

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-12825, Yamhill County                        )     CHANGE IN POINT OF DIVERSION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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**

CARLTON NURSERY CO. LLC  
C/O ALLAN ELLIOTT  
PO BOX 398  
DAYTON, OR 97114

**Findings of Fact**

1. On January 18, 2018, CARLTON NURSERY CO. LLC filed an application to change the point of diversion under Certificate 19850. The Department assigned the application number T-12825.
2. Notice of the application for transfer was published on January 30, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 22, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department requested that the deficiency be resolved by May 21, 2019.
4. On April 23, 2019, the applicant's agent submitted a revised Table 2, resolving the deficiency.
5. On May 17, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12825 to the applicant. The draft Preliminary

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.

Determination cover letter set forth a deadline of June 17, 2019, 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.

6. On July 31, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12825 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 6, 2019, and in the McMinnville New Register newspaper on August 2 and 9, 2019 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The right to be transferred is as follows:

- Certificate:** 19850 in the name of PETER N. AND ESSIE B. EDIGER (perfected under Permit S-17162)
- Use:** IRRIGATION of 14.2 ACRES
- Priority Date:** JULY 18, 1946
- Rate:** 0.18 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- Source:** PALMER CREEK, a tributary of YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	5	SE SE	51	NOT DESCRIBED ON CERTIFICATE

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	5	SW SE	51	8.4
5 S	3 W	WM	5	SE SE	51	5.8
Total						14.2

8. Transfer Application T-12825 proposes to move the authorized point of diversion approximately 0.4 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	8	NE NW	43	GORDON POD - 4020 FEET SOUTH AND 1350 FEET EAST FROM THE SE CORNER OF DLC 42

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

10. Water has been used within the last five years prior to submittal of the transfer application 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.
11. 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-12825.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

**Conclusions of Law**

The change in point of diversion proposed in Transfer Application T-12825 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in point of diversion proposed in Transfer Application T-12825 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 19850 and any related decree.
3. Water right Certificate 19850 is cancelled.
4. The quantity of water diverted at the new point of diversion (Gordon POD), shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user

must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.

Issued at Salem, Oregon this SEP 20 2019,



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

Mailing date: SEP 23 2019