

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12822, Harney County	)	PROPOSING DENIAL OF A CHANGE
	)	IN POINTS OF APPROPRIATION AND
	)	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**

GOLDEN RULE FARMS INC.  
PO BOX 255  
CHRISTMAS VALLEY, OR 97641

**Findings of Fact**

1. On January 11, 2018, GOLDEN RULE FARMS INC. filed an application to change the points of appropriation and to change the place of use under Certificates 62014, 93194, and 93234. The Department assigned the application number T-12822.
2. Notice of the application for transfer was published on January 23, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 24, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12822 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 19, 2018, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2024 and for the Department to proceed with the issuance of a Preliminary Determination. The applicant provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. On June 17, 2019, the Department sent a deficiency letter to the agent and applicant, requesting evidence of use for specific acres included in the transfer. The Department requested that the requested information be sent in no later than July 18, 2019.
5. On June 21, 2019, the Department also requested that the Land Use Information Form include the tax lots for the conveyance of water in the transfer application. The Department requested the updated Land Use form be sent in no later than July 18, 2019.

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.
--

6. On July 10, the applicant's agent submitted a Land Use Information Form including the tax lots for the conveyance of water in the transfer application.
7. The Department has not received the evidence of use for lands appurtenant to Certificate 62014, being 8.6 acres in the SE NW of Section 1, T26S, R30E, WM, as requested in Finding No. 4.
8. The portion of the first right to be transferred is as follows:

**Certificate:** 62014 in the name of GLEN CHOWNING (perfected under Permit G-10105)  
**Use:** IRRIGATION of 8.6 ACRES  
**Priority Date:** MAY 26, 1983  
**Rate:** 0.11 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:** WELL 10 within the HARNEY BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	1	SE NW	WELL 10 - 10 FEET NORTH AND 1340 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 1

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	1	SE NW	8.6

9. The proposed points of appropriation are described in the table below with the approximate measured distances in miles (mi.) from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Distance from authorized well location in miles (mi)
27 S	31 E	WM	1	SW NE		WELL 3 - 1542 FEET SOUTH AND 21 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 1	8.7 mi.
27 S	32 E	WM	6	NE NE	1	WELL 1 - 125 FEET SOUTH AND 915 FEET WEST FROM THE NE CORNER OF SECTION 6	9.7 mi.
27 S	32 E	WM	6	NE NW	3	WELL 2 - 1280 FEET SOUTH AND 1 FOOT WEST FROM THE NORTH 1/4 CORNER OF SECTION 6	9.5 mi.

10. Transfer Application T-12822 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	31 E	WM	1	SE NE	8.6

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

**Certificate:** 93194 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-13639)  
**Use:** IRRIGATION of 124.8 ACRES  
**Priority Date:** OCTOBER 9, 1998  
**Rate:** 1.56 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation for this right, 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.  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31  
**Source:** A WELL within the MALHEUR LAKE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	1	SW NE	WELL 3 - 2160 FEET SOUTH AND 2340 FEET WEST FROM THE NE CORNER OF SECTION 1

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	30 E	WM	1	NE NE	1	31.1
26 S	30 E	WM	1	NW NE	2	31.3
26 S	30 E	WM	1	SW NE		31.3
26 S	30 E	WM	1	SE NE		31.1
TOTAL						124.8

12. The proposed points of appropriation are described in the table below with the approximate measured distances from the authorized point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Distance from authorized well location in miles (mi)
27 S	31 E	WM	1	SW NE		WELL 3 - 1542 FEET SOUTH AND 21 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 1	8.7 mi.
27 S	32 E	WM	6	NE NE	1	WELL 1 - 125 FEET SOUTH AND 915 FEET WEST FROM THE NE CORNER OF SECTION 6	9.5 mi.
27 S	32 E	WM	6	NE NW	3	WELL 2 - 1280 FEET SOUTH AND 1 FOOT WEST FROM THE NORTH 1/4 CORNER OF SECTION 6	9.2 mi.

