

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13363, Harney County	)	PROPOSING DENIAL OF A CHANGE
	)	IN POINTS OF APPROPRIATION AND
	)	PLACES 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 55  
CHRISTMAS VALLEY, OR 97641

**Findings of Fact**

1. On February 6, 2020, GOLDEN RULE FARMS, INC. filed an application to change the points of appropriation and places of use under Certificates 32394, 91418, and 91644. The Department assigned the application number T-13363.
2. Notice of the application for transfer was published on February 18, 2020, pursuant to OAR 690-380-4000.
3. Timely comments were submitted to the Department in response to the notice. The issues raised by the comments focused primarily on concerns that:
  - a) The application fails to meet statutory requirements.
  - b) The applicant failed to comply with measurement and reporting conditions for Certificates 91418 and 91644.
  - c) There is no evidence of water use for Certificates 91418 and 91644.
  - d) The application form does not conform to the statutory requirements.

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.
--

- e) Injury must include domestic water users, including any exempt water users that could be impacted.
  - f) Rule OAR 690-008-001(8)(c) is unlawful, because it is contrary to ORS 537.525.
  - g) There are cones of depression in numerous areas in the GHVGAC (Greater Harney Valley Groundwater Area of Concern).
  - h) Water is severely over-allocated in the GHVGAC.
  - i) Some commenters do not agree with, nor support, the transfer.
4. Not all issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Many of the issues noted in Finding of Fact #3, though important to the residents and water resources of the area, do not directly relate to the transfer review criteria. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
- a) The water right proposed for transfer is a water use subject to transfer;
  - b) The portion of the water right proposed for transfer is not cancelled nor subject to forfeiture for non-use pursuant to ORS 540.610;
  - c) The water user is ready, willing and able to use the full amount of water allowed under the right;
  - d) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
  - e) The proposed transfer would not result in injury to other water rights.
5. On March 27, 2020, the applicant's agent sent revisions to the Department, removing two of the proposed wells from the transfer application and changing the place of use.
6. On May 4, 2020, the applicant's attorney contacted the Department in writing, expressing concern over the groundwater review and asserting that no enlargement nor injury would occur as a result of the transfer. The attorney requested that the Department address the stated concerns over the groundwater review before finalizing a draft preliminary determination. On June 4, 2020, the Department responded that it will follow the process laid out in OAR 690-380.
7. On October 3, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13363 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 3, 2020, for the applicant to respond. The applicant's agent responded that Golden Rule will not amend the application and will not provide notarized affidavits of consent from other groundwater users, but that they would supply the report of ownership and newspaper notice fees. The agent further expressed disagreement to items in the Draft Preliminary Determination.

8. On October 28, 2020, the attorney for the applicant contacted the Department in writing with submission of the report of ownership, and a request to extend the deadline to December 3, 2020, for submission of the Consents of Deeded Landowners. On October 29, the Department responded that the extension deadline fell within the required timeline.
9. On November 30, 2020, the attorney for the applicant contacted the Department in writing with a request for an additional extension for submission of the Consents of Deeded Landowners to December 17, 2020. On December 1, 2020, the Department granted the additional extension of time.
10. On December 11, 2020, the attorney for the applicant sent the Consents of Deeded Landowners to the Department.

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

**Certificate:** 32394 in the name of JOHN OR GEORGIA CROW (perfected under Permit G-1463)  
**Use:** IRRIGATION of 75.53 ACRES  
**Priority Date:** OCTOBER 2, 1959  
**Rate:** 0.94 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 3 acre feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** WELL No. 1 a tributary of MALHEUR LAKE

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	31 E	WM	1	SW NE	1562 FEET SOUTH AND 21 FEET EAST FROM THE N1/4 CORNER OF SECTION 1

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
27 S	31 E	WM	1	NW NE	2	40.53
27 S	31 E	WM	1	SW NE		35.00
TOTAL						75.53

12. Transfer Application T-13363 proposes to move the authorized points of appropriation for Certificate 32394 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation in miles (mi.)
27 S	34 E	WM	17	SW NW	WELL 1 (HARN 52795) - 210 FEET EAST OF THE WEST ¼ CORNER OF SECTION 17	13.5 mi.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation in miles (mi.)
27 S	34 E	WM	20	SE NE	WELL 3 (HARN 52719) – 200 FEET NORTH AND 110 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 20	14.9 mi.
27 S	34 E	WM	20	NE NW	WELL 2 (HARN 52796) – 70 FEET SOUTH AND 1250 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 20	13.8 mi.

