



# Oregon

Kate Brown, Governor

## Water Resources Department

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August 16, 2017

COLUMBIA FRUIT LLC  
C/O STEVEN PETERSON  
2526 DIKE RD  
WOODLAND, WA 98674

SUBJECT: Water Right Transfer Application T-12446

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12446. 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 Woodburn Independent 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 [Jessica.L.Joye@oregon.gov](mailto: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 T-12446  
Joel Plahn, District 16 Watermaster (*via e-mail*)  
Doann Hamilton, Agent for the applicant (*via e-mail*)



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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12446, Clackamas County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS 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**

COLUMBIA FRUIT LLC  
C/O STEVEN PETERSON  
2526 DIKE RD  
WOODLAND, WA 98674

**Findings of Fact**

1. On July 27, 2016, COLUMBIA FRUIT LLC, C/O STEVEN PETERSON, filed an application for additional points of appropriation under Certificates 91546, 91547, and 91548. The Department assigned the application number T-12446.
2. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 19, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12446 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 19, 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.
4. The first right to be transferred is as follows:  
**Certificate:** 91546 in the name of HESSEL BIERMA  
(perfected under Permit G-5164)  
**Use:** IRRIGATION of 150.9 ACRES

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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**Priority Date:** MAY 25, 1973

**Rate:** 0.5 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, 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.

**Source:** A WELL, a tributary to BUTTE CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	19	NW NE	WELL 1 - 570 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	18	SE SW	0.3
5 S	1 E	WM	18	SW SE	19.7
5 S	1 E	WM	18	SE SE	19.0
5 S	1 E	WM	19	NE NE	39.0
5 S	1 E	WM	19	NW NE	32.9
5 S	1 E	WM	20	SW NW	40.0
TOTAL					150.9

5. Transfer Application T-12446 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location measured in feet (ft)
5 S	1 E	WM	18	SW SE	WELL 3 - 630 FEET NORTH AND 2460 FEET WEST FROM THE SE CORNER OF SECTION 18	1200 ft
5 S	1 E	WM	18	SE SE	WELL 4 - 630 FEET NORTH AND 1180 FEET WEST FROM THE SE CORNER OF SECTION 18	1700 ft
5 S	1 E	WM	19	NE NE	WELL 2 - 530 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 19	1700 ft
5 S	1 E	WM	19	NW NE	WELL 6 - 60 FEET SOUTH AND 2510 FEET WEST FROM THE NE CORNER OF SECTION 19	1000 ft
5 S	1 E	WM	19	NE NW	WELL 5 - 65 FEET SOUTH AND 3435 FEET WEST FROM THE NE CORNER OF SECTION 19	1200 ft

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

**Certificate:** 91547 in the name of HESSEL BIERMA  
(perfected under Permit G-6083)  
**Use:** IRRIGATION of 19.2 ACRES  
**Priority Date:** JANUARY 24, 1975  
**Rate:** 0.24 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, 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.  
**Source:** A WELL, a tributary to BUTTE CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	19	NW NE	WELL 1 - 570 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	19	NE NW	19.2

7. Transfer Application T-12446 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location measured in feet (ft)
5 S	1 E	WM	18	SW SE	WELL 3 - 630 FEET NORTH AND 2460 FEET WEST FROM THE SE CORNER OF SECTION 18	1200
5 S	1 E	WM	18	SE SE	WELL 4 - 630 FEET NORTH AND 1180 FEET WEST FROM THE SE CORNER OF SECTION 18	1700
5 S	1 E	WM	19	NE NE	WELL 2 - 530 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 19	1700
5 S	1 E	WM	19	NW NE	WELL 6 - 60 FEET SOUTH AND 2510 FEET WEST FROM THE NE CORNER OF SECTION 19	1000
5 S	1 E	WM	19	NE NW	WELL 5 - 65 FEET SOUTH AND 3435 FEET WEST FROM THE NE CORNER OF SECTION 19	1200

8. The third right to be transferred is as follows:

**Certificate:** 91548 in the name of HESSEL BIERMA  
(perfected under Permit G-6711)

**Use:** SUPPLEMENTAL IRRIGATION of 170.1 ACRES

**Priority Date:** MARCH 1, 1976

**Rate:** 0.54 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, 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.

**Source:** WELL NO. 2, a tributary of ROCK CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	19	NE NE	WELL 2 - 530 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	18	SE SW	0.3
5 S	1 E	WM	18	SW SE	19.7
5 S	1 E	WM	18	SE SE	19.0
5 S	1 E	WM	19	NE NE	39.0
5 S	1 E	WM	19	NW NE	32.9
5 S	1 E	WM	19	NE NW	19.2
5 S	1 E	WM	20	SW NW	40.0
TOTAL					170.1

9. Transfer Application T-12446 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well location measured in feet (ft)
5 S	1 E	WM	18	SW SE	WELL 3 - 630 FEET NORTH AND 2460 FEET WEST FROM THE SE CORNER OF SECTION 18	2100
5 S	1 E	WM	18	SE SE	WELL 4 - 630 FEET NORTH AND 1180 FEET WEST FROM THE SE CORNER OF SECTION 18	1200
5 S	1 E	WM	19	NW NE	WELL 1 - 570 FEET SOUTH AND 2420 FEET WEST FROM THE NE CORNER OF SECTION 19	1700
5 S	1 E	WM	19	NW NE	WELL 6 - 60 FEET SOUTH AND 2510 FEET WEST FROM THE NE CORNER OF SECTION 19	1900
5 S	1 E	WM	19	NE NW	WELL 5 - 65 FEET SOUTH AND 3435 FEET WEST FROM THE NE CORNER OF SECTION 19	2800

***Transfer Review Criteria (OAR 690-380-4010)***

10. 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.
11. 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-12446.
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.
14. All other application requirements are met.

**Determination and Proposed Action**

The additional points of appropriation proposed in Transfer Application T-12446, 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-12446 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-12446 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 91546, 91547, 91548 and any related decree.*
3. *Water right Certificates 91546, 91547, and 91548 are cancelled.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point 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, 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.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of August, 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>