

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

In the Matter of Transfer Application)	RECONSIDERATION OF FINAL ORDER
T-13432, Marion County)	RECORDED IN SPECIAL ORDER VOLUME
)	120, PAGES 939 - 945, WITHDRAWING A
)	FINAL ORDER AND ISSUING A
)	SUPERSEDING FINAL ORDER APPROVING
)	ADDITIONAL POINTS 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

LOEN NURSERY INC.
C/O KURTIS T. LOEN
19205 SW CIPOLE RD.
SHERWOOD, OR 97140

Findings of Fact

1. On May 1, 2020, LOEN NURSERY INC. C/O KURTIS T. LOEN, filed an application for additional points of appropriation under Certificates 56069 and 88308. The Department assigned the application number T-13432.
2. Notice of the application for transfer was published on May 12, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On July 14, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13432 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 15, 2020, 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.
4. On October 21, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13432 and mailed a copy to the applicant.
5. On October 23, 2020, the agent for the applicant discovered a scrivener's error in the transferred acres for Certificate 56069. The agent for the applicant also requested a later Completion Date of October 1, 2024.
6. On January 19, 2021, the Preliminary Determination was withdrawn. Below are the correct transferred supplemental irrigation acres and corresponding rate for Certificate 56069.
7. On February 23, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13432 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 March 2, 2021 and in the Wilsonville Spokesman newspaper on March 3 and 11, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
8. On April 22, 2021, the Department issued a Final Order for the application, recorded at Special Order Volume 120, Pages 298 – 303. Shortly following issuance of the order the Department determined that the order should be reconsidered due to a scrivener's error in the amount of acres transferred under Certificate 56069 and the completion date which is extended to October 1, 2024.
9. On May 25, 2021, the Department issued a Reconsideration of a Final Order for the application, recorded at Special Order Volume 120, Pages 662 - 667. That order was issued to supersede the previous order recorded at Special Order Volume 120, pages 298 – 303, to correct scrivener's errors. Shortly following issuance of the order the agent for the applicant alerted the Department that there were scrivener's errors in the acres listed for supplemental irrigation and related nursery use under the authorized places of use for Certificate 56069.
10. On June 28, 2021, the Department issued a Reconsideration of a Final Order for the application, recorded at Special Order Volume 120, Pages 939 – 945. That order was issued to supersede the previous order recorded at Special Order Volume 120, Pages 662 – 667, to correct scrivener's errors. Shortly following issuance of the order, the agent for the applicant alerted the Department that there was a scrivener's error in the acres listed under certificate 56069.

11. This order is issued to supersede the previous order recorded at Special Order Volume 120, Pages 939 - 945, and to correct the scrivener's errors.

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

Certificate: 56069 in the name of KLUPENGER'S NURSERY AND GREENHOUSES, INC. (perfected under Permit G-9846)

Use: SUPPLEMENTAL IRRIGATION OF 42.57 ACRES, RELATED NURSERY USES, CONTAINERIZED NURSERY OPERATION, AND GREENHOUSE NURSERY OPERATION

Priority Date: DECEMBER 31, 1980

Rate: 2.23 CUBIC FEET PER SECOND (CFS): BEING 0.65 CFS FOR SUPPLEMENTAL IRRIGATION, AND 2.23 CFS FOR RELATED NURSERY USES, CONTAINERIZED NURSERY OPERATION, AND GREENHOUSE NURSERY OPERATION, PROVIDED THE TOTAL QUANTITY OF WATER DIVERTED FOR ALL USES SHALL NOT EXCEED 2.23 CFS

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, provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right, and shall be further limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during the period from October 1 to March 31, provided further that the right allowed herein, together with the amount secured under any other right existing for the same land, shall not exceed 2.5 acre-feet for each acre irrigated in any one year. The use of water during the period from October 1 to March 31 as authorized here in shall not establish priority of right as against future appropriations of ground water for beneficial uses other than similar rights for irrigation from October 1 to March 31, and shall conform to such reasonable rotation system as may be ordered by the proper state officer. The use allowed for supplemental irrigation may be made any time between October 1 and March 31 when water can be put to beneficial use by irrigation for immediate crop growth.

Source: WELLS 1 & 2, a tributary of WILLAMETTE RIVER

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL 1 - 260 FEET NORTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	150 FEET NORTH AND 190 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	33	SW NE	30.10
3 S	1 W	WM	33	SE NE	2.76
3 S	1 W	WM	33	SE NW	9.71
TOTAL					42.57

CONTAINERIZED NURSERY OPERATION				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE
3 S	1 W	WM	33	SE NW

GREENHOUSE NURSERY OPERATION				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE

RELATED NURSERY USE				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE
3 S	1 W	WM	33	SE NW

13. Transfer Application T-13432 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized Wells in Feet (ft.)	
3 S	1 W	WM	33	SW NE	WELL 4 - 285 FEET NORTH AND 1475 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	WELL 1	WELL 2
						792 ft.	633 ft.
3 S	1 W	WM	33	SE NE	WELL 5 - 295 FEET NORTH AND 805 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	1406 ft.	1267 ft.

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

Certificate: 88308 in the name of KLUPENGRS NURSERY AND GREENHOUSES INC.
(perfected under Permit G-3136)

Use: IRRIGATION of 89.0 ACRES

Priority Date: JANUARY 18, 1966
Rate: 1.11 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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 the WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL 1 - 260 FEET NORTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	33	SW NE	40.0
3 S	1 W	WM	33	SE NE	33.0
3 S	1 W	WM	33	SE NW	16.0
TOTAL					89.0

15. Transfer Application T-13432 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized Well in Feet (ft.)
3 S	1 W	WM	33	SW NE	WELL 4 - 285 FEET NORTH AND 1475 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	792 ft.
3 S	1 W	WM	33	SE NE	WELL 5 - 295 FEET NORTH AND 805 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	633.6 ft.

Transfer Review Criteria (OAR 690-380-4010)

16. 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.
17. 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-13432.

18. The proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. All other application requirements are met.

Conclusions of Law

The additional points of appropriation proposed in Transfer Application T-13432 appear to be 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 approved.

Now, therefore, it is ORDERED:

1. The additional points of appropriation proposed in Transfer Application T-13432 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 Certificates s 56069 and 88308 and any related decree.
3. Water right Certificates s 56069 and 88308 are cancelled.
4. The quantity of water diverted for Certificate 56069, at the new additional points of appropriation (Well 4 and Well 5), together with that diverted at the original points of appropriation, (Well 1 and Well 2), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 1 and Well 2).
5. The quantity of water diverted for Certificate 88308, at the new additional points of appropriation (Well 4 and Well 5), together with that diverted at the original point of appropriation, (Well 1), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 1).
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.

8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on ~~_____~~ **JUL 08 2021**



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

Mailing date: ~~_____~~ **JUL 09 2021**