

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING AN  
T-13497, Yamhill County                                 )     ADDITIONAL 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**

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

**Findings of Fact**

1. On June 23, 2020, BAILEY NURSERIES INC., JON ESTES filed an application for an additional point of diversion under Certificate 94391. The Department assigned the application number T-13497.
2. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. After proof of completion, any water right certificate issued to confirm the changes to Certificate 94391 under Transfer T-13497 is to remain in the name of the Palmer Creek Water District Improvement Company.
4. On January 25, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13497 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

5. On May 19, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13497 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 May 25, 2021, and in the News Register newspaper on May 21 and 28, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The right to be transferred is as follows:

**Certificate:** 94391 in the name of PALMER CREEK WATER DISTRICT IMPROVEMENT COMPANY (perfected under Permit S-54756)  
**Use:** IRRIGATION of 48.0 ACRES  
**Priority Date:** JULY 13, 1992  
**Volume:** 48.0 ACRE-FEET STORED WATER ONLY  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31 OR AS MAY BE FURTHER LIMITED BY THE BUREAU OF RECLAMATION WATER SUPPLY CONTRACT  
**Source:** WILLAMETTE RIVER BASIN PROJECT RESERVOIR, CONSTRUCTED UNDER PERMIT R-1625, A TRIBUTARY OF WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	3 W	WM	4	NW SW	PCWDIC POD - 4700 FEET NORTH AND 1290 FEET EAST FROM THE SE CORNER OF DLC 58

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	8	SW NE	51	9.8
5 S	3 W	WM	8	SE NW	51	0.2
5 S	3 W	WM	8	NE SW	51	1.0
5 S	3 W	WM	8	SE SW	51	0.9
5 S	3 W	WM	8	NW SE	51	26.9
5 S	3 W	WM	8	SW SE	51	9.2
Total						48.0

7. Transfer Application T-13497 proposes an additional point of diversion approximately 7.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	10	NW NW	CP POD - 608 FEET NORTH AND 40 FEET WEST FROM THE NORTHERLY NW CORNER OF DLC 54

8. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

9. 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.
10. 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-13497.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

**Conclusions of Law**

The additional point of diversion proposed in Transfer Application T-13497 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

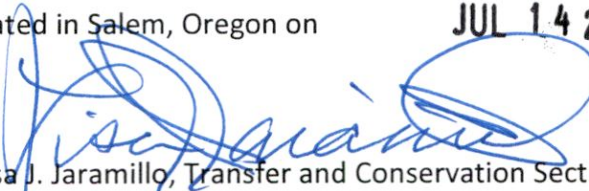
**Now, therefore, it is ORDERED:**

1. The additional point of diversion proposed in Transfer Application T-13497 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 94391 and any related decree.
3. Water right Certificate 94391 is cancelled.
4. The quantity of water diverted at the new additional point of diversion (CP POD), together with that diverted at the original point of diversion (PCWDIC POD), shall not exceed the quantity of water lawfully available at the original point of diversion (PCWDIC POD).

5. 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.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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

**JUL 14 2021**

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

Mailing date:     **JUL 15 2021**