



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 1, 2016

VIA E-MAIL

SINKING SAND LLC

PO BOX 55

CHRISTMAS VALLEY OR 97641

allenkellyroth@gmail.com

SUBJECT: Water Right Transfer Application T-12385

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12385. 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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application T-12385
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Bruce Estes, CWRE #1 (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12385, Lake County	)	PROPOSING APPROVAL AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION

Authority

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

Applicant

SINKING SAND LLC
DWIGHT AND ALLEN ROTH
PO BOX 55
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On May 16, 2016, SINKING SAND LLC filed an application for an additional point of appropriation under Certificate 62459. The Department assigned the application number T-12385.
2. Notice of the application for transfer was published on May 24, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 23, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12385 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 24, 201, for the applicants to respond. The applicants 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.
--

4. The right to be transferred is as follows:

Certificate: 62459 in the name of BIRCH CIRCLE FARMS, INC. (perfected under Permit G-8779)

Use: IRRIGATION OF 278.4 ACRES

Priority Date: SEPTEMBER 27, 1979

Rate: 2.45 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: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	18 E	WM	21	NW NE	1150 FEET SOUTH AND 1350 FEET WEST FROM THE NE CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	18 E	WM	21	NE NE	35.5
25 S	18 E	WM	21	NW NE	34.1
25 S	18 E	WM	21	SW NE	35.0
25 S	18 E	WM	21	SE NE	34.8
25 S	18 E	WM	21	NE NW	35.0
25 S	18 E	WM	21	SE NW	33.7
25 S	18 E	WM	22	NW NW	35.2
25 S	18 E	WM	22	SW NW	35.1
Total					278.4

5. Transfer Application T-12385 proposes an additional point of appropriation approximately 1315 feet from the existing point of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	18 E	WM	21	NE NE	1310 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 21

Transfer Review Criteria (OAR 690-380-4010)

6. 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.
7. 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-12385.
8. The proposed change would not result in enlargement of the right.

9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

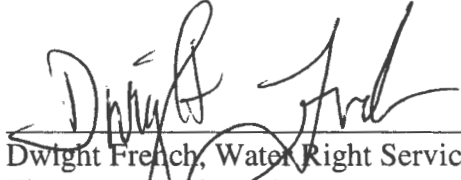
The additional point of appropriation proposed in Transfer Application T-12385 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12385 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12385 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 62459 and any related decree.*
3. *Water right Certificate 62459 is cancelled.*
4. *The quantity of water diverted at the additional 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 point of appropriation.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing and instantaneous 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 in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters; provided however, where the meters 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, 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 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 1 day of November, 2016.



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

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@wrdd.state.or.us.

Protests should be addressed to the attention of Water Rights Services 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>