

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-13168, Lane, Linn County) PROPOSING APPROVAL OF A
) CHANGE 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

BANNOCKBURN FARMS INC.
1541 NW 12TH ST
CORVALLIS, OR 97330

Findings of Fact

1. On April 17, 2019, BANNOCKBURN FARMS, INC. filed an application to change the place of use under Certificate 80359. The Department assigned the application number T-13168.
2. Notice of the application for transfer was published on April 23, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 8, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13168 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 8, 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.

4. The right to be transferred is as follows:

Certificate: 80359 in the name of HECTOR MACPHERSON; BANNOCKBURN FARMS, INC. (perfected under Permit S-42759)
Use: IRRIGATION of 28.1 ACRES
Priority Date: MARCH 1, 1978
Rate: 0.35 CUBIC FOOT PER SECOND

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.

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: MCKENZIE RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
17 S	3 W	WM	9	NE NE	38	McKENZIE RIVER (POD #1) - 4440 FEET SOUTH AND 5250 FEET EAST FROM THE SE CORNER OF MANSFIELD DLC 79
12 S	4 W	WM	20	NE SE	60	MUDDY CREEK RE-DIVERSION (POD # 3) - 800 FEET SOUTH AND 50 FEET EAST FROM THE NW CORNER OF JOHN G WILSON DLC 60

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
12 S	4 W	WM	20	SW NE	48	10.3
12 S	4 W	WM	20	SE NW	48	1.2
12 S	4 W	WM	20	NE SW	48	2.4
12 S	4 W	WM	20	NW SE	48	8.7
12 S	4 W	WM	21	SW SW	60	5.5
Total						28.1

5. Transfer Application T-13168 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
12 S	4 W	WM	20	NW NE		14.5
12 S	4 W	WM	20	SW NE	3	10.3
12 S	4 W	WM	20	NE NW	1	1.6
12 S	4 W	WM	20	SE NW	2	1.7
Total						28.1

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

6. Water has been used within the last five years. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. A diversion structure and ditch 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-13168.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13168 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-13168 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-13168 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 Certificate 80359 and any related decree.*
- 3. Water right Certificate 80359 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The former place of use of the transferred right shall no longer receive water under the right.*
- 5. 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 change and full beneficial use of the water.*
- 6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

DEC 20 2019


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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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

December 20, 2019

Applicant

BANNOCKBURN FARMS INC.
1541 NW 12TH ST
CORVALLIS, OR 97330

SUBJECT: Water Right Transfer Application T-13168

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13168. 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 contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: T-13168
Lanaya F. Blakely, District 2 Watermaster (via e-mail)
Gregory Macpherson, Agent for the applicant (via e-mail)

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