



Oregon
Kate Brown, Governor

Water Resources Department

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September 8, 2017

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

SUBJECT: Water Right Transfer Application T-12411

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12411. 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 file T-12411
J.R. Johnson, District 10 Watermaster *(via e-mail)*
John A. Short, 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-12411, Harney County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS 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 June 20, 2016, GOLDEN RULE FARMS INC. filed an application for additional points of appropriation and a change in place of use under Certificates 82369, 91366, 91367, and 91448. The Department assigned the application number T-12411.
2. Notice of the application for transfer was published on June 28, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. One June 21, 2017, the agent for the applicant submitted an amended application and maps.
4. On June 27, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12411 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 26, 2017, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2023 and for 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 first right to be transferred is as follows:

Certificate: 82369 in the name of CONNECTICUT GENERAL LIFE INSURANCE COMPANY. (perfected under Permit G-8592)

Use: IRRIGATION OF 143.2 ACRES

Priority Date: NOVEMBER 20, 1978

Rate: 1.79 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL 1A, within the MALHEUR LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	34 E	WM	9	NW SW	WELL 4 (AKA WELL 1A) - 2140 FEET NORTH AND 1125 FEET EAST FROM THE SW CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	8	SE NE	27.5
27 S	34 E	WM	9	SW NW	37.6
27 S	34 E	WM	9	SE NW	40.0
27 S	34 E	WM	9	NE SW	28.6
27 S	34 E	WM	9	NW SW	9.5
Total					143.2

6. Transfer Application T-12411 proposes additional points of appropriation with the approximate distances from the existing point of appropriation listed in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distances
27 S	34 E	WM	9	NE NE	WELL 1 - 1302 FEET SOUTH AND 1302 FEET WEST FROM THE NE CORNER OF SECTION 9	0.60 mile
27 S	34 E	WM	9	NE NW	WELL 2 - 590 FEET SOUTH AND 1345 FEET EAST FROM THE NW CORNER OF SECTION 9	0.48 mile
27 S	34 E	WM	9	SE SE	WELL 3 - 505 FEET NORTH AND 730 FEET WEST FROM THE SE CORNER OF SECTION 9	0.70 mile

7. Transfer Application T-12411 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	8	SE NE	23.4
27 S	34 E	WM	9	NW NW	7.3
27 S	34 E	WM	9	SW NW	34.1
27 S	34 E	WM	9	SE NW	30.7
27 S	34 E	WM	9	NE SW	29.0
27 S	34 E	WM	9	NW SW	10.0
27 S	34 E	WM	9	SE SE	8.7
Total					143.2

8. The amount of water available for the 7.3 acres in the NW¼ NW¼, Section 8, T27S, R34E, WM, will be used to make up for a deficiency in rate from Certificate 88299.

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

Certificate: 91366 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-8593)
Use: IRRIGATION OF 206.0 ACRES
Priority Date: JUNE 4, 1979
Rate: 1.88 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Sources: WELL 1 AND WELL 2, within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	34 E	WM	9	NE NE	WELL 1 (ADDITIONAL) - 1302 FEET SOUTH AND 1302 FEET WEST FROM THE NE CORNER OF SECTION 9
27 S	34 E	WM	9	NW NW	WELL 2 (ORIGINAL) - 590 FEET SOUTH AND 1345 FEET EAST FROM THE NW CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	4	SW NW	2.0
27 S	34 E	WM	4	NE SW	5.3
27 S	34 E	WM	4	NW SW	33.1
27 S	34 E	WM	4	SW SW	40.0
27 S	34 E	WM	4	SE SW	37.3
27 S	34 E	WM	4	SW SE	10.9
27 S	34 E	WM	9	NW NE	39.7
27 S	34 E	WM	9	NE NW	20.0
27 S	34 E	WM	9	NW NW	17.7
Total					206.0

10. Transfer Application T-12411 proposes additional points of appropriation with the approximate distances from the existing points of appropriation listed in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 2
27 S	34 E	WM	9	SE SE	WELL 3 - 505 FEET NORTH AND 730 FEET WEST FROM THE SE CORNER OF SECTION 9	0.67 mile	1.00 mile
27 S	34 E	WM	9	NW SW	WELL 4 - 2140 FEET NORTH AND 1125 FEET EAST FROM THE SW CORNER OF SECTION 9	0.60 mile	0.48 mile

11. Transfer Application T-12411 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	4	NE SW	5.3
27 S	34 E	WM	4	NW SW	28.9
27 S	34 E	WM	4	SW SW	35.9
27 S	34 E	WM	4	SE SW	37.1
27 S	34 E	WM	4	SW SE	9.6
27 S	34 E	WM	6	SW NE	20.0
27 S	34 E	WM	9	NW NE	7.3
27 S	34 E	WM	9	NE NW	19.3
27 S	34 E	WM	9	NW NW	6.6
27 S	34 E	WM	9	NE SE	5.0
27 S	34 E	WM	9	NW SE	3.7
27 S	34 E	WM	9	SW SE	9.3
27 S	34 E	WM	9	SE SE	18.0
Total					206.0

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

Certificate: 91367 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-17034)

