



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

September 25, 2018

WRIGHT FARMS LLC  
30825 SUNSET VALLEY LANE  
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-12807

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12807. 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](mailto: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-12807  
JR 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-12807, 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**

WRIGHT FARMS LLC  
30825 SUNSET VALLEY LANE  
BURNS, OR 97720

**Findings of Fact**

1. On December 26, 2017, WRIGHT FARMS LLC filed an application for additional points of appropriation and to change the place of use under Certificates 50980, 55577, and 67672. The Department assigned the application number T-12807.
2. On December 29, 2017, MATTHEW STASHIN filed an application for a change in points of appropriation and to change the place of use also under Certificate 67672. The Department assigned the application number T-12812.
3. Notice of the application for transfer was published on January 9, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 19, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12807 to the applicant. 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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5. The first right to be transferred is as follows:

**Certificate:** 50980 in the name of GEORGE L. AND ELLA J. ROBERTS (perfected under Permit G-7056)  
**Use:** IRRIGATION OF 76.1 ACRES  
**Priority Date:** DECEMBER 15, 1976  
**Rate:** 0.64 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** ROBERTS WELL within the MALHEUR LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	31 E	WM	5	NE NE	1	ROBERTS WELL (AKA WELL #1) - 60 FEET SOUTH AND 10 FEET EAST FROM THE NW CORNER OF LOT 1 (NE¼ NE¼) OF SECTION 5

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	31 E	WM	5	NE NE	1	37.2
25 S	31 E	WM	5	NW NE	2	38.9
Total						76.1

6. Transfer Application T-12807 proposes additional points of appropriation approximately 462 feet for WELL #2, 2640 feet for WELL #3, 3762 feet for WELL #4 and 1386 feet for WELL #5 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
24 S	31 E	WM	32	SW SE		WELL #2 - 380 FEET NORTH AND 1480 FEET WEST FROM THE SE CORNER OF SECTION 32
25 S	31 E	WM	5	NW NW	4	WELL #3 - 35 FEET SOUTH AND 1377 FEET WEST FROM THE N¼ CORNER OF SECTION 5
25 S	31 E	WM	5	NW NW	4	WELL #4 - 210 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 5
24 S	31 E	WM	32	SE SW		WELL #5 - 270 FEET NORTH AND 40 FEET WEST FROM THE S¼ CORNER OF SECTION 32

7. Transfer Application T-12807 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	31 E	WM	5	NE NE	1	31.3
25 S	31 E	WM	5	NW NE	2	31.3
25 S	31 E	WM	5	NE NW	3	13.5
Total						76.1

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

**Certificate:** 55577 in the name of CURLEY AND BLANCH ANGELL (perfected under Permit G-7992)

**Use:** IRRIGATION OF 64.7 ACRES

**Priority Date:** FEBRUARY 14, 1978

**Rate:** 0.81 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the MALHEUR LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	31 E	WM	32	SW SE	WELL #2 - 380 FEET NORTH AND 1480 FEET WEST FROM THE SE CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	31 E	WM	32	SW SE	25.6
24 S	31 E	WM	32	SE SE	39.1
Total					64.7

9. Transfer Application T-12807 proposes additional points of appropriation approximately 462 feet for WELL #1, 2440 feet for WELL #3, 3565 feet for WELL #4 and 1122 feet for WELL #5 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	31 E	WM	5	NE NE	1	WELL #1 - 60 FEET SOUTH AND 10 FEET EAST FROM THE NW CORNER OF LOT 1 OF SECTION 5
25 S	31 E	WM	5	NW NW	4	WELL #3 - 35 FEET SOUTH AND 1377 FEET WEST FROM THE N¼ CORNER OF SECTION 5
25 S	31 E	WM	5	NW NW	4	WELL #4 - 210 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 5
24 S	31 E	WM	32	SE SW		WELL #5 - 270 FEET NORTH AND 40 FEET WEST FROM THE S¼ CORNER OF SECTION 32

10. Transfer Application T-12807 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	31 E	WM	32	SW SE	32.4
24 S	31 E	WM	32	SE SE	32.3
Total					64.7

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

**Certificate:** 67672 in the name of HELEN M. BARRUS (perfected under Permit G-10914)  
**Use:** IRRIGATION OF 113.6 ACRES  
**Priority Date:** MAY 23, 1989  
**Rate:** 1.42 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:** ONE WELL within the SAGE HEN CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	31 E	WM	5	NW NW	4	35 FEET SOUTH AND 1377 FEET WEST FROM THE N¼ CORNER OF SECTION 5

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	31 E	WM	32	SW SW		33.5
24 S	31 E	WM	32	SE SW		31.1
25 S	31 E	WM	5	NE NW	3	15.5
25 S	31 E	WM	5	NW NW	4	33.5
Total						113.6

12. Transfer Application T-12807 proposes additional points of appropriation approximately 2640 feet for WELL #1, 2440 feet for WELL #2, 1188 feet for WELL #4, and 1320 feet for WELL #5 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	31 E	WM	5	NE NE	1	WELL #1 - 60 FEET SOUTH AND 10 FEET EAST FROM THE NW CORNER OF LOT 1 OF SECTION 5
24 S	31 E	WM	32	SW SE		WELL #2 - 380 FEET NORTH AND 1480 FEET WEST FROM THE SE CORNER OF SECTION 32
25 S	31 E	WM	5	NW NW	4	WELL #4 - 210 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 5
24 S	31 E	WM	32	SE SW		WELL #5 - 270 FEET NORTH AND 40 FEET WEST FROM THE S¼ CORNER OF SECTION 32

13. Transfer Application T-12807 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	31 E	WM	32	SW SW		33.5
24 S	31 E	WM	32	SE SW		31.1
25 S	31 E	WM	5	NE NW	3	15.5
25 S	31 E	WM	5	NW NW	4	33.5
Total						113.6

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

14. 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.
15. 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-12807.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.
18. 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-12807 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-12807 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-12807 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 50980, 55577, and 67672 and any related decree.*
- 3. Water right Certificates 50980 and 55577 are cancelled.*
- 4. Water right Certificate 67672 is modified and will be cancelled upon approval or denial of Transfer Application T-12812. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 5. 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.*
- 6. 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.*
- 7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 8. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 9. 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.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this SEP 27 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>