

Water Resources Department

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

February 27, 2017

WILLOW CREEK DAIRY PO BOX 1210 BOARDMAN OR 97818

SUBJECT: Water Right Transfer Application T-12247

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12247. 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 <u>Patrick.K.Starnes@oregon.gov</u> if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application T-12247

Greg Silbernagel, Watermaster 5 District (via e-mail)

William I. Porfily, Agent for the applicant (via e-mail)

Sage Hollow Ranch, LLC, Receiving Landowner (via e-mail)

Dale G. VanSchoiack, CWRE #333 (via e-mail)

David E. Filippi, Stoel Rives LLP, Representing Commenters

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# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12247, Morrow County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

# **Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

WILLOW CREEK DAIRY PO BOX 1210 BOARDMAN, OR 97818

## **Receiving Landowner**

SAGE HOLLOW RANCH, LLC 3620 INDEPENDENCE RD SUNNYSIDE, WA 98944

## **Findings of Fact**

- On January 15, 2016, WILLOW CREEK DAIRY filed an application to change the place of use under Certificates 80062, 86992, and 86993. The Department assigned the application number T-12247.
- 2. SAGE HOLLOW RANCH, LLC is the receiving landowner who will be responsible for completion of the changes.
- 3. Notice of the application for transfer was published on January 26, 2016, pursuant to OAR 690-380-4000. Timely comments were filed in response to the notice.
- 4. On February 25, 2016, the Department received timely comments concerning potential injury to nearby water rights from David E. Filippi, Stoel Rives LLP on behalf of Pete and Tressa Meenderinck and Meenderinck Land Co. LLC. The Meenderinck's are very concerned that the use of groundwater for the proposed dairy will result in injury to the Meenderinck's existing water rights.
- 5. On May 17, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12247 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 17, 2016, 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 applicants are 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 portion of the first right to be transferred is as follows:

Certificate: 80062 in the names of CONNECTICUT GENERAL LIFE INSURANCE

COMPANY AND FIRST INTERSTATE BANK OF OREGON, c/o BOB

O'ROURKE. (perfected under Permit S-37150)

Use: IRRIGATION OF 350.2 ACRES

**Priority Date:** JULY 25, 1973

Rate: 5.48 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 ONE-FORTIETH 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 4.5 acre-feet for each acre for each acre irrigated during the

irrigation season of each year.

Source: COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

#### **Authorized Point of Diversion:**

Twp	Rng	Mer	- Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

#### **Authorized Place of Use:**

	IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres			
3 N	26 E	WM	15	SW NW	7.5			
3 N	26 E	WM	15	NW SW	7.2			
3 N	26 E	WM	15	SW SW	9.0			
3 N	26 E	WM	16	SW NE	31.0			
3 N	26 E	WM	16	SE NE	36.8			
3 N	26 E	WM	16	SW NW	5.0			
3 N	26 E	WM	16	SE NW	34.6			
3 N	26 E	WM	16	NE SW	36.7			
3 N	26 E	WM	16	NW SW	7.2			
3 N	26 E	WM	16	SW SW	6.2			
3 N	26 E	WM	16	SE SW	33.8			
3 N	26 E	WM	16	NE SE	33.8			
3 N	26 E	WM	16	NW SE	31.3			
3 N	26 E	WM	16	SW SE	32.1			
3 N	26 E	WM	16	SE SE	38.0			
	350.2							

Transfer Application T-12247 proposes to change the place of use of the right to:

	IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres		
3 N	26 E	WM	4	NE NE	2	18.4		
3 N	26 E	WM	4	NW NE	2	17.7		
3 N	26 E	WM	4	SW NE	1	30.0		
3 N	26 E	WM	4	SE NE	1	32.7		
3 N	26 E	WM	4	NE NW	2	37.2		
3 N	26 E	WM	4	NW NW	2	33.6		
3 N	26 E	WM	4	SW NW	1	35.6		
3 N	26 E	WM	4	SE NW	1	36.8		
3 N	26 E	WM	4	NE SW		36.0		
3 N	26 E	WM	4	NW SW		35.4		
3 N	26 E	WM	4	SW SW		28.3		
3 N	26 E	WM	4	NE SE		0.9		
3 N	26 E	WM	4	NW SE		0.4		
3 N	26 E	WM	4	SW SE		7.2		
					Total	350.2		

Total | 350.2

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

Certificate: 86993 in the name of BOARDMAN TREE FARM, LLC (perfected under

Permit S-37293)

Use: **IRRIGATION OF 66.4 ACRES** 

**Priority Date: FEBRUARY 7, 1974** 

1.09 CUBIC FEET PER SECOND Rate:

The amount of water used for irrigation, together with the amount secured Limit/Duty:

> under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation

season of each year.

