

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12500, Lake County	)	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**

FITZGERALD RANCH INC.  
27493 PLUSH-ADEL RD  
PLUSH, OR 97637

**Findings of Fact**

1. On October 11, 2016, FITZGERALD RANCH INC. filed an application to change the point of appropriation and to change the place of use under Certificate 31171. The Department assigned the application number T-12500.
2. Notice of the application for transfer was published on October 18, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 15, 2017, the Department contacted the applicant's agent in regards to a deficiency on the evidence of use affidavit.
4. On February 16, 2017, the Department received an amended evidence of use affidavit, remedying all deficiencies.
5. On January 12, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12500 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 12, 2018, 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.
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6. On January 23, 2018, the Department contacted the Applicant's agent requesting a report of ownership for tax lot 36S24E 03800.
7. On February 9, 2018, the Department received a report of ownership for tax lot 36S24E 03800.
8. The portion of the right to be transferred is as follows:

**Certificate:** 31171 in the name of FITZGERALD BROTHERS  
(perfected under Permit U-273)

**Use:** IRRIGATION of 99.7 ACRES

**Priority Date:** MARCH 10, 1949

**Rate:** 1.25 CUBIC FEET PER SECOND

**Limit/Duty:** The amount of water used for irrigation, together with the amount served 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL, a tributary of HONEY CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	24 E	WM	17	NE SE	32.5 CHAINS NORTH AND 3.75 CHAINS WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	24 E	WM	16	NW NW	3.8
36 S	24 E	WM	16	SW NW	39.5
36 S	24 E	WM	16	SE NW	6.0
36 S	24 E	WM	16	NE SW	0.9
36 S	24 E	WM	16	NW SW	35.2
36 S	24 E	WM	17	SE NE	7.3
36 S	24 E	WM	17	NE SE	7.0
TOTAL					99.7

9. Transfer Application T-12500 proposes to move the authorized point of appropriation approximately 12.5 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	24 E	WM	17	NE SE	2145 FEET NORTH AND 235 FEET WEST FROM THE SE CORNER OF SECTION 17

10. Transfer Application T-12500 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	24 E	WM	16	NE NW	0.4
36 S	24 E	WM	16	NW NW	1.0
36 S	24 E	WM	16	SW NW	35.6
36 S	24 E	WM	16	SE NW	26.1
36 S	24 E	WM	16	NE SW	14.9
36 S	24 E	WM	16	NW SW	21.7
TOTAL					99.7

***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 right. There is no information in the record that would demonstrate that the right is 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-12500.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

**Determination and Proposed Action**

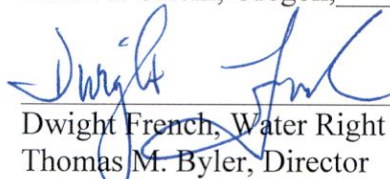
The change in point of appropriation and change in place of use proposed in Transfer Application T-12500 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

*If Transfer Application T-12500 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-12500 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 31171 and any related decree.*
3. *Water right Certificate 31171 is cancelled. 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 point 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.*
  - 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 point 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, 2019**. 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 change 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, FEB 14 2018.



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](mailto: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>