

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

In the Matter of Transfer Application)
T-12895, Marion County)
)
) PRELIMINARY DETERMINATION
) 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

SANDY RIDGE BERRY FARMS
4902 RIVER ROAD NORTH
KEIZER, OR 97303

Findings of Fact

1. On April 10, 2018, SANDY RIDGE BERRY FARMS filed an application for additional points of appropriation under Certificates 85732 and 85733. The Department assigned the application number T-12895.
2. Notice of the application for transfer was published on April 17, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 20, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12895 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 18, 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.
4. On September 14, 2018, on behalf of the applicant, the applicant's agent requested the Department to place a temporary hold on the application. The applicant received a higher estimate to bring power to the additional points of appropriation (APOA) than originally

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.

quoted. The applicant needed additional time to determine a new location that might be less expensive. The Department granted a deadline of November 16, 2018, to provide a response.

5. On October 15, 2018, the applicant's agent submitted a revised Table 1 and map, identifying locations for three additional POAs.
6. On November 6, 2018, the Department received a revised review from the Department's Groundwater section.
7. On November 27, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12895 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of December 28, 2018, for the applicant to respond.
8. On December 3, 2018, the applicant requested that the Department proceed with issuance of a Preliminary Determination. The applicant also requested to extend the date to complete full beneficial use of the water to October 1, 2023.
9. The first right to be transferred is as follows:

Certificate: 85732 in the name of JAMES AND BETTY HOLLIN
(perfected under Permit G-12181)

Use: IRRIGATION OF 2.8 ACRES AND SUPPLEMENTAL IRRIGATION
207.9 ACRES (DEFICIENCY OF RATE)

Priority Date: JULY 12, 1991

Rate: 1.14 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 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.

Period of Use: March 1 through October 31 of each year

Source: TWO WELLS, in the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	2 W	WM	14	SW NW	4	WELL 1 - 1750 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 14
6 S	2 W	WM	15	NE NE		WELL 2 - 1140 FEET SOUTH AND 150 FEET WEST FROM THE NW CORNER OF SECTION 14

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	2 W	WM	14	SE NW	3	1.30
6 S	2 W	WM	14	SE NW	11	1.00
6 S	2 W	WM	14	NE SW	11	0.50
Total						2.80

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	2 W	WM	14	NE NW		30.50
6 S	2 W	WM	14	NW NW		38.90
6 S	2 W	WM	14	SW NW	4	39.20
6 S	2 W	WM	14	SE NW	3	28.70
6 S	2 W	WM	14	NE SW	3	2.60
6 S	2 W	WM	14	NE SW	11	4.00
6 S	2 W	WM	14	NW SW	4	19.00
6 S	2 W	WM	14	NW SW	13	1.20
6 S	2 W	WM	15	NE NE		37.80
6 S	2 W	WM	15	NW NE		6.00
Total						207.90

10. Transfer Application T-12895 proposes additional points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in miles (mi.)	
						WELL 1	WELL 2
6 S	2 W	WM	14	NE NW	WELL 7 - 1155 FEET SOUTH AND 1780 FEET EAST FROM THE NW CORNER OF SECTION 14	0.2 mi.	0.4 mi.
6 S	2 W	WM	14	NW NW	WELL 4 - 110 FEET SOUTH AND 1135 FEET EAST FROM THE NW CORNER OF SECTION 14	0.3 mi.	0.3 mi.
6 S	2 W	WM	14	SE NW	WELL 5 - 1780 FEET SOUTH AND 2335 FEET EAST FROM THE NW CORNER OF SECTION 14	0.3 mi.	0.5 mi.
6 S	2 W	WM	14	SE NW	WELL 6 - 1780 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 14	0.2 mi.	0.4 mi.
6 S	2 W	WM	15	NE NE	WELL 3 - 50 FEET SOUTH AND 800 FEET WEST FROM THE NW CORNER OF SECTION 14	0.5 mi.	0.2 mi.

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

Certificate: 85733 in the name of JAMES AND BETTY HOLLIN
(perfected under Permit G-2983)

Use: IRRIGATION of 207.9 ACRES

Priority Date: JULY 21, 1965

Rate: 1.46 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 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.

Source: TWO WELLS, within the LITTLE PUDDING RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	2 W	WM	14	SW NW	4	ORIGINAL WELL - 1750 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 14
6 S	2 W	WM	15	NE NE		ADDITIONAL WELL - 1140 FEET SOUTH AND 150 FEET WEST FROM THE NW CORNER OF SECTION 15

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	2 W	WM	14	NE NW		30.5
6 S	2 W	WM	14	NW NW		38.9
6 S	2 W	WM	14	SW NW	4	39.2
6 S	2 W	WM	14	SE NW	3	28.7
6 S	2 W	WM	14	NE SW	3	2.6
6 S	2 W	WM	14	NE SW	11	4.0
6 S	2 W	WM	14	NW SW	13	1.2
6 S	2 W	WM	14	NW SW	4	19.0
6 S	2 W	WM	15	NE NE		37.8
6 S	2 W	WM	15	NW NE		6.0
Total						207.9

12. Transfer Application T-12895 proposes additional points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in miles (mi.)	
						ORIGINAL WELL	ADDITIONAL WELL
6 S	2 W	WM	14	NE NW	WELL 7 - 1155 FEET SOUTH AND 1780 FEET EAST FROM THE NW CORNER OF SECTION 14	0.2 mi.	0.4 mi.
6 S	2 W	WM	14	NW NW	WELL 4 - 110 FEET SOUTH AND 1135 FEET EAST FROM THE NW CORNER OF SECTION 14	0.3 mi.	0.3 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in miles (mi.)	
						ORIGINAL WELL	ADDITIONAL WELL
6 S	2 W	WM	14	SE NW	WELL 5 - 1780 FEET SOUTH AND 2335 FEET EAST FROM THE NW CORNER OF SECTION 14	0.3 mi.	0.5 mi.
6 S	2 W	WM	14	SE NW	WELL 6 - 1780 FEET SOUTH AND 2000 FEET EAST FROM THE NW CORNER OF SECTION 14	0.2 mi.	0.4 mi.
6 S	2 W	WM	15	NE NE	WELL 3 - 50 FEET SOUTH AND 800 FEET WEST FROM THE NW CORNER OF SECTION 14	0.5 mi.	0.2 mi.

Transfer Review Criteria (OAR 690-380-4010)

13. 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.
14. 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-12895.
15. The proposed change would not result in enlargement of the rights.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12895 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-12895 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12895 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 85732 and 85733 and any related decree.*
3. *Water right Certificates 85732 and 85733 are cancelled.*
4. *The quantity of water diverted at the new 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 shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *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.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon, DEC 17 2018.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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

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Fax (503) 986-0904

December 17, 2018

SANDY RIDGE BERRY FARMS
4902 RIVER ROAD NORTH
KEIZER, OR 97303

SUBJECT: Water Right Transfer Application T-12895

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12895. 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 Statesman Journal 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12895
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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