CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	46 E	WM	21	NE NE	WELL 2 (MALH 1897) – 1200 FEET SOUTH AND 4930 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	SE SW	WELL 8 (MALH 777) – 5020 FEET SOUTH AND 2180 FEET EAST FROM THE NW CORNER OF SECTION 21
19 S	46 E	WM	21	NW SW	WELL 9 (MALH 1899) – 3660 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 21

Authorized Place of Use:

FEED LOT WELLS 8 AND 9				
Twp	Rng	Mer	Sec	Q-Q
19 S	46 E	WM	16	SW SW
19 S	46 E	WM	21	SW NE
19 S	46 E	WM	21	NE NW
19 S	46 E	WM	21	NW NW
19 S	46 E	WM	21	SW NW
19 S	46 E	WM	21	SE NW
19 S	46 E	WM	21	NE SW
19 S	46 E	WM	21	NW SW

SUPPLEMENTAL IRRIGATION WELL 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	46 E	WM	21	SW NE	8.9
19 S	46 E	WM	21	SE NE	27.4
19 S	46 E	WM	21	NE NW	5.8
19 S	46 E	WM	22	NW NW	9.9
19 S	46 E	WM	22	SW NW	21.6
Total					73.6

7. The proposed additional points of appropriation are described in the table below with the measured distances from the original (authorized) points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in feet(ft.)		
						WELL 2	WELL 8	WELL 9
19 S	46 E	WM	21	SE SW	WELL 1 – 1160 FEET SOUTH AND 2480 FEET EAST FROM THE NW CORNER OF SECTION 21	2400 ft.	3870 ft.	2900 ft.
19 S	46 E	WM	21	NW SW	WELL 6 (MALH 1898) – 1080 FEET SOUTH AND 2430 FEET EAST FROM THE NW CORNER OF SECTION 21	2500 ft.	3970 ft.	3000 ft.
19S	46 E	WM	21	SE NE	WELL 10 (MALH 54178) – 1355 FEET SOUTH AND 4955 FEET EAST FROM THE NW CORNER OF SECTION 21	190 ft.	4600 ft.	4600 ft.

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. A pump, pipeline, pressurized system 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-11929.
10. The proposed change would not result in enlargement of the rights.
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 additional points of appropriation proposed in Transfer Application T-11929 appear 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-11929 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-11929 are 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 55554 and 55555 and any related decree.*
3. *Water right certificates 55554 and 55555 are cancelled.*
4. *The quantity of water diverted at the additional points 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 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 (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *Prior to using water from any well listed on this transfer application, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 9 day of October 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@wrđ.state.or.us