

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12969, Marion County)	PROPOSING APPROVAL OF A
)	CHANGE FROM SURFACE WATER
)	POINTS OF DIVERSION TO A
)	GROUNDWATER POINT OF
)	APPROPRIATION.

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

BLUE LINE FARMS, INC.
C/O ROBERT DETTWYLER AND KARL H. DETTWYLER
4741 BRUSH CREEK DRIVE NE
SILVERTON, OR 97381

Findings of Fact

1. On July 12, 2018, BLUE LINE FARMS, INC.; C/O ROBERT DETTWYLER AND KARL H. DETTWYLER filed an application to change from surface water points of diversion to a groundwater point of appropriation under Certificates 20574, 64713, 67686, 75598, 75599, 87460, 87461, and 87462. The Department assigned the application number T-12969.
2. Notice of the application for transfer was published on July 17, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 16, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12969 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 15, 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.

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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3. The first right to be transferred is as follows:

Certificate: 20574 in the name of ELBERT DE GUIRE (perfected under Permit S-14084)
Use: IRRIGATION of 22.8 ACRES
Priority Date: NOVEMBER 28, 1939
Rate: 0.285 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: ABIQUA CREEK, a tributary of PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	22	NE SE	ABIQUA WEST POD CERTIFICATE 20574 - NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	22	NE SE	6.0
6 S	1 W	WM	22	SE SE	6.4
6 S	1 W	WM	23	NW SW	3.8
6 S	1 W	WM	23	SW SW	6.6
Total					22.8

5. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1104 feet upstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

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

Certificate: 64713 in the name of DAVID J. PEMBROKE (perfected under Permit S-50440)
Use: IRRIGATION of 106.0 ACRES
Priority Date: NOVEMBER 12, 1987
Rate: 320 GALLONS PER MINUTE
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: ABIQUA CREEK, a tributary of PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	22	NE SE	ABIQUA WEST POD CERTIFICATE 64713 - 1800 FEET NORTH AND 200 FEET WEST FROM THE SE CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	1 W	WM	22	SE SE		23.00
6 S	1 W	WM	23	SW SW		9.00
6 S	1 W	WM	26	NE NW		4.25
6 S	1 W	WM	26	NW NW		32.00
6 S	1 W	WM	26	SW NW	4	4.50
6 S	1 W	WM	26	SE NW	3	0.25
6 S	1 W	WM	27	NE NE		25.00
6 S	1 W	WM	27	SE NE	1	8.00
Total						106.0

7. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1104 feet upstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

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

Certificate: 67686 in the name of PEMBROKE FARMS (perfected under Permit S-46219)
Use: IRRIGATION of 37.3 ACRES
Priority Date: MARCH 23, 1981
Rate: 0.47 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ABIQUA CREEK, a tributary of PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	22	NE SE	ABIQUA WEST POD CERTIFICATE 67686 - 1840 FEET NORTH AND 380 FEET WEST FROM THE SE CORNER OF SECTION 22

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	22	NE SE	2.3
6 S	1 W	WM	22	SE SE	1.2
6 S	1 W	WM	23	NE SW	0.8
6 S	1 W	WM	23	NW SW	11.2
6 S	1 W	WM	23	SW SW	20.3
6 S	1 W	WM	23	SE SW	1.5
Total					37.3

9. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1370 feet upstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

10. The fourth right to be transferred is as follows:

Certificate: 75598 in the name of PEMBROKE FARMS (perfected under Permit S-14020)

Use: IRRIGATION of 9.5 ACRES

Priority Date: AUGUST 31, 1939

Rate: 0.12 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, is limited to a diversion of 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: ABIQUA CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	23	NW SE	3	ABIQUA EAST POD CERTIFICATE 75598 - NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	23	NE SW	5.2
6 S	1 W	WM	23	SE SW	4.3
Total					9.5

11. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 2113.5 feet downstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

12. The fifth right to be transferred is as follows:

Certificate: 75599 in the name of PEMBROKE FARMS (perfected under Permit S-21354)
Use: IRRIGATION of 6.3 ACRES
Priority Date: MAY 6, 1952
Rate: 0.08 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, is 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: ABIQUA CREEK, a tributary of the PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	23	NW SE	3	ABIQUA EAST POD CERTIFICATE 75599 - NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	23	NE SW	3.3
6 S	1 W	WM	23	NW SW	2.4
6 S	1 W	WM	23	SE SW	0.6
Total					6.3

13. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 2113.5 feet downstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

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

Certificate: 87460 in the name of PEMBROKE FARMS (perfected under Permit S-27494)
Use: IRRIGATION of 8.0 ACRES
Priority Date: JULY 17, 1961
Rate: 0.10 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, 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: ABIQUA CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	23	NW SE	3	ABIQUA EAST POD CERTIFICATE 87460 - 2550 FEET NORTH AND 2560 FEET WEST FROM THE SE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	23	SE SW	3.8
6 S	1 W	WM	23	SW SE	2.5
6 S	1 W	WM	26	NW NE	0.6
6 S	1 W	WM	26	NE NW	1.1
Total					8.0

15. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1925.4 feet downstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

16. The seventh right to be transferred is as follows:

Certificate: 87461 in the name of PEMBROKE FARMS (perfected under Permit S-14020)
Use: IRRIGATION of 9.1 ACRES
Priority Date: AUGUST 31, 1939
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, 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: ABIQUA CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	23	NW SE	3	ABIQUA EAST POD CERTIFICATE 87461 - 2550 FEET NORTH AND 2560 FEET WEST FROM THE SE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
6 S	1 W	WM	23	NE SW		3.2
6 S	1 W	WM	23	SE SW		3.3
6 S	1 W	WM	23	NW SE	3	1.3
6 S	1 W	WM	23	SW SE		1.3
Total						9.1

17. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1925.4 feet downstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

18. The eighth right to be transferred is as follows:

Certificate: 87462 in the name of PEMBROKE FARMS (perfected under Permit S-21354)

Use: IRRIGATION of 12.9 ACRES

Priority Date: MAY 6, 1952

Rate: 0.16 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, 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: ABIQUA CREEK, tributary to PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
6 S	1 W	WM	23	NW SE	3	ABIQUA EAST POD CERTIFICATE 87462 - 2550 FEET NORTH AND 2560 FEET WEST FROM THE SE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	23	SE SW	7.2
6 S	1 W	WM	23	SW SE	5.7
Total					12.9

19. Transfer Application T-12969 proposes to change from a surface water point of diversion to a groundwater point of appropriation (sump) approximately 1925.4 feet downstream from the original point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	23	NW SW	POA POND SUMP - 2035 FEET NORTH AND 900 FEET EAST FROM THE SW CORNER OF SECTION 23

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

20. 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 rights are subject to forfeiture under ORS 540.610.
21. 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-12969.
22. The proposed sump meets the requirements of ORS 540.531.
23. The proposed changes would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.
25. All other application requirements are met.

Determination and Proposed Action

The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-12969 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-12969 is approved, the final order will include the following:

1. *The change from surface water points of diversion to a groundwater point of appropriation proposed in Transfer Application T-12969 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 Certificates 20574, 20574, 64713, 67686, 75598, 75599, 87460, 87461, and 87462, and any related decree.*

3. *Water right Certificates 20574, 20574, 64713, 67686, 75598, 75599, 87460, 87461, and 87462 are cancelled.*
4. *The quantity of water diverted at the new point of appropriation (POA Pond Sump), shall not exceed the quantity of water lawfully available at the original point of diversion (Abiqua West POD).*
5. *The quantity of water diverted at the new point of appropriation (POA Pond Sump), shall not exceed the quantity of water lawfully available at the original point of diversion (Abiqua East POD).*
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 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.*
7. *The use of water under these rights shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original points of diversion.*
8. *The original date of priority shall be retained. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*

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

Dated in Salem, Oregon on **NOV 19 2019**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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 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.



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

November 19, 2019

BLUE LINE FARMS, INC.
C/O ROBERT DETTWYLER AND KARL H. DETTWYLER
4741 BRUSH CREEK DRIVE NE
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-12969

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12969. 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 Silverton Appeal 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-12969
Joel M. Plahn, District 16 Watermaster (via e-mail)
Gregory E. Kupillas, Agent for the applicant (via e-mail)

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