

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12959, Jackson County)	PROPOSING APPROVAL OF
)	CHANGES IN 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

BGE PROPERTIES, LLC
1 WEST MAIN STREET, SUITE 401
MEDFORD, OR 97504

Agent

MIKE MONTERO
DbA: MONTERO & ASSOCIATES, LLC
4497 BROWNRIDGE TRRRACE, SUITE 202
MEDFORD, OR 97504

Findings of Fact

1. On June 28, 2018, Martin Farms Properties, LLC, filed a transfer application to change the place of use under Certificates 93676 and 93678. The Department assigned the application number T-12959.
2. Notice of the application for transfer was published on July 3, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The agent for the applicant submitted a request for assignment to update the applicant's name from Martin Farms Properties, LLC to BGE Properties, LLC. On May 14, 2019, the Department approved the request for assignment and the records have been recorded now showing BGE Properties, LLC as the transfer holder of record.
4. On May 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12959 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 27, 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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5. The first right to be transferred is as follows:

Certificate: 93678 in the name of MARTIN FARMS PROPERTIES, LLC (perfected under Permit S-17066)

Use: SUPPLEMENTAL IRRIGATION and AGRICULTURE USE ON 8.0 ACRES, INCLUDING BUT NOT LIMITED TO SUPPLEMENTAL IRRIGATION AND AGRICULTURE USE, DUST AND FROST CONTROL, AND FIRE SUPPRESSION

Priority Date: JUNE 24, 1946

Rate: 0.10 CUBIC FOOT PER SECOND (cfs)

Period of Use: APRIL 2 TO OCTOBER 31

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, irrigated from direct flow and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre, for each acre irrigated during the irrigation season from April 2 to October 31, of each year from direct flow and storage from reservoir constructed under Permit R-846, and shall conform to such reasonable rotation system as may be order by the proper state officer

Source: OLD MINING TUNNEL AND MARTIN RESERVOIR CONSTRUCTED UNDER PERMIT R-846, A TRIBUTARY OF GRIFFIN CREEK WATERSHED

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
38 S	2 W	WM	4	NW NW	44	POD R1 – 60 FEET SOUTH AND 455 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION AND AGRICULTURE USE					
Twp	Rng	Mer	Sec	Q - Q	Acres
37 S	2 W	WM	33	NE SW	0.8
37 S	2 W	WM	33	NW SW	1.8
37 S	2 W	WM	33	SW SW	4.7
37 S	2 W	WM	33	SE SW	0.7
Total:					8.0

6. Transfer Application T-12959 proposes to change the place of use for the right to:

SUPPLEMENTAL IRRIGATION AND AGRICULTURE USE						
Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
37 S	2 W	WM	33	NE SW	95	0.91
37 S	2 W	WM	33	NW SW	95	3.32
37 S	2 W	WM	33	NW SW	91	1.33
37 S	2 W	WM	33	SW SW	95	2.01
37 S	2 W	WM	33	SE SW	95	0.43
Total:						8.00

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

Certificate: 93676 in the name of MARTIN FARMS PROPERTIES, LLC (perfected under Permit S-15772)
Use: IRRIGATION and AGRICULTURE on 8.0 ACRES, INCLUDING BUT NOT LIMITED TO IRRIGATION AND AGRICULTURE, DUST AND FROST CONTROL AND FIRE SUPPRESSION
Priority Date: MAY 11, 1944
Rate: 0.10 CUBIC FOOT PER SECOND (cfs)
Period of Use: APRIL 2 to OCTOBER 31
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 4.5 acre-feet per acre for each acre irrigated during the irrigation season from April 2 to October 31, of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer
Source: A MINING TUNNEL (IN GRIFFIN CREEK WATERSHED), A TRIBUTARY OF BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	95	POD T1 - 1325 FEET NORTH FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION AND AGRICULTURE					
Twp	Rng	Mer	Sec	Q - Q	Acres
37 S	2 W	WM	33	NE SW	0.8
37 S	2 W	WM	33	NW SW	1.8
37 S	2 W	WM	33	SW SW	4.7
37 S	2 W	WM	33	SE SW	0.7
Total:					8.0

8. Transfer Application T-12959 proposes to change the place of use for the right to:

IRRIGATION AND AGRICULTURE						
Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
37 S	2 W	WM	33	NE SW	95	0.91
37 S	2 W	WM	33	NW SW	95	3.32
37 S	2 W	WM	33	NW SW	91	1.33
37 S	2 W	WM	33	SW SW	95	2.01
37 S	2 W	WM	33	SE SW	95	0.43
Total:						8.00

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

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. Diversion structures, reservoir, ditches, pipelines and water delivery systems sufficient to use the full amounts of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12959.
11. The proposed changes would not result in enlargement of the rights
12. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

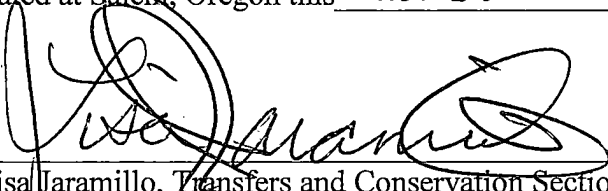
The changes in place of use proposed in Transfer Application T-12959 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12959 is approved, the final order will include the following:

1. *The changes in place of use proposed in Transfer Application T-12959 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 93676 and 93678 and any related decree.*
3. *Water right Certificates 93676 and 93678 are cancelled.*
4. *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.*
 - b. *The water user shall maintain the meter or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

5. *The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion (as required in Special Order Volume 95, Page 917, approving previously approved Transfer Application T-11881) within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
6. *The former places of use of the transferred rights, as modified herein, shall no longer receive water under the rights.*
7. *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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this NOV 25 2019


Lisa Jaramillo, Transfers 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 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>



Oregon

Kate Brown, Governor

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

November 25, 2019

BGE PROPERTIES, LLC
1 WEST MAIN STREET, SUITE 401
MEDFORD, OR 97504

SUBJECT: Water Right Transfer Application T-12959

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12959. 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, 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 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-12959
Shavon L. Haynes, District 13 Watermaster (*via e-mail*)
Mike Montero, Agent for the applicant (*via e-mail*)

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