

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

In the Matter of Transfer Application        )  
T-11580, YAMHILL County                    )  
  )        **FINAL ORDER APPROVING A  
TEMPORARY CHANGE IN PLACE OF  
USE**

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of appropriation 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**

CARLTON NURSERY CO. LLC  
PO BOX 398  
DAYTON, OR 97114

**Findings of Fact**

**Background**

1. On April 22, 2013, CARLTON NURSERY CO. LLC filed an application to temporarily change the place of use under Certificate 86088 for a period of five years. The Department assigned the application number T-11580.
2. Notice of the application for transfer was published on April 30, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the right to be transferred is as follows:

**Certificate:**        86088 in the name of CARLTON NURSERY CO. LLC (perfected under Permit G-8464)  
**Use:**                    IRRIGATION OF 15.6 ACRES  
**Priority Date:**     FEBRUARY 20, 1979  
**Rate:**                    0.195 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

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the WARNER CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	16	SE NW	56	1890 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER OF HEWITT DLC 56

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	16	NE NW	56	15.6

- Temporary Transfer Application T-11580 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	16	NW NW	56	3.5
5 S	3 W	WM	16	SW NW	56	12.1

- Temporary Transfer Application T-11580 proposes to temporarily transfer a water right within the boundaries of Palmer Creek Water District Improvement Company. The district was notified of the proposed temporary transfer and indicated that the district did not object to the temporary transfer.

**Temporary Transfer Review Criteria**

- Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
- The proposed change, as conditioned, would not result in enlargement of the right.
- The proposed change, as conditioned, would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.

**Conclusions of Law**

The temporary change in place of use proposed in Temporary Transfer Application T-11580 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

**Now, therefore, it is ORDERED:**

1. The temporary change in place of use proposed in Temporary Transfer Application T-11580 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2013, 2014, 2015, 2016 and 2017 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2017 irrigation season.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes causes injury to any existing water right.
5. A subsequent application for permanent transfer of Certificate 86088 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 86088.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. The use of the remaining water right described by Certificate 86088 shall continue to be in accordance with the terms and conditions of Certificate 86088.
9. Dated at Salem, Oregon this 26<sup>th</sup> day of July, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date:     **AUG 02 2013**