13. Transfer Application T-12822 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	31 E	WM	1	NE SW	31.4
27 S	31 E	WM	1	SE SW	31.4
27 S	31 E	WM	1	NW SE	30.6
27 S	31 E	WM	1	SW SE	31.4
TOTAL					124.8

14. The third right to be transferred is as follows:

**Certificate:** 93234 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-17514)  
**Use:** IRRIGATION of 124.0 ACRES  
**Priority Date:** OCTOBER 9, 1998  
**Rate:** 1.55 CUBIC FEET PER SECOND  
**Limit/Duty:** The amount of water used for irrigation under this right, 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 and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31  
**Source:** TWO WELLS within the MALHEUR LAKE BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	31 E	WM	31	NW SE	WELL 1 - 1310 FEET NORTH AND 1505 FEET WEST FROM THE SE CORNER OF SECTION 31
25 S	31 E	WM	31	SW SE	WELL 2 - 130 FEET NORTH AND 210 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 31

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	31	NE SE	31.0
25 S	31 E	WM	31	NW SE	31.0
25 S	31 E	WM	31	SW SE	31.0
25 S	31 E	WM	31	SE SE	31.0
TOTAL					124.0

15. The proposed points of appropriation are described in the table below with the approximate measured distances from the authorized points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	G Lot	Measured Distances	Distance from authorized well location in miles (mi)	
							Well 1	Well 2
27 S	31 E	WM	1	SW NE		WELL 3 - 1542 FEET SOUTH AND 21 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 1	12.8 mi.	12.9 mi.
27 S	32 E	WM	6	NE NE	1	WELL 1 - 125 FEET SOUTH AND 915 FEET WEST FROM THE NE CORNER OF SECTION 6	14.0 mi.	13.9 mi.
27 S	32 E	WM	6	NE NW	3	WELL 2 - 1280 FEET SOUTH AND 1 FOOT WEST FROM THE NORTH 1/4 CORNER OF SECTION 6	13.6 mi.	13.7 mi.

16. Transfer Application T-12822 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
27 S	31 E	WM	1	SE NE		16.3
27 S	31 E	WM	1	NW SE		0.8
27 S	32 E	WM	6		6	19.7
27 S	32 E	WM	6		7	20.0
27 S	32 E	WM	6	NE SW		32.4
27 S	32 E	WM	6	SE SW		32.1
27 S	32 E	WM	6	NW SE		1.4
27 S	32 E	WM	6	SW SE		1.3
TOTAL						124.0

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

- 17. Evidence has not been submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Aerial photographs of the lands to which the Certificate 62014 is appurtenant, being 8.6 acres in the SE NW of Section 1, T26S, R30E, WM, suggests that water has not been used within the last five years according to the terms and conditions of the right.
- 18. 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-12822.
- 19. The proposed changes would not result in enlargement of the rights.
- 20. The proposed changes would not result in injury to other water rights.
- 21. The application is not complete because the applicant has not produced evidence of use for some of the lands included in the transfer.

**Determination and Proposed Action**

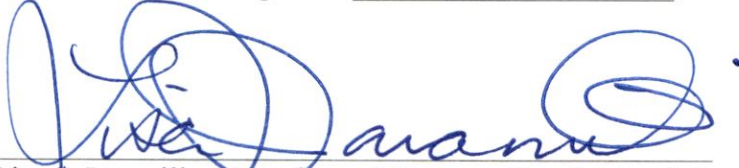
The change in points of appropriation and change in place of use proposed in Transfer Application T-12822 appear not to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-3000 (12) and (19). The application does not provide evidence of use and complete land use information to approve.

*If the requested evidence of use is submitted and the application is deemed complete, and transfer application is approved, the final order will include the following:*

- 1. *The change in points of appropriation and change in place of use proposed in Transfer Application T-12822 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 62014, 93194, and 93234 and any related decree.*
- 3. *Water Right Certificates 93194 and 93234 are cancelled.*

4. *Water right Certificate 62014 is cancelled. 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 new points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
6. *If the requested evidence of use and land use information is submitted and the application is deemed complete, and transfer application is approved, the final order will include the following:*
7. *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 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.*
8. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
9. *The former place of use of the transferred right shall no longer receive water under the right.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Issued at Salem, Oregon on JUL 23 2019,



Lisa J. Jaramillo, Transfer and Conservation Section Manager for  
THOMAS M. BYLER, DIRECTOR  
Oregon Water Resources Department

This Preliminary Determination was prepared by Tamera Smith. If you have questions about the information in this document, you may reach me at 503-986-0864 or [tamera.l.smith@oregon.gov](mailto:tamera.l.smith@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 these proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at (800) 452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.