

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-11837, Marion County	)	ADDITIONAL POINT OF
	)	APPROPRIATION
	)	
	)	
	)	

**Authority**

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

BRENT SMITH  
OREGON ROOTSTOCK & TREE INC.  
10906 MONITOR MCKEE RD NE  
WOODBURN, OR 97071

**Findings of Fact**

1. On June 13, 2014, BRENT SMITH, OREGON ROOTSTOCK & TREE CO., filed an application for an additional point of appropriation under Certificate 68197. The Department assigned the application number T-11837.
2. Notice of the application for transfer was published on June 17, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 21, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11837 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 21, 2014, 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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On December 30, 2015, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11837 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on December 30, 2015, and in the Woodburn Independent newspaper on January 7 and 14, 2015, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

5. The portion of the right to be transferred is as follows:

**Certificate:** 68197 in the name of TRECO (perfected under Permit G-8856)  
**Use:** YEAR-ROUND PRIMARY IRRIGATION OF 105.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 55.3 ACRES, AND COMMERCIAL USE IN NURSERY WAREHOUSES

**Priority Date:** AUGUST 13, 1979

**Rate:** 2.09 CUBIC FEET PER SECOND (CFS) ; BEING 1.31 CFS FROM WELLS 1 AND 2 FOR PRIMARY IRRIGATION, 0.69 CFS FROM WELL 1 FOR SUPPLEMENTAL IRRIGATION AND 0.09 CFS FROM WELL 1 FOR COMMERCIAL USE

**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 for each acre irrigated during the period of April 1 to September 30. The right is further limited to the diversion of 1 acre foot for each acre irrigated during the period of October 1 to March 31. The supplemental portion of this right is limited to any deficiency in the available supply of any prior right existing for the same land.

**Source:** TWO WELLS in the PUDDING RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	1 W	WM	29	SE SW	4		WELL 1 - 1200 FEET NORTH AND 3750 FEET WEST FROM THE SE CORNER OF SECTION 29
5 S	1 W	WM	30	SE NE		44	WELL 2 - 940 FEET SOUTH AND 460 FEET EAST FROM THE SE CORNER OF LOT 1 (SW 1/4, NE 1/4) OF SECTION 30

**Authorized Place of Use:**

COMMERCIAL USE IN NURSERY WAREHOUSES					
Twp	Rng	Mer	Sec	Q-Q	GLot
5 S	1 W	WM	29	SE SW	4

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
5 S	1 W	WM	29	NE SW	3	2.6
5 S	1 W	WM	29	SW SW	4	2.7
5 S	1 W	WM	29	SE SW	4	9.8
5 S	1 W	WM	32	NW NE		2.0
5 S	1 W	WM	32	SW NE		7.4
5 S	1 W	WM	32	NE NW		13.5
5 S	1 W	WM	32	NW NW	1	9.7
5 S	1 W	WM	32	SE NW		40.0
5 S	1 W	WM	32	NE SW	3	13.2
5 S	1 W	WM	32	NW SE		4.6
Total						105.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	29	SW NW	44	0.6
5 S	1 W	WM	29	NW SW	44	0.3
5 S	1 W	WM	30	SW NE	44	5.2
5 S	1 W	WM	30	SE NE	44	24.8
5 S	1 W	WM	30	NE SE	44	20.0
5 S	1 W	WM	30	NW SE	44	4.4
Total						55.3

6. Transfer Application T-11837 proposes an additional point of appropriation, described as follows with the approximate distances from the existing points of appropriation identified:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Well 1	Distance from Well 2
5 S	1 W	WM	32	SE NW	WELL 3 - 1920 FEET SOUTH AND 1795 FEET EAST FROM THE NW CORNER OF SECTION 32	0.6 mile	1.1 miles

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

7. 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.
8. 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-11837.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

## Conclusion of Law

The additional point of appropriation proposed in Transfer Application T-11837 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

### Now, therefore, it is ORDERED:

1. The additional point of appropriation proposed in Transfer Application T-11837 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 68197 and any related decree.
3. Water Right Certificate 68197 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.
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, 2016**. 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.

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 18 day of February 2015.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: FEB 20 2015