13. Transfer Application T-13363 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	18	NW SE	31.70
27 S	34 E	WM	19	NE NE	12.50
27 S	34 E	WM	19	SE NE	31.33
TOTAL					75.53

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

**Certificate:** 91418 in the name of GOLDEN RULE FARMS INC. (perfected under Permit G-12262)

**Use:** IRRIGATION of 131.0 ACRES

**Priority Date:** MAY 21, 1992

**Rate:** 1.64 CUBIC FEET PER SECOND

**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:** A WELL IN DONNER AND BLITZEN RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	32 E	WM	10	NE NE	1255 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 10

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	32 E	WM	2	SW SW	8.3
27 S	32 E	WM	3	SE SE	14.8
27 S	32 E	WM	10	NE NE	32.7
27 S	32 E	WM	10	SE NE	30.6
27 S	32 E	WM	10	NE SE	3.6
27 S	32 E	WM	11	NW NW	18.8

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	32 E	WM	11	SW NW	19.7
27 S	32 E	WM	11	NW SW	2.5
TOTAL					131.0

15. Transfer Application T-13363 proposes to move the authorized points of appropriation for Certificate 91418 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation in miles (mi.)
27 S	34 E	WM	17	SW NW	WELL 1 (HARN 52795) - 210 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 17	9.1 mi.
27 S	34 E	WM	20	SE NE	WELL 3 (HARN 52719) - 200 FEET NORTH AND 110 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 20	10.2 mi.
27 S	34 E	WM	20	NE NW	WELL 2 (HARN 52796) - 70 FEET SOUTH AND 1250 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 20	9.4 mi.

16. Transfer Application T-13363 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	20	SW NE	35.1
27 S	34 E	WM	20	SE NE	28.6
27 S	34 E	WM	20	SE NW	2.7
27 S	34 E	WM	20	NE SW	3.9
27 S	34 E	WM	20	NE SE	20.8
27 S	34 E	WM	20	NW SE	38.2
27 S	34 E	WM	20	SE SE	1.7
TOTAL					131.0

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

**Certificate:** 91644 in the name of GOLDEN RULE FARMS (perfected under Permit G-12938)

**Use:** IRRIGATION of 354.7 ACRES

**Priority Date:** MAY 21, 1992

**Rate:** 4.43 CUBIC FEET PER SECOND

**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:** TWO WELLS IN THE DONNER AND BLITZEN RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
27 S	32 E	WM	6	NE NE	1	WELL 1 - 125 FEET SOUTH AND 915 FEET WEST FROM THE NE CORNER OF SECTION 6
27 S	32 E	WM	6	NE NW	3	WELL 2 - 1280 FEET SOUTH AND 1 FOOT WEST FROM THE N1/4 CORNER OF SECTION 6

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	32 E	WM	31	SE SW	3	2.2
26 S	32 E	WM	31	SE SW	13	37.8
26 S	32 E	WM	31	NE SE	11	16.4
26 S	32 E	WM	31	NE SE	1	1.6
26 S	32 E	WM	31	NW SE	10	22.6
26 S	32 E	WM	31	NW SE	2	0.2
26 S	32 E	WM	31	SW SE	2	18.2
26 S	32 E	WM	31	SW SE	12	16.8
26 S	32 E	WM	31	SE SE	1	24.7
26 S	32 E	WM	31	SE SE	11	4.2
26 S	32 E	WM	32	SW SW	1	6.69
26 S	32 E	WM	32	SW SW	2	33.31
27 S	31 E	WM	1	NE NE	1	38.3
27 S	32 E	WM	5	NE NW	4	17.2
27 S	32 E	WM	5	NW NW	5	21.8
27 S	32 E	WM	5	SE NW		5.2
27 S	32 E	WM	6	NE NE	1	4.0
27 S	32 E	WM	6	NW NE	2	16.6
27 S	32 E	WM	6	NE NW	3	38.7
27 S	32 E	WM	6	NW NW	4	28.2
TOTAL						354.7

18. Transfer Application T-13363 proposes to move the authorized points of appropriation for Certificate 91644 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from authorized point of appropriation in miles (mi.)	
						WELL #1	WELL #2
27 S	34 E	WM	17	SW NW	WELL 1 (HARN 52795) - 210 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 17	12.4 mi.	12.7 mi.
27 S	34 E	WM	20	SE NE	WELL 3 (HARN 52719) - 200 FEET NORTH AND 110 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 20	13.6 mi.	13.8 mi.
27 S	34 E	WM	20	NE NW	WELL 2 (HARN 52796) - 70 FEET SOUTH AND 1250 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 20	13.0 mi.	13.6 mi.

