



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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September 23, 2019

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

SUBJECT: Water Right Transfer Application T-12833

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12833. 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 Burns Times-Herald 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 tamera.l.smith@oregon.gov or via phone at 503-986-0864 if I may be of assistance.

Kindest regards,

Transfer Caseworker
Transfer and Conservation Section

cc: T-12833
J R. Johnson, District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12833, Harney County)	PROPOSING APPROVAL OF
)	CHANGES IN POINT 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 29, 2018, Golden Rule Farms, Inc. filed an application to change the point of appropriation and to change the place of use under Certificate 93424. The Department assigned the application number T-12833.
2. Notice of the application for transfer was published on February 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 6, 2019, the Department contacted the agent by written correspondence to notify the applicant's agent of deficiencies in the application. The application tables had some discrepancies, and the lands proposed for changing place of use are layered with Certificates 57865 and 57866.
4. On June 8, 2019, the agent revised the tables in the application and stated that the layered portions of Certificates 57865 and 57866 would be voluntarily cancelled by the applicant.
5. On June 17, 2019, the Department contacted the applicant by written correspondence, calling out deficiencies in the application. The evidence of use affidavit lists that the entire place of use for Certificate 57864 was watered, based on the attached aerial photo. The

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.

Department has determined water was beneficially used around the pivot, but there is no evidence to suggest the corners were irrigated as authorized under Certificate 57864.

6. On June 26, 2019, the agent asked, in writing, if the voluntary cancellations could wait until the Final Order for T-12833 was issued.
7. On June 27, 2019, the Department responded to the agent that the cancellations must occur before a Final Order approving T-12833 can be signed.
8. On July 8, 2019, the agent alerted the Department that revisions to the deficiencies were forth coming.
9. On July 11, 2019, the agent submitted additional photographs for evidence of use.
10. On July 15, 2019, the Department responded that the photos were not valid for evidence of use. The evidence needed must be dated from five years previous, up to the date of filing the application, being January 29, 2018. Also, photos must be taken during the irrigation season, which is March 1 to October 31.
11. On July 25, 2019, the agent responded to the deficiency letter of June 17, 2019 by requesting that the application be amended to remove Certificate 57864. Due to the removal of Certificate 57864, the Department is no longer waiting for Affidavits of Cancellation for conflicting rights involved with the right.
12. On August 9, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12833 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 9, 2019, 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.
13. On August 18, 2019, the agent sent a revised ON map, reflecting the removal of Certificate 57864. The agent asked that the Department discard the sections in the application listing Certificate 57864 on pages 6, 7, and 8.
14. On August 26, 2019, the agent sent ownership reports and approved the Draft Preliminary Determination, requesting five years to complete the transfer.
15. The portion of the right to be transferred is as follows:
 - Certificate:** 93424 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-17544)
 - Use:** IRRIGATION of 242.4 ACRES
 - Priority Date:** FEBRUARY 8, 1999
 - Rate:** 3.03 CUBIC FEET PER SECOND, FURTHER LIMITED TO NO MORE THAN 1.45 CFS FROM WELL 6 AND WELL 7, NOT TO EXCEED MAX CUMULATIVE TOTAL OF 3.03 CFS
 - 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 (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: WELL 6, WELL 7, WELL 13 AND WELL 18 in the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	31 E	WM	32	NE NE	WELL 6 - 40 FEET SOUTH AND 1055 FEET WEST FROM THE NE CORNER OF SECTION 32
25 S	31 E	WM	32	NE NE	WELL 7 - 40 FEET SOUTH AND 1200 FEET WEST FROM THE NE CORNER OF SECTION 32
25 S	31 E	WM	32	SW NE	WELL 13 - 2630 FEET SOUTH AND 1340 FEET WEST FROM THE NE CORNER OF SECTION 32
25 S	31 E	WM	33	NW NW	WELL 18 - 770 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	31 E	WM	29	SE SW	33.0
25 S	31 E	WM	29	SW SE	8.0
25 S	31 E	WM	32	NE NE	37.0
25 S	31 E	WM	32	NW NE	38.8
25 S	31 E	WM	32	SW NE	31.4
25 S	31 E	WM	32	SE NE	31.4
25 S	31 E	WM	32	NE SE	31.4
25 S	31 E	WM	32	NW SE	31.4
TOTAL					242.4

16. Transfer Application T-12833 proposes to move the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from authorized points of appropriation in miles (mi.) SE			
26 S	32 E	WM	34	SE SE	1310 FEET NORTH AND 1260 FEET EAST FROM THE S1/4 CORNER OF SECTION 34	Well 6	Well 7	Well 13	Well 18
						15.7 mi.	15.7 mi.	15.5 mi.	15.1 mi.

17. Transfer Application T-12833 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	32 E	WM	34	NE SW	31.4
26 S	32 E	WM	34	NW SW	31.4
26 S	32 E	WM	34	SW SW	31.4
26 S	32 E	WM	34	SE SW	31.4
26 S	32 E	WM	34	NE SE	26.1
26 S	32 E	WM	34	NW SE	30.3
26 S	32 E	WM	34	SW SE	30.2
26 S	32 E	WM	34	SE SE	30.2
TOTAL					242.4

Transfer Review Criteria (OAR 690-380-4010)

18. Water has been used within the last five years prior to the submittal of Transfer Application T-12833 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.
19. 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-12833.
20. The proposed change would not result in enlargement of the right.
21. All other application requirements are met.

Determination and Proposed Action

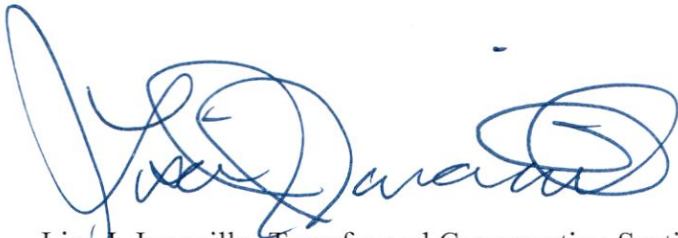
The change in point of appropriation and change in place of use proposed in Transfer Application T-12833 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12833 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12833 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 93424 and any related decree.*
3. *Water right Certificate 93424 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
4. *The quantity of water diverted under the right described by Certificate 93424 at the new point of appropriation ("ON" Well), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 6, 7, 13 and 18).*
5. *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.*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*

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, 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on SEP 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 any questions about the information in this document, I can be reached at 503-986-0864 or 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 servicemembers have a right to stay these proceedings under the federal Servicemembers 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.