



Oregon

Kate Brown, Governor

Water Resources Department

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December 13, 2016

GOLDEN RULE FARMS, INC.
PO BOX 255
CHRISTMAS VALLEY OR 97641

SUBJECT: Water Right Transfer Applications T-12336, 12337, and 12338

Please find enclosed Preliminary Determinations indicating that, based on the information available, the Department intends to approve Transfer Applications T-12336, 12337, and 12338. These documents are an intermediate step in the approval process; water may not be used legally as proposed in the transfer applications until Final Orders have been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

Public notices are being published in the Department's weekly publication and in the Burns Times-Herald newspaper, simultaneously with issuance of the Preliminary Determinations. The notices initiate periods 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 periods will end 30 days after the last date of newspaper publication.

If no protests are filed, the Department will issue Final Orders consistent with the Preliminary Determinations. You should receive a copies of the Final Orders about 30 days after the close of the protest periods.

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

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application files T-12336, 12337, and 12338
J.R. Johnson, District 10 Watermaster (*via e-mail*)
John Short, Agent for the applicant

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12337, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION AND A CHANGE IN
)	PLACE OF USE

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

GOLDEN RULE FARMS, INC.
PO BOX 455
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On April 12, 2016, GOLDEN RULE FARMS, INC. filed an application to change the points of appropriation and change the place of use under Certificates 65928 and 82390. The Department assigned the application number T-12337.
2. Notice of the application for transfer was published on April 26, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 12, 2016, Transfer Applications T-12336 and T-12338 were filed. This transfer modifies the same right, described by Certificate 82390, that has been proposed to be modified in T-12336 and T-12338. Certificate 82390 shall be cancelled after all three transfer applications are processed.
4. On September 30, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12337 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 31, 2016, 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. The applicant requested that the completion date be extended to October 1, 2022.

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

Certificate: 65928 in the names of MIKE AND JOHNA WILLIAMS (perfected under Permit G-7990)
Use: IRRIGATION OF 156.1 ACRES
Priority Date: OCTOBER 17, 1977
Rate: 1.95 CUBIC FEET PER SECOND (CFS); BEING 1.12 CFS FROM WELL 1 AND 0.83 CFS FROM WELL 2
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 AND WELL 2, within the HARNEY LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	31 E	WM	28	NE SW	WELL 1 - 1400 FEET NORTH AND 40 FEET WEST FROM THE S¼ CORNER OF SECTION 28
25 S	31 E	WM	28	NW SE	WELL 2 - 1400 FEET NORTH AND 1280 FEET EAST FROM THE S¼ CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	28	SW NE	40.0
25 S	31 E	WM	28	SE NW	38.5
25 S	31 E	WM	28	NE SW	38.2
25 S	31 E	WM	28	NW SE	39.4
Total					156.1

6. Transfer Application T-12337 proposes to move the authorized points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized points of appropriation (miles)	
						Well 1	Well 2
23S	26 E	WM	2	SE SE	WELL 9 - 1300 FEET NORTH AND 1300 FEET WEST FROM THE SE CORNER OF SECTION 2	32.00	32.10
23 S	26 E	WM	1	NW NW	WELL 12 - 1300 FEET SOUTH AND 1300 FEET EAST FROM THE NW CORNER OF SECTION 1	31.75	32.06
23S	26 E	WM	1	NE NE	WELL 13 - 1300 FEET SOUTH AND 1300 FEET WEST FROM THE NE CORNER OF SECTION 1	31.33	31.56

7. Transfer Application T-12337 also proposes to change the place of use of the right to:

IRRIGATION WELL 9						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	2	NE SE		4.4
Total						4.4

IRRIGATION WELL 12						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	1	NE NW	3	32.3
23 S	26 E	WM	1	NW NW	4	32.7
23 S	26 E	WM	1	SW NW		32.3
23 S	26 E	WM	1	SE NW		32.7
Total						130.0

IRRIGATION WELL 13						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23S	26 E	WM	1	NE NE	1	12.2
23 S	26 E	WM	1	NW NE	2	9.5
Total						21.7

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

Certificate: 82390 in the name of CARPENTER RANCH LLC (perfected under Permit G-10397)

Use: IRRIGATION OF 108.3 ACRES

Priority Date: SEPTEMBER 29, 1983

Rate: 1.36 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.

Source: ONE WELL, in the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	31 E	WM	33	NW NW	770 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	28	SW SW	29.5
25 S	31 E	WM	33	NE NW	39.4
25 S	31 E	WM	33	NW NW	39.4
Total					108.3

9. Transfer Application T-12337 proposes to move the authorized point of appropriation approximately 31.35 miles northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23S	26 E	WM	1	NE NE	WELL 13 - 1300 FEET SOUTH AND 1300 FEET WEST FROM THE NE CORNER OF SECTION 1

10. Transfer Application T-12337 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	1	NE NE	1	19.3
23 S	26 E	WM	1	NW NE	2	23.2
23 S	26 E	WM	1	SW NE		32.9
23 S	26 E	WM	1	SE NE		32.9
Total						108.3

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. 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-12337.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action


The change in point of appropriation and place of use 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-12337 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12337 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 65928 and 82390 and any related decrees.*
3. *Water Right Certificate 82390 is modified and will be cancelled upon approval or denial of T-12336 and T-12338.*
4. *Water Right Certificate 65928 is cancelled.*

5. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*
6. *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.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15 day of December, 2016.


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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@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>