

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12392, Malheur County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

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

GRESSLEY FARMS LLC
4010 FREESE LANE
VALE, OR 97918

Findings of Fact

1. On May 19, 2016, GRESSLEY FARMS LLC filed an application for an additional point of appropriation under Certificate 87476. The Department assigned the application number T-12392.
2. Notice of the application for transfer was published on May 31, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 8, 2018, an affidavit certifying that a portion of water right Certificate 87476 will be diminished was received from Bob Gressley.
4. On August 20, 2018, the applicant submitted a revised application and map, which included a request to change the place of use under Certificate 87476, for 2.0 acres in SWSW, and 2.0 acres in SESW of Section 8, T18S, R46E, WM.
5. On August 22, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12392 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 24, 2018, for the applicant to

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.

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.

6. On January 22, 2020, the Department determined the change in place of use of 2.0 acres in SWSW, and 2.0 acres in SESW of Section 8, T18S, R46E, WM, appeared not to have been irrigated within the previous 5 years prior to submittal of T-12392, being May 19, 2011, to May 19, 2016.
7. On February 7, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of the deficiency regarding non-use of water on the place of use identified in Finding of Fact 3 and 5. The Department requested that the deficiency be resolved by March 9, 2020.
8. On March 7, 2020, the applicant's agent requested additional time to resolve the deficiency regarding non-use of water. The Department requested that the deficiency be resolved by April 10, 2020.
9. On April 7, 2020, the applicant's agent requested additional time to resolve the deficiency regarding non-use of water. The Department requested that the deficiency be resolved by May 11, 2020.
10. On April 28, 2020, the applicant's agent confirmed that requesting an additional point of appropriation would be the only change moving forward with T-12392.

10. The right to be transferred is as follows:

Certificate: 87476 in the name of ROBERT K. GREASSLEY (perfected under Permit G-12071)
Use: IRRIGATION of 13.0 ACRES and SUPPLEMENTAL IRRIGATION of 181.3 ACRES
Priority Date: MAY 9, 1991 FOR 0.53 CFS FROM WELL 1, AND JULY 23, 1992 FOR 0.72 CFS FROM WELL 2
Rate: 1.25 CUBIC FEET 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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELLS 1 AND 2 in the MALHEUR RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	46 E	WM	7	NE SE	WELL 1 - 286 FEET SOUTH AND 232 FEET WEST FROM THE WEST 1/4 CORNER OF SECTION 8
18 S	46 E	WM	8	SW SW	WELL 2 - 1588 FEET SOUTH AND 15 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	46 E	WM	8	SW SW	8.8
18 S	46 E	WM	8	SE SW	1.9
18 S	46 E	WM	8	SW SE	2.3
Total					13.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	46 E	WM	8	NE SW	33.9
18 S	46 E	WM	8	NW SW	38.4
18 S	46 E	WM	8	SW SW	24.0
18 S	46 E	WM	8	SE SW	30.8
18 S	46 E	WM	8	NW SE	6.4
18 S	46 E	WM	8	SW SE	29.3
18 S	46 E	WM	8	SE SE	18.5
Total					181.3

11. Transfer Application T-12392 proposes an additional point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of appropriation in feet (ft.)	
18 S	46 E	WM	8	NW SW	WELL 3 - 28 FEET SOUTH AND 900 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 8	WELL 1	WELL 2
						1210 ft.	1870 ft.

Transfer Review Criteria (OAR 690-380-4010)

12. 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.
13. 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-12392.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-12392 appears 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.

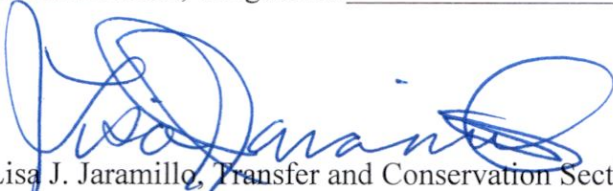
If Transfer Application T-12392 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-12392 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 87476 and any related decree.*
3. *Water right Certificate 87476 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation (Well 3), together with that diverted at the original points of appropriation (Wells 1 and 2), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1 and 2).*
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. *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, a new certificate confirming the right transferred will be issued.*

JUL 29 2020

Dated at Salem, Oregon this _____.



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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

July 29, 2020

GRESSLEY FARMS LLC
4010 FREESE LANE
VALE, OR 97918

SUBJECT: Water Right Transfer Application T-12392

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12392. 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 Argus Observer 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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-12392
Ronald K. Jacobs, District 9 Watermaster (*via e-mail*)
Pat Woodcock, Agent for the applicant (*via e-mail*)

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