19. Transfer Application T-13363 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	34 E	WM	17	SW NW	28.0
27 S	34 E	WM	17	NW SW	28.2
27 S	34 E	WM	17	SW SW	26.8
27 S	34 E	WM	18	SE NE	32.6
27 S	34 E	WM	18	NE SE	33.1
27 S	34 E	WM	18	NW SE	0.8
27 S	34 E	WM	18	SW SE	32.2
27 S	34 E	WM	18	SE SE	26.6
27 S	34 E	WM	19	NE NE	3.0
27 S	34 E	WM	20	SW NE	0.7
27 S	34 E	WM	20	SE NE	0.3
27 S	34 E	WM	20	NE NW	33.1
27 S	34 E	WM	20	NW NW	32.7
27 S	34 E	WM	20	SW NW	27.6
27 S	34 E	WM	20	SE NW	33.2
27 S	34 E	WM	20	NE SE	14.0
27 S	34 E	WM	20	NW SE	0.1
27 S	34 E	WM	20	SE SE	1.7
TOTAL					354.7

20. The Department conducts transfer reviews in accordance with statutes and rules (ORS 540.510 – 540.532 and OAR 690-380). In applying statutes and rules, the Department consistently relies upon best available information regarding each application and the Department’s understanding of the groundwater system at the time of transfer application review. The results of the groundwater technical review of Application T-13363 are different when compared to the review of previous reviews due to the evolution of our understanding of the groundwater system of the Harney Basin, which has been the topic of numerous public meetings over the past five years.

21. The Department determined that pumping in several areas of the Harney Basin exceeded natural recharge in about 2014 and presented this information to the Water Resources Commission in June 2015. At that time, the Department indicated its intention to begin a public process to engage with the community and revise the basin program rules to address responsible management of the area’s groundwater resource. Over the next year, the Department held a number of public open-house meetings, formed and met with a rules advisory committee in 6 meetings open to and well-attended by the public, and held 2 public hearings on the final proposed revisions to the basin rules (refer to February 2016 and April 2016 staff reports to the Commission for further details).

22. The revised basin rules, among other things, committed the Department to conduct a groundwater basin study designed to collect substantial data on the groundwater flow system of the basin (OAR 690-512-0020). The study was planned and is being conducted in coordination with a local Groundwater Study Advisory Committee (GSAC) jointly appointed by the Department and the Harney County Court. Over the course of the ongoing basin study, the Department has greatly expanded its groundwater monitoring network and in early 2019 began to analyze data collected over the past several years. All of the collected data that are being considered by the Department have been available to the public

via the Department's Groundwater Information System (GWIS) shortly after being collected.

Since March 2019, scientists from the Department and U.S. Geological Survey have shared data analysis interpretations and conclusions in public GSAC meetings and have provided near-final tables and figures to the GSAC for review and comment. A water table contour map of the basin is one of the near-final data products that have been shared in public meetings, and Department staff have announced at these and other public meetings that this information is being considered during the course of the Department's ongoing water right transaction reviews. The Harney Basin has not at this time been "divided up into subbasins" from the perspective of the groundwater system; this is a generalization based on the existing surface water system divisions used informally by the Department in an attempt to clearly communicate the concept of differing recharge areas and the groundwater flow paths. This more-detailed understanding of the basin hydrogeology is relatively new, but is the outcome of an ongoing groundwater basin study required by rule and has been presented in several public forums in draft form. The final study reports containing this and other study findings are planned to be completed by the end of the year 2020.

23. On April 6, 2020, the Department's Groundwater Section determined that the proposed change would interfere with other existing groundwater rights, resulting in injury to those rights. The proposed additional points of appropriation (wells) are located from approximately 9 miles to over 13 miles east of the currently authorized wells. The "FROM" wells are located in an area where regional groundwater flow is toward Malheur Lake, while the "TO" wells are located in an area where groundwater flow is toward the Malheur basin via Virginia Valley. Consequently, groundwater withdrawals at the proposed location will draw groundwater from a different aquifer, and therefore will result in an increase in interference with an entirely different group of groundwater rights in the vicinity of the proposed "TO" wells.

