

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-13455, Yamhill County) A CHANGE IN PLACE OF USE

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.
9855 NW PIKE RD
YAMHILL, OR 97148

Findings of Fact

1. On May 28, 2020, BAILEY NURSERIES INC. filed an application to change the place of use under Certificate 90079. The Department assigned the application number T-13455.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 23, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13455 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 23, 2021, 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 February 2, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13455 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 February 8, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests 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.

5. The portion of the right to be transferred is as follows:

Certificate: 90079 in the name of BAILEY NURSERIES, INC. (perfected under Permit S-51934)

Use: AGRICULTURAL USE (NURSERY OPERATIONS) on 11.9 ACRES

Priority Date: MARCH 2, 1990

Rate: 0.10 CUBIC FEET PER SECOND

Period of

Allowed Use: NOVEMBER 1 THROUGH APRIL 30 FROM LIVE FLOW AND STORED WATER;

MAY 1 THROUGH OCTOBER 31 FROM STORED WATER ONLY

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 of water 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 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.

Source: SALT CREEK AND FIDEL BROTHERS RESERVOIR, tributary to the NORTH YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	4 W	WM	31	NE NE	55	DIVERSION POINT A - 1265 FEET NORTH AND 1360 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	NE NE	55	DIVERSION POINT B - 1255 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE NE	55	DIVERSOIN POINT C - 675 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE NE	55	DIVERSION POINT D - 220 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE SE	54	DIVERSION POINT E - 660 FEET NORTH AND 2780 FEET WEST FROM THE SE CORNER OF DLC 61

Authorized Place of Use:

AGRICULTURAL USE (NURSERY OPERATIONS)						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	5.8
2 S	4 W	WM	31	NW SE	54	3.6
2 S	4 W	WM	31	SW SE	54	2.0
2 S	4 W	WM	31	SE SE	54	0.5
Total:						11.9

6. Transfer Application T-13455 proposes to change the place of use of the right to:

AGRICULTURAL USE (NURSERY OPERATIONS)						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	3.0
2 S	4 W	WM	31	SE SE	54	1.8
2 S	4 W	WM	32	SW NW	54	3.5
2 S	4 W	WM	32	SW NW	54	1.5
2 S	4 W	WM	32	NW SW	54	1.9
2 S	4 W	WM	32	NW SW	54	0.2
Total:						11.9

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

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-13455.
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.

Conclusions of Law

The change in place of use proposed in Transfer Application T-13455 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 place of use proposed in Transfer Application T-13455 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 90079 and any related decree.
3. Water right Certificate 90079 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.

4. The former place of use of the transferred right shall no longer receive water under the right.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.
6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

JUN 08 2022



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

Mailing date: **JUN 09 2022**