



Oregon

Kate Brown, Governor

Water Resources Department

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May 16, 2017

G AND C FARMS INC. / JEFF ROTH
4196 81ST AVE NE
SALEM, OR 97305

SUBJECT: Water Right Transfer Application T-12049

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12049. 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 Silverton Appeal 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@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-12049
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent and CWRE for the applicant (*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-12049, Marion County) **PROPOSING APPROVAL OF AN**
) **ADDITIONAL POINT OF**
) **APPROPRIATION**

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

G AND C FARMS INC./ JEFF ROTH
4196 81ST AVE NE
SALEM, OR 97305

Findings of Fact

1. On April 27, 2015, G AND C FARMS INC. filed an application for an additional point of appropriation under Certificate 87474. The Department assigned the application number T-12049.
2. On August 19, 2016, the applicant’s agent submitted an amended application page, showing that the new Ross Well was intended to replace Well 1, because Well 1 is no longer being used by the applicant.
3. Notice of the application for transfer was published on May 5, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On February 1, 2017, the Department sent a draft Preliminary Determination proposing to deny Transfer Application T-12049 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2017, for the applicant to respond.
5. On February 15, 2017, the Department met with the applicant’s agent and discussed options for approving Transfer Application T-12049. The Department has determined that the application can be approved by adding conditions to the order.
6. On March 22, 2017, the Department sent a revised draft Preliminary Determination proposing to approve the Transfer Application T-12049 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of April 22, 2017, for the applicant to respond.

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.

7. On April 10, 2017, the Department sent a 2nd revised draft Preliminary Determination proposing to approve the Transfer Application T-12049 to the applicant. The 2nd revised draft Preliminary Determination cover letter set forth a deadline of May 10, 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.
8. The portion of the right to be transferred is as follows:

Certificate: 87474 in the name of G AND C FARMS INC. (perfected under Permit G-7720)

Use: IRRIGATION OF 132.8 ACRES

Priority Date: APRIL 8, 1977

Rate: 1.56 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL 1, 1A, 1B, and 2A, within the PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	2	SW SE	57	WELL 1 - 1540 FEET SOUTH AND 1230 FEET EAST FROM THE NW CORNER OF GREENWOOD DLC 57
7 S	2 W	WM	2	NW SE	57	WELL 1A - 40 FEET SOUTH AND 940 FEET EAST FROM THE NW CORNER OF GREENWOOD DLC 57
7 S	2 W	WM	11	NE NE	57	WELL 1B - 2785 FEET SOUTH AND 1980 FEET EAST FROM NW CORNER OF GREENWOOD DLC 57
7 S	2 W	WM	11	NE NE	57	WELL 2A - 1350 FEET NORTH AND 2810 FEET WEST FROM SE CORNER OF GREENWOOD DLC 57

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	2 W	WM	2	NE SW	57	10.7
7 S	2 W	WM	2	SE SW	57	13.6
7 S	2 W	WM	2	NE SE	57	16.5
7 S	2 W	WM	2	NW SE	57	37.1
7 S	2 W	WM	2	SW SE	57	40.0
7 S	2 W	WM	2	SE SE	57	11.4
7 S	2 W	WM	11	NE NE	57	0.4
7 S	2 W	WM	11	NW NE	57	2.3
7 S	2 W	WM	11	NE NW	57	0.8
Total						132.8

9. Transfer Application T-12049 a proposes an additional point of appropriation approximately 1340 feet west from Well 1B :

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	11	NW NE	57	ROSS WELL - 3630 FEET NORTH AND 270 FEET EAST FROM THE SW CORNER OF GREENWOOD DLC 57

10. The Groundwater Section found that Well 1, as currently constructed, is producing from both the shallow alluvial aquifer and the deeper basalt aquifer. This well is commingling and producing from multiple aquifers and is therefore not producing exclusively from the same source (alluvial aquifer) as the proposed Ross Well and needs to be repaired to meet Enforcement Requirements (ORS 537.775). OAR 690.380-2110 (2) states "A change in point of appropriation under a water right or certificate of registration modification is restricted to the same aquifer." Therefore, to ensure that the proposed Ross Well develops water from the same source as all the wells currently authorized under Certificate 87474, Well 1 will need to be reconstructed to comply with current well construction standards to only produce water from the alluvial aquifer; or be abandoned.

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available 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 right were present within the five-year period prior to submittal of Transfer Application T-12049.
13. The proposed change would not result in enlargement of the right.
14. The proposed change as conditioned would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation (Ross Well) proposed in Transfer Application T-12049 does appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-2110 (2) 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-12049 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12049 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 87474 and any related decree.*

3. *Water right Certificate 87474 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original point(s) of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *Well 1 shall be reconstructed to produce water from only the alluvial aquifer prior to water use, or shall be abandoned.*
7. *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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 16 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 Sarah Henderson. If you have any questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@oregon.gov.

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>