

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13527, Yamhill County)	CHANGE IN POINT OF
)	APPROPRIATION AND 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

BAILEY NURSERIES, INC.,
ATTN: JON ESTES
PO BOX 398
DAYTON, OR 97114

Findings of Fact

1. On September 29, 2020, BAILEY NURSERIES, INC., ATTN: JON ESTES filed an application to change a point of appropriation and an additional point of appropriation under Certificate 31650. The Department assigned the application number T-13527.
2. Notice of the application for transfer was published on September 29, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 18, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13527 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 17, 2021, 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 March 14, 2022, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13527 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 March 15, 2022, and in the NEWS-REGISTER newspaper on March 18 and 25, 2022 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: 31650 in the name of NORMAN & JOYCE QUIGLEY (perfected under Permit G-1387)
Use: IRRIGATION of 117.9 ACRES
Priority Date: JULY 14, 1959
Rate: 1.06 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	9	SE SW	53	POA 1 - 5 CHAINS SOUTH AND 12 CHAINS EAST FROM THE SE CORNER OF THESSING DLC 51

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	3 W	WM	8	SW SE		50	21.4
5 S	3 W	WM	8	SE SE		50	27.6
5 S	3 W	WM	9	SW SW	2		19.5
5 S	3 W	WM	9	SE SW	1		0.8
5 S	3 W	WM	9	SE SW		53	16.5
5 S	3 W	WM	9	SW SE		53	9.9
5 S	3 W	WM	16	NW NE		53	2.8
5 S	3 W	WM	16	NE NW	2		0.1
5 S	3 W	WM	16	NE NW		53	4.6
5 S	3 W	WM	16	NW NW	3		4.8
5 S	3 W	WM	17	NE NE		50	5.6
5 S	3 W	WM	17	NW NE		50	4.3
						Total	117.9

6. Transfer Application T-13527 proposes to move the authorized point of appropriation approximately 700 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	9	SE SW	WELL 3 – 520 FEET NORTH AND 1275 FEET EAST FROM THE NW CORNER OF DLC 56

7. Transfer Application T-13527 proposes an additional point of appropriation approximately 1800 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	9	NW SW	HOLBROOK WELL 2 – 2120 FEET NORTH AND 675 FEET EAST FROM THE NW CORNER OF DLC 56

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. 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-13527.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Conclusions of Law

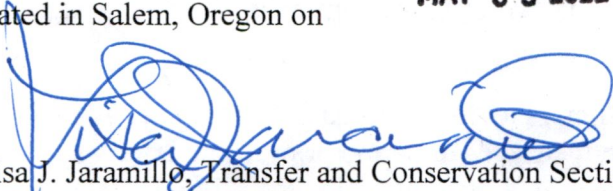
The change in point of appropriation and an additional point of appropriation proposed in Transfer Application T-13527 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and an additional point of appropriation proposed in Transfer Application T-13527 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 Certificate 31650 and any related decree.
3. Water right Certificate 31650 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 new point of appropriation (Well 3), together with that diverted at the additional point of appropriation (Holbrook Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 1).
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **MAY 09 2022**


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

Mailing date: ~~_____ MAY 10 2022 _____~~