

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11852, Marion County)	CHANGE IN 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

PHIL KARTAL
3881 2ND ST
HUBBARD, OR 97032

Findings of Fact

1. On June 24, 2014, PHIL KARTAL filed an application to change the point of appropriation under Certificate 89193. The Department assigned the application number T-11852.
2. Notice of the application for transfer was published on July 1, 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-11852 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. The applicant also requested that the date by which all conditions are to be met be changed from "before October 1, 2016" to "before October 1, 2017".

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-11852 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on December 30, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

5. The right to be transferred is as follows:

Certificate: 89193 in the name of DIERINGER NURSERY (perfected under Permit G-13352)

Use: IRRIGATION AND AGRICULTURAL USE FOR NURSERY OPERATIONS ON 10 ACRES

Priority Date: APRIL 8, 1997

Rate: 0.25 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at any time of the year that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Period of Use: March 1 through October 31 for irrigation use and year round for agricultural use

Source: A WELL within the BRANDY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	35	NE SW	64	615 FEET SOUTH AND 2490 FEET WEST FROM THE NE CORNER OF DLC 64

Authorized Place of Use:

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	35	SW NW	63	0.4
4 S	1 W	WM	35	SE NW	63	1.3
4 S	1 W	WM	35	NE SW	64	6.7
4 S	1 W	WM	35	NW SW	64	1.6

6. Transfer Application T-11852 proposes to move the authorized point of appropriation approximately 792 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	35	NW SW	64	680 FEET SOUTH AND 3290 FEET WEST FROM THE NE CORNER OF DLC 64

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-11852.
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 change in point of appropriation proposed in Transfer Application T-11852 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 proposed in Transfer Application T-11852 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 89193 and any related decree.
3. Water right certificate 89193 is cancelled.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
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, 2017**. 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.

Dated at Salem, Oregon this 24 day of February, 2015.



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

Mailing date: MAR 04 2015