



Oregon
Kate Brown, Governor

Water Resources Department

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August 7, 2019

MARK CAMPBELL
33462 MCKENZIE VIEW DRIVE
EUGENE, OR 97408

THERMAL FARMS, LLC
28859 HIGHWAY 36
JUNCTION CITY, OR 97448

SUBJECT: Water Right Transfer Application T-12372

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to NOT approve application T-12372. This document is an intermediate step in the denial process. 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, 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 Department's notice.

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-12372

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12372, Lane County	)	PROPOSING DENIAL OF A CHANGE
	)	IN PLACE OF USE AND A CHANGE
	)	IN CHARACTER 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.

Applicants

MARK CAMPBELL
33462 MCKENZIE VIEW DRIVE
EUGENE OR 97408

THERMAL FARMS LLC
28859 HIGHWAY 36
JUNCTION CITY OR 97448

Findings of Fact

1. On May 6, 2016, MARK CAMPBELL filed an application to change the place of use and to change the character of use under Certificate 41539. The Department assigned the application number T-12372.
2. Notice of the application for transfer was published on May 17, 2016 and March 7, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 22, 2016 the Department notified the applicant by mail of deficiencies with the application and the map. Specifically in addition to a place of use change, the applicant proposed to change the character of use; however the change was not indicated in the application and required fees for the change were not received. Additionally, the number of acres proposed on the To and From in Table 2 on page 9 of the application did not balance and a portion of the "from" lands on the map appeared to be layered with Groundwater Registration GR-1388.
4. On January 25, 2017 the Department notified the applicant via email of deficiencies with the application and the map. Specifically in addition to a place of use change, the applicant proposed to change the character of use; however the change was not indicated in the application and required fees for the change were not received. Additionally, the number of acres proposed on the To and From in Table 2 on page 9 of the application did not balance and a portion of the "from" lands on the map appeared to be layered with Groundwater Registration GR-1388.

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. On February 6, 2017 the Department received amended application pages to correct the deficiencies and additional monies sufficient to cover requested changes. The revised map received on February 6, 2017 did not satisfy the deficiency.
6. On February 22, 2017 the Department communicated the CWRE by phone and explained that the application map showed layering of GR-1388.
7. On February 27, 2017 the Department received a new application map sufficient to satisfy the deficiency.
8. On April 7, 2017 the Department approved a partial assignment of T-12372 to Thermal Farms, LLC, 28859 Highway 36, Junction City, Oregon 97448.
9. On July 31, 2017 the Department was contacted by the agent that they were no longer working with the applicant on Transfer Application T-12372.
10. On August 17, 2017 the Department contacted the applicant regarding deficiencies with the revised map received from the applicant. The applicant was given a deadline of September 17, 2017 to satisfy the deficiencies with the map.
11. On August 18, 2017 the applicant requested a meeting in person and on August 22, 2017 the applicant met with the caseworker for Transfer Application T-12372 regarding deficiencies with the revised map. A deadline of October 1, 2017 was given to satisfy the deficiencies.
12. On April 2, 2018 the Department attempted to contact the applicant and the CWRE regarding deficiencies in the map, no response to the e-mail was received by the Department.
13. On December 20, 2018 an e-mail was sent to the applicant and CWRE again requesting correspondence regarding deficiencies with the map. No response was received by the applicant. The CWRE responded that they were waiting for correspondence from the applicant to move forward with a new revised map. The phone number and email address for the applicant are no longer valid.
14. On February 14, 2019, the Department sent a deficiency letter to the applicant by mail regarding deficiencies with the map. The letter set forth a deadline of March 22, 2019 to satisfy the deficiency. No correspondence was received by the Department to satisfy the deficiency.
15. On May 30, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12375 to the applicants. The Draft Preliminary Determination cover letter set forth a deadline of June 28, 2019, for the applicant to respond. No response was received by the Department from the applicant.

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

Certificate: 41539 in the name of WALLACE AND OPAL KRENIK (perfected under Permit G-4892)
Use: IRRIGATION of 4.0 ACRES
Priority Date: APRIL 15, 1970
Rate: 0.033 CUBIC FOOT 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.
Source: WELL No. 1, a tributary to INGRAM SLOUGH in the WILLAMETTE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	4 W	WM	7	SE NE	770 FEET NORTH AND 2530 FEET EAST FROM THE CENTER OF SECTION 7

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	4 W	WM	7	SE NE	200	4.0

17. Transfer Application T-12372 proposes to change the character of use to nursery.
18. Transfer Application T-12372 also proposes to change the place of use of the right to:

NURSERY						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	4 W	WM	7	SE NE	202	0.7
16 S	4 W	WM	7	SW NE	202	1.3
16 S	4 W	WM	7	SW NE	200	1.5
16 S	4 W	WM	7	SE NE	200	0.5
Total						4.0

19. Certificate 41539 does not describe the irrigation season. However, the Willamette Basin Program establishes the irrigation season for the basin as March 1 to October 31.
20. The proposed nursery use shall be limited to a rate of not to exceed 0.033 cubic foot per second (cfs) and shall be further limited to a total volume diverted of 10.0 acre-feet (AF) per season, being 2.5 AF per acre per season.

Transfer Review Criteria (OAR 690-380-4010)

21. 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.

22. 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-12372.
23. The proposed changes, as conditioned, would not result in enlargement of the right.
24. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and character of use proposed in Transfer Application T-12372 appear to not 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 denied unless a revised map is received by the Department, satisfying the deficiency.

Notwithstanding this denial, if the deficiency can be resolved and subsequent review determines Transfer Application T-12372 can be approved, the final order will include the following:

1. *The changes in place of use and character of use proposed in Transfer Application T-12372 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 Certificate 41539 and any related decree.*
3. *The use of water for the proposed nursery use shall be limited to the irrigation season being March 1 to October 31.*
4. *The proposed nursery use shall be limited to a rate of not to exceed 0.033 cubic foot per second (cfs) and shall be further limited to a total volume diverted of 10.0 acre-feet (AF) per season, being 2.5 AF per acre per season, from May 1 through September 30.*
5. *The proposed nursery operations shall be further limited such that:*

The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.008 cfs per acre and 2.5 AF per acre per season.

For irrigation of containerized nursery plants, the amount of water diverted is limited to 0.008 cfs per acre and 2.5 AF per acre per season

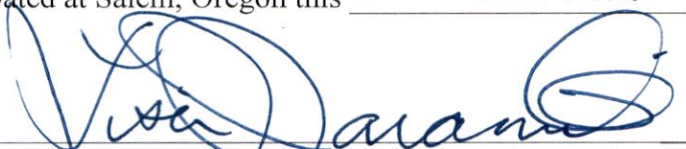
For irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.008 cfs per acre and 2.5 AF per acre per season

For irrigation of any other crop, the amount of water diverted is limited to 0.008 cfs per acre and 2.5 AF per acre per season. The place of use of water for irrigation of any other crop shall be limited to 1.1 acres.

6. *Water right Certificate 41539 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this AUG 07 2019



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Davis. If you have any questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@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>