



Oregon

Kate Brown, Governor

Water Resources Department

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July 5, 2017

PAN AMERICAN BERRY GROWERS, LLC
6826 55th AVE NE
SALEM, OR 97305

SUBJECT: Water Right Transfer Application T-12546

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12546. 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 Jessica.L.Joye@oregon.gov or by phone at 503-986-0814, if I may be of assistance.

Sincerely,

Jessica Joye
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application File T-12546
Joel Plahn, District #16 Watermaster (*via e-mail*)
Jim Schuette, Agent 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-12546, Marion County)	PROPOSING APPROVAL OF 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

PAN AMERICAN BERRY GROWERS, LLC
6826 55TH AVE NE
SALEM, OR 97305

Findings of Fact

1. On December 27, 2016, PAN AMERICAN BERRY GROWERS, LLC filed an application for an additional point of appropriation under Certificates 91929, 91930, and 91931. The Department assigned the application number T-12546.
2. Notice of the application for transfer was published on January 10, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 28, 2017, the Department contacted Jim Schuette, the agent for the applicant, by email informing him of deficiencies within the transfer application.
4. On March 3, 2017 and March 7, 2017, the Department received the necessary information to resolve the deficiencies.
5. On May 16, 2017, the Department contacted the Agent in regards to a map clarification.
6. On May 19, 2017, the Agent submitted an amended map.

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 May 25, 2017, the Department emailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12546 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 22, 2017 for the applicant to respond.
8. On May 25, 2017, the Applicant requested that the Department extend the completion date from October 1, 2018 to October 1, 2021. The applicant also requested to proceed with issuance of a Preliminary Determination and provided necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. The portion of the first right to be transferred is as follows:

Certificate: 91929 in the names of PAN AMERICAN BERRY GROWERS LLC and NORTHWEST FARM CREDIT SERVICES, FLCA
(perfected under Permit G-13304)

Use: IRRIGATION OF 15.0 ACRES AND SUPPLEMENTAL IRRIGATION OF 144.7 ACRES.

Priority Date: JANUARY 28, 1997

Rate: 0.902 CUBIC FOOT PER SECOND (CFS), BEING 0.187 CFS FOR IRRIGATION OF 15.0 ACRES AND 0.715 CFS FOR SUPPLEMENTAL IRRIGATION (TO MAKE UP A DEFICIENCY IN RATE) OF 144.7 ACRES

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-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Sources: TWO WELLS, in the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL #1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL #2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SW CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	2 W	WM	28	NW SW	15.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	2 W	WM	28	SE NW	19.2
6 S	2 W	WM	28	NE SW	39.7
6 S	2 W	WM	28	NW SW	10.4
6 S	2 W	WM	28	SW SW	35.4
6 S	2 W	WM	28	SE SW	40.0
TOTAL					144.7

10. The second right to be transferred is as follows:

Certificate: 91930 in the name of PAN AMERICAN BERRY GROWERS, LLC
(perfected under Permit G-55)
Use: IRRIGATION OF 4.8 ACRES
Priority Date: SEPTEMBER 30, 1955
Rate: 0.06 CUBIC FOOT 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.
Sources: TWO WELLS, within the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL 1 - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL 2 - 2157 FEET NORTH AND 1245 FEET EAST FROM THE SW CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	2 W	WM	33	NW NW	4.8

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

Certificate: 91931 in the name of PAN AMERICAN BERRY GROWERS, LLC
(perfected under Permit G-163)
Use: IRRIGATION of 144.7 ACRES
Priority Date: MARCH 9, 1956
Rate: 1.09 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Sources: TWO WELLS, within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	2 W	WM	28	NW SW	WELL 1 (ORIGINAL) - 1650 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 28
6 S	2 W	WM	28	NW SW	WELL 2 (ADDITIONAL) - 2157 FEET NORTH AND 1245 FEET EAST FROM SW CORNER OR SECTION 28

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	2 W	WM	28	SE NW	19.2
6 S	2 W	WM	28	NE SW	39.7
6 S	2 W	WM	28	NW SW	10.4
6 S	2 W	WM	28	SW SW	3.0
6 S	2 W	WM	28	SW SW	35.4
6 S	2 W	WM	28	SE SW	40.0
TOTAL					144.7

12. Transfer Application T-12546 proposes an additional point of appropriation, for all the rights as described above, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance	Distance from original well locations measured in feet (ft)	
						Well #1	Well #2
6 S	2 W	WM	28	NW SW	WELL 3 - 1650 FEET NORTH AND 75 FEET EAST FROM THE SW CORNER OF SECTION 28	1175	1170

Transfer Review Criteria (OAR 690-380-4010)

13. 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.
14. 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-12546.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

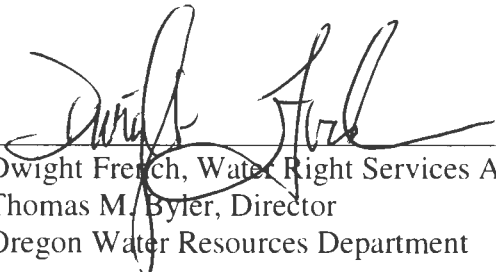
The additional point of appropriation proposed in Transfer Application T-12546 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12546 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12546 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 91929, 91930, and 91931 and any related decree.*

3. *Water right Certificates 91929, 91930, and 91931 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
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 points of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 5 day of July, 2017.


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

This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@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>