



Oregon

Kate Brown, Governor

Water Resources Department

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July ~~21~~²², 2016

VIA E-MAIL

PHASE 3 FARMS INC
41771 SODHOUSE LANE
PRINCETON, OR 97721

SUBJECT: Water Right Transfer Application T-12138

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12138. 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 Burns Times Herald 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 503-986-0890 or Sarah.A.Henderson@wrд.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12138
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Gary DeJarnatt, CWRE #033 (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12138, Harney County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION AND CHANGES 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 August 6, 2015, PHASE 3 FARMS INC filed an application for an additional point of appropriation and to change the place of use under Certificates 90729, 28839, 46392 and 84831. The Department assigned the application number T-12138.
2. Notice of the application for transfer was published on August 25, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 24, 2015 the applicant was sent a letter of deficiency requesting corrections to well locations and to amend a certificate number. The department received the corrected information and revised tables on December 28, 2015.
4. On January 25, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12138 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2016, for the applicant to respond.
5. On March 18, 2016, the Department received amended application pages that are being incorporated into this Preliminary Determination. 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.

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 first right to be transferred is as follows:

Certificate: 90729 in the name of E. A. WING (perfected under Permit U-724)

Use: IRRIGATION of 106.4 ACRES

Priority Date: APRIL 29, 1955

Rate: 1.33 CUBIC FEET PER SECOND (CFS)

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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: 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	WELL 1: 325 FEET SOUTH AND 690 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	35	NE SW	39.2
26 S	33 E	WM	35	NW SW	37.0
26 S	33 E	WM	35	SW SW	30.2
Total					106.4

7. Transfer Application T-12138 proposes additional points of appropriation approximately 1.0 and 1.3 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	27	SE SW	WELL 4: 440 FEET NORTH AND 50 FEET WEST OF THE S1/4 CORNER OF SECTION 27
26 S	33 E	WM	27	SW SE	WELL 3: 40 FEET NORTH AND 1685 FEET WEST OF THE SE CORNER OF SECTION 27
26 S	33 E	WM	34	SW NE	WELL 2: 70 FEET NORTH AND 90 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 34

8. Transfer Application T-12138 also proposes to change the place of use of the right to:

IRRIGATION						
Well	Twp	Rng	Mer	Sec	Q-Q	Acres
2, 3, 4	26 S	33 E	WM	27	SE SW	4.3
2, 3, 4	26 S	33 E	WM	34	NE NW	8.0
1	26 S	33 E	WM	35	NE SW	31.2
1	26 S	33 E	WM	35	NW SW	31.5
1	26 S	33 E	WM	35	SW SW	31.4
Total						106.4

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

Certificate: 28839 in the name of E. A. WING (perfected under Permit U-727)

Use: IRRIGATION of 158.6 ACRES

Priority Date: MAY 5, 1955

Rate: 1.98 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 within the SILVIES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	34	SW NE	* WELL 1: 70 FEET NORTH AND 90 FEET EAST FROM CENTER OF SECTION 34

* Applicant refers to this POA as Well 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	34	NE NE	40.0
26 S	33 E	WM	34	NW NE	39.6
26 S	33 E	WM	34	SW NE	39.0
26 S	33 E	WM	34	SE NE	40.0
Total					158.6

10. Transfer Application T-12138 proposes additional points of appropriation approximately one half mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	27	SE SW	WELL 4: 440 FEET NORTH AND 50 FEET WEST OF THE S1/4 CORNER OF SECTION 27
26 S	33 E	WM	27	SW SE	WELL 3: 40 FEET NORTH AND 1685 FEET WEST OF THE SE CORNER OF SECTION 27

11. Transfer Application T-12138 also proposes to change the place of use of the right to:

IRRIGATION						
Well	Twp	Rng	Mer	Sec	Q-Q	Acres
2, 3, 4	26 S	33 E	WM	27	NE SW	4.6
2, 3, 4	26 S	33 E	WM	27	NW SW	1.6
2, 3, 4	26 S	33 E	WM	27	SW SW	7.6
2, 3, 4	26 S	33 E	WM	27	SE SW	7.0
2, 3, 4	26 S	33 E	WM	34	NE NE	33.2
2, 3, 4	26 S	33 E	WM	34	NW NE	34.3
2, 3, 4	26 S	33 E	WM	34	SW NE	35.9

IRRIGATION						
Well	Twp	Rng	Mer	Sec	Q-Q	Acres
2	26 S	33 E	WM	34	SE NE	34.4
Total						158.6

