



3. On September 20, 2006, the Department contacted the applicant to discuss the character of use change proposed in Transfer T-8767. The transfer application proposes to change the character of use under Certificate 79922 from *irrigation* to *temperature control*. Certificate 79922, however, allows the use of water for *nursery operations*. Because irrigation and temperature control are both elements of nursery operations, a change in character of use is considered unnecessary. The applicant agreed with the Department that the change in character of use proposed in Transfer T-8767 is not needed and requested that it be removed from the transfer application.
4. On September 27, 2006, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8767 to the applicant. The draft Preliminary Determination set forth a deadline in which the applicant could respond.
5. The applicant submitted a written statement to the Department on December 11, 2006, officially amending Transfer Application T-8767. The amendment removed the proposed change in character of use from the application.
6. On January 12, 2007, the applicant submitted a revised affidavit attesting to the use of water under Certificate 79922 to the Department.
7. The portion of the right to be transferred is as follows:

**Certificate:** 79922 in the name of ISSA KARAM dba KARAM NURSERY (perfected under Permit G-11279)

**Use:** NURSERY OPERATIONS ON 5.8 ACRES

**Priority Date:** OCTOBER 4, 1990

**Rate:** 0.0725 CUBIC FOOT PER SECOND (CFS)

**Limit/Duty:** ONE-FORTIETH of one cfs per acre, not to exceed 5.0 ACRE FEET per acre per year for irrigation of containerized nursery plants; ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 ACRE FEET per acre per year for irrigation of in ground nursery plants; and ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 ACRE FEET per acre per year for irrigation of any other crop

**Source:** A WELL in the ABERNATHY CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	2 E	WM	34	SW NW	557 FEET NORTH AND 250 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	33	SE NE	2	1.6
2 S	2 E	WM	34	SW NW		4.2
<b>TOTAL:</b>						<b>5.8</b>

8. Transfer Application T-8767 proposes to add a point of appropriation located approximately 75 feet southeast from the existing point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	2 E	WM	34	SW NW	516 FEET NORTH AND 345 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 33

9. Transfer Application T-8767 also proposes to change the place of use of the right to:

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	2 E	WM	33	SE NE	2.2
2 S	2 E	WM	34	SW NW	3.6
<b>TOTAL:</b>					<b>5.8</b>

10. Notice of the application for transfer was published on May 8, 2001, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
11. On January 19, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application 8767 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 January 23, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
12. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

### **Partial Cancellation of a Water Right**

16. On August 23, 2006, the applicant submitted an affidavit meeting the requirements of ORS 540.621 for partial cancellation of a water right as follows:

**Certificate:** 79922 in the name of ISSA KARAM dba KARAM NURSERY (perfected under Permit G-11279)

**Use:** NURSERY OPERATIONS on 0.04 ACRE

**Priority Date:** OCTOBER 4, 1990

**Rate:** 0.0005 CUBIC FOOT PER SECOND (CFS)

**Limit/Duty:** ONE-FORTIETH of one cfs per acre, not to exceed 5.0 ACRE FEET per acre per year for irrigation of containerized nursery plants; ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 ACRE FEET per acre per year for irrigation

of in ground nursery plants; and ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 ACRE FEET per acre per year for irrigation of any other crop

**Source:** A WELL in the ABERNETHY CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	2 E	WM	34	SW NW	557 FEET NORTH AND 250 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 33

**Authorized Place of Use to be Cancelled:**

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acre
2 S	2 E	WM	34	SW NW	0.04

**Conclusions of Law**

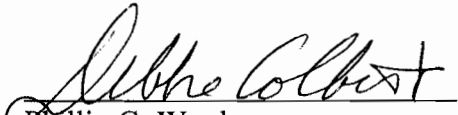
The additional point of appropriation and change in place of use proposed in Transfer Application T-8767 are consistent with the requirements of ORS 537.705, 540.505 to 540.580, and OAR 690-380-5000.

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

1. The additional point of appropriation and change in place of use proposed in Transfer Application T-8767 are approved. The portion of the right that has been abandoned is cancelled.
2. The right to 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 79922 and any related decree.
3. Water Right Certificate 79922 is cancelled. A new certificate will be issued describing that portion of the right evidenced by Certificate 79922 not affected by this transfer and cancellation.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
6. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
7. The former place of use of the transferred water shall no longer receive water as part of these rights.

8. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 28<sup>th</sup> day of February 2007.

  
Phillip C. Ward,  
Director

Mailing date: MAR 06 2007