

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12699, Washington County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION
)	AND PLACE OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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

SCHLICHTING CENTURY FARM LLC
6242 N KERBY AVE
PORTLAND, OR 97217-2501

Receiving Landowner

SCHLICHTING CENTURY FARM LLC
6242 N KERBY AVE
PORTLAND, OR 97217

BAGGENSTOS FARMS, INC.
15801 SW ROY ROGERS RD
SHERWOOD, OR 97140

Findings of Fact

1. On June 19, 2017, SCHLICHTING CENTURY FARM LLC and BAGGENSTOS FARMS, INC. filed an application to change the point of diversion and to change the place of use under Certificate 23580. The Department assigned the application number T-12699.
2. SCHLICHTING CENTURY FARM LLC is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on June 27, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On August 28, 2018, the applicant's agent contacted the Department by telephone to discuss the status of T-12699. The Department requested the applicant's agent revise the application to include Permit S-49958, which is supplemental to Certificate 23580.
5. On September 10, 2018, the applicant submitted a revised application and map to include Permit S-49958.

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 12, 2018, the Department contacted the applicant's agent by written correspondence to notify the agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by September 26, 2018.
7. On September 17, 2018, the applicant submitted a revised Table 1 and 2 for both rights, and a revised map, which corrected the deficiency.
8. On October 26, 2018, the Department approved an extension of time, for Permit S-49958, for complete application of water to October 1, 2023.
9. On November 9, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12699 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 10, 2018, for the applicants to respond. The applicants 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.

10. The portion of the first right to be transferred is as follows:

Certificate: 23580 in the name of JOHN A. BAGGENSTOS (perfected under Permit S-21065)
Use: IRRIGATION of 37.2 ACRES
Priority Date: JANUARY 30, 1952
Rate: 0.470 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: TUALATIN RIVER, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	1 W	WM	7	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	7	NE SE	37.2

11. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 23580 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	7	SW SW	1100 FEET NORTH AND 4700 FEET WEST FROM THE SE CORNER OF SECTION 7

12. Transfer Application T-12699 proposes to move the authorized point of diversion approximately 3.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	19	NE NW	200 FEET SOUTH AND 2300 FEET WEST FROM THE NW CORNER OF DLC 41

13. Transfer Application T-12699 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	19	SW NE	6.4
2 S	1 W	WM	19	SW NW	2.9
2 S	1 W	WM	19	SE NW	27.9
Total					37.2

14. The portion of the second right to be transferred is as follows:

Permit: APPLICATION S-54580 (PERMIT S-49958) in the name of TUALATIN VALLEY IRRIGATION DISTRICT
Use: SUPPLEMENTAL IRRIGATION of 34.1 ACRES
Priority Date: JANUARY 4, 1984
Rate: 0.43 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, 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: UNIFIED SEWAGE AGENCY ROCK CREEK TREATMENT PLANT DISCHARGE

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	7	SW SW	BAGGENSTOS BROTHERS: 1100 FEET NORTH AND 640 FEET EAST FROM THE SW CORNER OF SECTION 7

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	7	NE SE	34.1

15. Transfer Application T-12699 proposes to move the authorized point of diversion approximately 3.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	19	NE NW	200 FEET SOUTH AND 2300 FEET WEST FROM THE NW CORNER OF DLC 41

16. Transfer Application T-12699 also proposes to change the place of use of the permit to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	19	SW NE	6.4
2 S	1 W	WM	19	SW NW	2.9
2 S	1 W	WM	19	SE NW	24.8
Total					34.1

17. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

18. Water has been used within the last five years according to the terms and conditions of Certificate 23580. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
19. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under Certificate 23580 was present within the five-year period prior to submittal of Transfer Application T-12699.
20. The proposed changes would not result in enlargement of Certificate 23580 or Permit S-49958.
21. The proposed changes would not result in injury to other water rights.
22. The changes do not alter any other terms of Permit S-49958.
23. All other application requirements are met.

Determination and Proposed Action

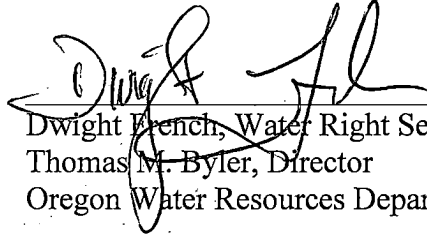
The change in point of diversion and change in place of use proposed in Transfer Application T-12699 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12699 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-12699 is 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 23580 and Permit S-49958 and any related decree.*

10. After satisfactory proof of beneficial use is received, a new certificate confirming the right under Certificate 23580 transferred will be issued.

Dated at Salem, Oregon this JAN 31 2019.



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>

3. *Water right Certificate 23580 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Permit S-55171, in the name of Tualatin Valley Irrigation District, is issued to replace Permit S-49958, and incorporates the amendments approved by this order, and the extension of time. Permit S-49958, in the name of Tualatin Valley Irrigation District, is no longer of any force or effect.*
5. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
6. *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 diversion (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. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
8. *The former place of use of the transferred right under Certificate 23580 and Permit S-49958 shall no longer receive water under the right, and permit.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 31, 2019

SCHLICHTING CENTURY FARM LLC
6242 N KERBY AVE
PORTLAND, OR 97217-2501

BAGGENSTOS FARMS, INC.
15801 SW ROY ROGERS RD
SHERWOOD, OR 97140

SUBJECT: Water Right Transfer Application T-12699

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12699. 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 Sherwood Gazette 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-12699
Jacob W. Constans, District 18 Watermaster (via e-mail)
Marc Van Camp, Agent for the applicant (via e-mail)

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