Source: COLUMBIA RIVER, tributary to PACIFIC OCEAN

# **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

#### **Authorized Place of Use:**

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
3 N	26 E	WM	15	NE NW	1.1			
3 N	26 E	WM	15	SW NW	6.6			
3 N	26 E	WM	15	SE NW	4.1			
3 N	26 E	WM	15	NE SW	2.4			
3 N	26 E	WM	15	NW SW	6.7			
3 N	26 E	WM	15	SW SW	7.3			
3 N	26 E	WM	15	SE SW	6.0			
3 N	26 E	WM	15	SW SE	2.7			
3 N	26 E	WM	22	NW NE	2.9			
3 N	26 E	WM	22	SW NE	3.0			
3 N	26 E	WM	22	NE NW	3.2			
3 N	26 E	WM	22	NW NW	4.8			
3 N	26 E	WM	22	SW NW	7.0			
3 N	26 E	WM	22	SE NW	5.0			
3 N	26 E	WM	22	NW SE	3.6			
				Total	66.4			

Total | 66.4

Transfer Application T-12247 proposes to change the place of use of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
3 N	26 E	WM	4	SW SW	7.0			
3 N	26 E	WM	4	SE SW	36.8			
3 N	26 E	WM	4	NE SE	22.6			
				Total	66.1			

Total 66.4

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

Certificate:

86992 in the name of BOARDMAN TREE FARM, LLC (perfected under

Permit S-37150)

Use:

**IRRIGATION OF 86.4 ACRES** 

**Priority Date:** 

JULY 25, 1973

Rate:

1.35 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation

season of each year.

Source:

COLUMBIA RIVER, tributary to PACIFIC OCEAN

# **Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

# **Authorized Place of Use:**

	IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres				
3 N	26 E	WM	15	NW NW	2.4				
3 N	26 E	WM	16	NE NE	0.6				
3 N	26 E	WM	16	NW NE	1.8				
3 N	26 E	WM	16	SW NE	5.4				
3 N	26 E	WM	16	SE NE	2.0				
3 N	26 E	WM	16	NE NW	0.8				
3 N	26 E	WM	16	NW NW	2.3				
3 N	26 E	WM	16	SW NW	6.0				
3 N	26 E	WM	16	SE NW	5.2				
3 N	26 E	WM	16	NE SW	3.0				
3 N	26 E	WM	16	SW SW	1.6				
3 N	26 E	WM	16	SE SW	4.2				
3 N	26 E	WM	16	NE SE	5.2				
3 N	26 E	WM	16	NW SE	7.4				
3 N	26 E	WM	16	SW SE	6.5				
3 N	26 E	WM	16	SE SE	1.2				
3 N	26 E	WM	17	NE NE	1.5				
3 N	26 E	WM	17	NW NE	1.0				
3 N	26 E	WM	17	SW NE	2.0				
3 N	26 E	WM	17	SE NE	2.4				
3 N	26 E	WM	21	NE NE	4.4				
3 N	26 E	WM	21	NW NE	6.4				
3 N	26 E	WM	21	SW NE	6.2				
3 N	26 E	WM	21	SE NE	0.5				
3 N	26 E	WM	21	NE NW	1.2				
3 N	26 E	WM	21	SE NW	5.2				
		-		Total	86.4				

11. Transfer Application T-12247 proposes to change the place of use of the right to:

	IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres				
3 N	26 E	WM	4	NE SE	1.3				
3 N	26 E	WM	4	NW SE	23.6				
3 N	26 E	WM	4	SW SE	27.4				
3 N	26 E	WM	4	SE SE	34.1				
•				Total	86.4				

## Transfer Review Criteria [OAR 690-380-4010(2)]

- 12. 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.
- 13. 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-12247.
- 14. The proposed changes would not result in enlargement of the rights.

15. The proposed changes would not result in injury to other water rights.

# **Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-12247 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12247 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-12247 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 Certificates 80062, 86992, and 86993 and any related decree.
- 3. Water right Certificates 80063, 86992, and 86993 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
- 4. The water user shall maintain all existing totalizing flowmeters and measurement devices.
- 5. The former place of use of the transferred rights shall no longer receive water under the rights.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2019. 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.

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

Dated at Salem, Oregon this \_\_\_\_\_ day of February, 2017.

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 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