12. The third right to be transferred is as follows:

Certificate: 46391 in the name of HERBERT C. DAVIS (perfected under Permit G-4914)

Use: IRRIGATION of 39.2 ACRES

Priority Date: MAY 17, 1971

Rate: 0.49 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL 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	330 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
26 S	33 E	WM	35	SE SW	39.2	

13. Certificate 46391 does describe the location of the point of appropriation, however information is available from the applicant and certified water right examiner indicating that the point of diversion is more accurately described as follows:

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
27 S	33 E	WM	2	NW NW	4	WELL 1: 325 FEET SOUTH AND 690 FEET EAST FROM THE NW CORNER OF SECTION 2

14. Transfer Application T-12138 proposes additional points of appropriation approximately one mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	27	SE SW	WELL 4: 440 FEET NORTH AND 50 FEET WEST OF THE S1/4 CORNER OF SECTION 27
26 S	33 E	WM	27	SW SE	WELL 3: 40 FEET NORTH AND 1685 FEET WEST OF THE SE CORNER OF SECTION 27
26 S	33 E	WM	34	SW NE	WELL 2: 70 FEET NORTH AND 90 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 34

15. Transfer Application T-12138 also proposes to change the place of use of the right to:

IRRIGATION						
Well	Twp	Rng	Mer	Sec	Q-Q	Acres
2, 3, 4	26 S	33 E	WM	34	NE NW	7.3
1	26 S	33 E	WM	35	SE SW	31.9
Total						39.2

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

Certificate: 84831 in the name of MARIE WATTS (perfected under Permit G-9324)

Use: IRRIGATION of 158.4 ACRES

Priority Date: APRIL 7, 1981

Rate: 1.98 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: WELL 2 within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	34	SW NE	WELL 2: 2660 FEET NORTH AND 2670 FEET EAST FROM THE SE CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	33 E	WM	34	NE SE	40.0
26 S	33 E	WM	34	NW SE	40.0
26 S	33 E	WM	34	SW SE	39.0
26 S	33 E	WM	34	SE SE	39.4
Total					158.4

17. Certificate 84831 does describe the location of the point of appropriation, however information is available from the applicant and certified water right examiner indicating that the point of diversion is more accurately described as follows:

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	34	SW NE	WELL 2: 70 FEET NORTH AND 90 FEET EAST FROM THE CENTER OF SECTION 34

18. Transfer Application T-12138 proposes additional points of appropriation approximately one half mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	33 E	WM	27	SE SW	WELL 4: 440 FEET NORTH AND 50 FEET WEST OF THE S1/4 CORNER OF SECTION 27
26 S	33 E	WM	27	SW SE	WELL 3: 40 FEET NORTH AND 1685 FEET WEST OF THE SE CORNER OF SECTION 27

19. Transfer Application T-12138 also proposes to change the place of use of the right to:

IRRIGATION						
Well	Twp	Rng	Mer	Sec	Q-Q	Acres
2, 3, 4	26 S	33 E	WM	27	SE SW	21.0
2, 3, 4	26 S	33 E	WM	34	NE SE	33.7
2, 3, 4	26 S	33 E	WM	34	NW SE	35.7
2, 3, 4	26 S	33 E	WM	34	SW SE	34.1
2, 3, 4	26 S	33 E	WM	34	SE SE	33.9
Total						158.4

Transfer Review Criteria (OAR 690-380-4010)

20. 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.
21. A pump, pipeline, 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-12138.
22. The proposed changes, as conditioned, would not result in enlargement of the rights.
23. The proposed changes, as conditioned, would not result in injury to other water rights.
24. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-12138 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-12138 is approved, the final order will include the following:

- The additional points of appropriation and change in place of use proposed in Transfer Application T-12138 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 90729, 28839, 46391, and 84831.*
3. *Water right Certificates 90729, 28839, 46391 and 84831 are cancelled. A new certificate will be issued describing that portion of water right Certificate 84831 not affected by this transfer.*
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. *If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this water right, then use of water from the wells shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.*
6. *Prior to using water from any well listed on this water right, the water user 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. *Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.*
8. *Measurement Devices:*
 - a) *Before water use may begin under this order, the water user shall install a totalizing flowmeter, or with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).*
 - b) *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.*
9. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
10. *The former place of use of the transferred right shall no longer receive water under the right.*

11. 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.
12. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 22 day of July, 2016.


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@wrds.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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>