Additionally, the proposed additional points of appropriation are located in the Adobe Flat area adjacent to and up-gradient of the Virginia Valley area; an area within the Harney Basin that has documented year-to-year water level declines. The proposed use is expected to result in additional water level declines in the Virginia Valley area. Existing water rights in this area have permit decline conditions that will be triggered earlier if this transfer is approved. Existing groundwater users in this area will be negatively impacted by any increased authorized groundwater pumping, which will increase the rate of water level declines.



24. The proposed changes will interfere with other existing groundwater rights, resulting in injury to those rights. The injured water rights are listed as follows:

Certificate No.	Name on Certificate	Priority Date
12493	LINDA NEALE	5/21/1992
26370	C.L. WRIGHT	3/17/1954
61864	V DASH CATTLE CO.	7/8/1977
67719	LEE A. WALLACE	1/17/1979
82382	CONLEY MARSHALL	11/13/1979
82462	JOHN & KAREN STARBUCK	6/3/1981
84999	V BOX LAND AND LIVESTOCK	7/8/1977
86629	CAROLINE MANOCK AND RUTH PEVERLY	8/9/1979
61864	V DASH CATTLE CO.	7/8/1977
82369	CONNECTICUT GENERAL LIFE INSURANCE	11/20/1978
91366	GOLDEN RULE FARMS INC.	6/4/1979
91367	GOLDEN RULE FARMS INC.	12/18/2008
91448	GOLDEN RULE FARMS INC.	12/20/2012
93236	GOLDEN RULE FARMS INC.	9/27/2012
94869	SUSAN OPIE	2/28/2008

25. The use of a different aquifer could reduce the availability of ground water for existing water rights calling on that aquifer. As a result, there is not a basis for making an affirmative finding of no injury.
26. Without conditions to limit the quantity of water that may be appropriated at the proposed points of appropriation to that amount allowed at the existing, authorized points of appropriation, there is the potential for the water rights proposed for transfer to be enlarged as a result of Transfer T-13363. Therefore, conditions are necessary to ensure that the quantity of water diverted at the new points of appropriation do not exceed the quantity of water lawfully available at the original points of appropriation under each right.

***Transfer Review Criteria (OAR 690-380-4010)***

27. Water has been used within the last five years 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.
28. 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-13363.
29. Consistent with Findings of Fact Nos. 20, 21, 22, and 23, the proposed points of appropriation in Transfer Application T-13363 do not develop the same aquifer as the authorized points of appropriation and, therefore, do not meet the requirements outlined in OAR 690-380-2110(2).

30. As outlined in Findings of Fact Nos. 20, 21, 22, and 23, the proposed changes will result in injury to other existing groundwater rights.
31. In accordance with Finding of Fact No. 23, the proposed changes, as conditioned, will not result in enlargement of the water rights proposed for transfer.
32. All other application requirements are met.

### **Determination and Proposed Action**

The change in points of appropriation and change in place of use proposed in Transfer Application T-13363 appear to be not 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 denied.

*If Transfer Application T-13363 is modified to propose points of appropriation that develop the same aquifer as that of the authorized points of approved appropriation and all necessary notarized affidavits of consent to the transfer are submitted for existing groundwater rights injured as a result of this transfer, then Transfer Application T-13363 may be approved. If approved, the final order will include the following:*

1. *The change in points of appropriation and change in place of use proposed in Transfer Application T-13363 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 32394, 91418, and 91644, and any related decree.*
3. *Water right Certificates 32394, 91418, and 91644 are cancelled.*
4. *For Certificate 32394, the quantity of water diverted at the new points of appropriation, (Well 1, Well 2, and Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #1).*
5. *For Certificate 91418, the quantity of water diverted at the new points of appropriation, (Well 1, Well 2, and Well 3), shall not exceed the quantity of water lawfully available at the original point of appropriation, (Well).*
6. *For Certificate 91644, the quantity of water diverted at the new points of appropriation, (Well 1, Well 2, and Well 3), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well #1 and Well #2).*
7. *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.*
8. *Water shall be acquired from the same aquifer as the original points of appropriation.*
  9. *The former places of use of the transferred rights shall no longer receive water under the rights.*
  10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
  11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on APR 14 2021



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, you may reach me at 503-986-0864 or [tamera.l.smith@oregon.gov](mailto: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.*

**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 these proceedings under the federal service members 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. <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.