



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 5, 2017

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

SUBJECT: Water Right Transfer Application T-12387

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12387. 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12387
J.R. Johnson, Watermaster 10 District [REDACTED]
John A. Short, Agent for the applicant [REDACTED]

encs

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

In the Matter of Transfer Application)
T-12387, Harney County)
)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT 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 255
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On May 16, 2016, GOLDEN RULE FARMS INC. filed an application to change the point of appropriation and to change the place of use under Certificate 91368. The Department assigned the application number T-12387.
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 July 25, 2016, the applicant submitted a revised application and maps.
4. On March 29, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12387 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 29, 2017, 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.

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.

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

Certificate: 91368 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-17183)
Use: IRRIGATION OF 51.3 ACRES
Priority Date: SEPTEMBER 27, 2012
Rate: 0.85 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-SIXTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Period of Use: APRIL 1 THROUGH OCTOBER 31
Source: TWO WELLS, within the SOUTH FORK MALHEUR RIVER BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 27 S | 34 E | WM | 9 | NE NE | WELL 1 (HARN 1495) - 1302 FEET SOUTH AND 1302 FEET WEST FROM THE NE CORNER OF SECTION 9 |
| 27 S | 34 E | WM | 9 | SE SE | WELL 3 (HARN 51851) - 505 FEET NORTH AND 730 FEET WEST FROM THE SE CORNER OF SECTION 9 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 27 S | 34 E | WM | 9 | NE SE | 12.8 |
| 27 S | 34 E | WM | 9 | SW SE | 8.6 |
| 27 S | 34 E | WM | 9 | SE SE | 29.9 |
| Total | | | | | 51.3 |

6. Transfer Application T-12387 proposes to move the authorized point of appropriation approximately 2.25 miles from WELL 1 and 2.7 miles from WELL 3 to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 27 S | 34 E | WM | 6 | NW NE | WELL - 1300 FEET SOUTH AND 1340 FEET WEST FROM THE NE CORNER OF SECTION 6 |

7. Transfer Application T-12387 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|------|-------|
| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
| 27 S | 34 E | WM | 6 | NE NE | 1 | 14.1 |
| 27 S | 34 E | WM | 6 | NW NE | 2 | 31.3 |
| 27 S | 34 E | WM | 6 | SW NE | | 5.9 |
| Total | | | | | | 51.3 |

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

9. 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-12387.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-12387 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-12387 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-12387 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 Certificate 91368 and any related decree.*
3. *Water right Certificate 91368 is canceled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point 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 totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices 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. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 8 day of May, 2017.



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@oregon.gov.

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>