

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12540, Marion County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE AND PARTIAL
)	CANCELLATION OF A WATER RIGHT

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

RD FARMS INC.
C/O STEVE DAVIDSON
4608 DAVIDSON RD NE
ST. PAUL, OR 97137

Findings of Fact

1. On December 20, 2016, RD FARMS INC., C/O STEVE DAVIDSON filed an application for additional points of appropriation and to change the place of use under Certificate 40215. The Department assigned the application number T-12540.
2. Notice of the application for transfer was published on December 27, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 10, 2018, the Department contacted the agent for the applicant by e-mail regarding deficiencies in the application.
4. On April 25, 2018, the Department received amended application pages, an amended map and an affidavit for a partial cancellation of Certificate 40215 addressing any remaining deficiencies.
5. On August 22, 2018, the agent for the applicant sent correcting information for the amended application pages and map satisfying the deficiencies.

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 September 24, 2018, the Department emailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12540 to the applicant and agent for the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 24, 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 and requested the completion date for the transfer be extended to October 1, 2022.

7. The right to be transferred is as follows:

Certificate: 40215 in the name of RAYMOND T. DAVIDSON (perfected under Permit G-4085)

Use: IRRIGATION of 48.85 ACRES and SUPPLEMENTAL IRRIGATION of 100.4 ACRES

Priority Date: APRIL 16, 1968

Rate: 1.325 CUBIC FEET PER SECOND (CFS)

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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein

Source: A WELL in the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	SW NW	94	WELL 2 - 3450 FEET NORTH AND 470 FEET EAST FROM THE NW CORNER OF DLC 56

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	29	NE NW	94	8.8
4 S	2 W	WM	29	NW NW	94	10.0
4 S	2 W	WM	29	SW NW	94	10.0
4 S	2 W	WM	29	SE NW	94	7.95
4 S	2 W	WM	30	NE NE	94	9.8
4 S	2 W	WM	30	SE NE	94	2.3
Total						48.85

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	29	SW NW	94	14.5
4 S	2 W	WM	29	NW SW	94	8.1
4 S	2 W	WM	29	NW SW	80	12.4
4 S	2 W	WM	29	SW SW	80	20.0
4 S	2 W	WM	30	SE NE	94	10.2
4 S	2 W	WM	30	NE SE	94	4.3

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	30	NE SE	80	5.7
4 S	2 W	WM	30	SE SE	80	14.4
4 S	2 W	WM	31	NE NE	80	5.2
4 S	2 W	WM	32	NW NW	80	5.6
Total						100.4

8. Transfer Application T-12540 proposes additional points of appropriation in the table below with the approximate distances from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Distance from original well location in feet
4 S	2 W	WM	32	NW NW	80	WELL 3 - 425 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 32	0.74 mile
4 S	2 W	WM	30	NE SE	80	WELL 4 -1565 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 30	0.40 mile

9. Transfer Application T-12540 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed Changes
4 S	2 W	WM	29	NE NW	94	0.5	POU/APOA
4 S	2 W	WM	29	NE NW	94	7.7	APOA
4 S	2 W	WM	29	NW NW	94	0.6	POU/APOA
4 S	2 W	WM	29	NW NW	94	10.0	APOA
4 S	2 W	WM	29	SW NW	94	10.0	APOA
4 S	2 W	WM	29	SE NW	94	7.95	APOA
4 S	2 W	WM	30	NE NE	94	9.8	APOA
4 S	2 W	WM	30	SE NE	94	2.3	APOA
Total						48.85	

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed Changes
4 S	2 W	WM	29	SW NW	94	14.5	APOA
4 S	2 W	WM	29	NW SW	94	8.1	APOA
4 S	2 W	WM	29	NW SW	80	12.4	APOA
4 S	2 W	WM	29	SW SW	80	20.0	APOA
4 S	2 W	WM	30	SE NE	94	10.2	APOA
4 S	2 W	WM	30	NE SE	94	4.3	APOA
4 S	2 W	WM	30	NE SE	80	5.7	APOA
4 S	2 W	WM	30	SE SE	80	14.4	APOA
4 S	2 W	WM	31	NE NE	80	5.2	APOA
4 S	2 W	WM	32	NW NW	80	5.6	APOA
Total						100.4	

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 right. There is no information in the record that would demonstrate that the right is 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 right were present within the five-year period prior to submittal of Transfer Application T-12540.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Partial Cancellation of a Water Right

15. On April 25, 2018 the Department received an affidavit from the landowner certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right.

Certificate: 40215 in the name of RAYMOND T. DAVIDSON (perfected under Permit G-4085)

Use: IRRIGATION of 1.75 ACRES

Priority Date: APRIL 16, 1968

Rate: 0.015 CUBIC FEET PER SECOND (CFS)

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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein

Source: A WELL in the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

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Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	29	NE NW	94	0.6
4 S	2 W	WM	29	SE NW	94	1.15
Total						1.75

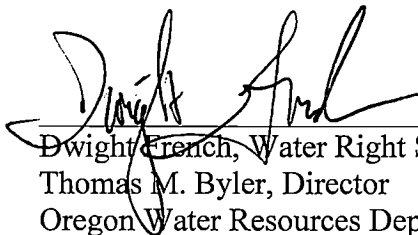
Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-12540 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-12540 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-12540 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 40215 and any related decree.*
- 3. Water right Certificate 40215 is 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. The former place of use of the transferred right shall no longer receive water under the right.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this NOV 21 2018



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0806 or Arla.L.Heard@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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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 21, 2018

RD FARMS INC.
C/O STEVE DAVIDSON
4608 DAVIDSON RD NE
SAINT PAUL, OR 97137

SUBJECT: Water Right Transfer Application T-12540

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12540. 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 503-986-0806 or arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-12540
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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