

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12655, Harney 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

TOR S FARMS LLC
6459 OAK HILL RD
ROSEBURG, OR 97471

Findings of Fact

1. On April 28, 2017, TOR S FARMS LLC filed an application for additional points of appropriation under Certificate 82356. The Department assigned the application number T-12655.
2. Notice of the application for transfer was published on May 2, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 29, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12655 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 2, 2018, for the applicants to respond. The applicants requested the completion date be extended to October 1, 2023 and for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are 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.

4. The right to be transferred is as follows:

Certificate: 82356 in the name of CONNECTICUT GENERAL LIFE INSURANCE CO. (perfected under Permit G-7664)
Use: IRRIGATION of 626.2 ACRES
Priority Date: DECEMBER 6, 1977
Rate: 7.83 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: FOUR WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
23 S	34 E	WM	19	SE SE		WELL 1 - 1320 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 19
23 S	34 E	WM	19	SW SW	4	WELL 2 - 1320 FEET NORTH AND 1300 FEET EAST FROM THE SW CORNER OF SECTION 19
23 S	34 E	WM	19	SE NE		WELL 3 - 2320 FEET SOUTH AND 1320 FEET WEST FROM THE NE CORNER OF SECTION 19
23 S	34 E	WM	19	SW NW	2	WELL 4 - 2300 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	34 E	WM	19	NE NE		40.0
23 S	34 E	WM	19	NW NE		40.0
23 S	34 E	WM	19	SW NE		40.0
23 S	34 E	WM	19	SE NE		40.0
23 S	34 E	WM	19	NE NW		40.0
23 S	34 E	WM	19	NW NW	1	37.7
23 S	34 E	WM	19	SW NW	2	37.8
23 S	34 E	WM	19	SE NW		40.0
23 S	34 E	WM	19	NE SW		40.0
23 S	34 E	WM	19	NW SW	3	37.9
23 S	34 E	WM	19	SW SW	4	33.8
23 S	34 E	WM	19	SE SW		39.0
23 S	34 E	WM	19	NE SE		40.0
23 S	34 E	WM	19	NW SE		40.0
23 S	34 E	WM	19	SW SE		40.0
23 S	34 E	WM	19	SE SE		40.0
Total						626.2

5. Transfer Application T-12655 proposes seven additional points of appropriation described in the table below with the approximate distances from the original (authorized) points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Distance from original well locations measured in feet (ft.)			
							Well 1	Well 2	Well 3	Well 4
23 S	34 E	WM	19	SE SW		WELL 5 - 170 FEET NORTH AND 1330 FEET EAST FROM THE SW CORNER OF SECTION 19	2840	1056	3828	2706
23 S	34 E	WM	19	NW NW		WELL 6 - 80 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 19	5215	4026	4224	2442
23 S	34 E	WM	19	NW NW		WELL 7 - 1280 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 19	4750	2970	4026	1650
23 S	34 E	WM	19	SW NW	2	WELL 8 - 2070 FEET SOUTH AND 110 FEET EAST FROM THE NW CORNER OF SECTION 19	4290	2310	3960	1254
23 S	34 E	WM	19	NW SE		WELL 9 - 1340 FEET NORTH AND 2690 FEET EAST FROM THE SW CORNER OF SECTION 19	1254	1450	2046	2112
23 S	34 E	WM	19	NE SW		WELL 10 - 2580 FEET NORTH AND 1710 FEET EAST FROM THE SW CORNER OF SECTION 19	1188	1386	2244	594
23 S	34 E	WM	19	SE SE		WELL 11 - 1160 FEET NORTH AND 1310 FEET WEST FROM THE SE CORNER OF SECTION 19	130	2772	1782	3234

Transfer Review Criteria (OAR 690-380-4010)

6. 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.
7. 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-12655.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12655 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-12655 is approved, the final order will include the following:

- 1. The additional points of appropriation proposed in Transfer Application T-12655 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 82356 and any related decree.*
- 3. Water right Certificate 82356 is 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 totalizing flow meters, 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 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 points of appropriation.*
- 7. 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 change 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 SEP 20 2018,



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>



Oregon
Kate Brown, Governor

Water Resources Department

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September 13, 2018

TOR S FARMS LLC
6459 OAK HILL RD
ROSEBURG, OR 97471

SUBJECT: Water Right Transfer Application T-12655

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12655. 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-12656
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

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