Use: IRRIGATION OF 230.0 ACRES

Priority Date: DECEMBER 18, 2008

Rate: 2.87 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 2.42 CFS FROM WELL 1 (HARN 1495) AND 2.87 CFS FROM WELL 3 (HARN 51851), IN ANY COMBINATION NOT TO EXCEED 2.87 CFS

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 and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Sources: TWO WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	34 E	WM	9	NE NE	WELL 1 - 1302 FEET SOUTH AND 1302 FEET WEST FROM THE NE CORNER OF SECTION 9
27 S	34 E	WM	9	SE SE	WELL 3 - 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 NE	23.5
27 S	34 E	WM	9	SW NE	40.0
27 S	34 E	WM	9	SE NE	40.0
27 S	34 E	WM	9	NE SE	25.6
27 S	34 E	WM	9	NW SE	40.0
27 S	34 E	WM	10	NW NW	4.1
27 S	34 E	WM	10	SW NW	38.4
27 S	34 E	WM	10	SE NW	18.4
Total					230.0

13. Transfer Application T-12411 proposes additional points of appropriation with the approximate distances from the existing points of appropriation listed in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 3
27 S	34 E	WM	9	NE NW	WELL 2 - 590 FEET SOUTH AND 1345 FEET EAST FROM THE NW CORNER OF SECTION 9	0.50 mile	0.67 mile
27 S	34 E	WM	9	NW SW	WELL 4 - 2140 FEET NORTH AND 1125 FEET EAST FROM THE SW CORNER OF SECTION 9	0.60 mile	0.70 mile

14. Transfer Application T-12411 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	9	NE NE	22.1
27 S	34 E	WM	9	NW NE	30.0
27 S	34 E	WM	9	SW NE	31.3
27 S	34 E	WM	9	SE NE	37.4
27 S	34 E	WM	9	NE SE	29.8
27 S	34 E	WM	9	NW SE	31.4
27 S	34 E	WM	10	NW NW	4.0
27 S	34 E	WM	10	SW NW	35.6
27 S	34 E	WM	10	SE NW	8.4
Total					230.0

15. The fourth right to be transferred is as follows:

Certificate: 91448 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-17264)

Use: PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE ON 206.0 ACRES

Priority Date: DECEMBER 20, 2012

Rate: 0.70 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-EIGHTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Sources: WELL 1 (HARN 1495) AND WELL 2 (HARN 1488) 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 - 1302 FEET SOUTH AND 1302 FEET WEST FROM THE NE CORNER OF SECTION 9
27 S	34 E	WM	9	NE NW	WELL 2 - 590 FEET SOUTH AND 1345 FEET EAST FROM THE NW CORNER OF SECTION 9

Authorized Place of Use:

PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
27 S	34 E	WM	4	SW NW	4	2.0
27 S	34 E	WM	4	NE SW		5.3
27 S	34 E	WM	4	NW SW		33.1
27 S	34 E	WM	4	SW SW		40.0
27 S	34 E	WM	4	SE SW		37.3
27 S	34 E	WM	4	SW SE		10.9
27 S	34 E	WM	9	NW NE		39.7
27 S	34 E	WM	9	NE NW		20.0
27 S	34 E	WM	9	NW NW		17.7
Total						206.0

16. Transfer Application T-12411 proposes additional points of appropriation with the approximate distances from the existing points of appropriation listed in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 2
27 S	34 E	WM	9	SE SE	WELL 3 - 505 FEET NORTH AND 730 FEET WEST FROM THE SE CORNER OF SECTION 9	0.67 mile	1.00 mile
27 S	34 E	WM	9	NW SW	WELL 4 - 2140 FEET NORTH AND 1125 FEET EAST FROM THE SW CORNER OF SECTION 9	0.60 mile	0.48 mile

17. Transfer Application T-12411 also proposes to change the place of use of the right to:

PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	4	NE SW	5.3
27 S	34 E	WM	4	NW SW	28.9
27 S	34 E	WM	4	SW SW	35.9
27 S	34 E	WM	4	SE SW	37.1
27 S	34 E	WM	4	SW SE	9.6
27 S	34 E	WM	6	SW NE	20.0
27 S	34 E	WM	9	NW NE	7.3
27 S	34 E	WM	9	NE NW	19.3
27 S	34 E	WM	9	NW NW	6.6
27 S	34 E	WM	9	NE SE	5.0
27 S	34 E	WM	9	NW SE	3.7
27 S	34 E	WM	9	SW SE	9.3
27 S	34 E	WM	9	SE SE	18.0
Total					206.0

Transfer Review Criteria (OAR 690-380-4010)

- 18. 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.
- 19. 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-12411.
- 20. The proposed changes would not result in enlargement of the rights.
- 21. The proposed changes would not result in injury to other water rights.
- 22. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-12411 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-12411 is approved, the final order will include the following:

- 1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-12411 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 82369, 91366, 91367, and 91448 and any related decree.*

3. *Water right Certificates 82369, 91366, 91367, and 91448 are cancelled.*
4. *The quantity of water diverted at the additional points 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 use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).*
 - b. *The water user shall maintain the meters in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters; provided however, where the meters 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 rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of September 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>