

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12856, Yamhill County)	SUBSTITUTION OF A
)	SUPPLEMENTAL GROUNDWATER
)	RIGHT FOR A PRIMARY SURFACE
)	WATER RIGHT

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

CARLTON NURSERY CO., LLC
C/O ALLAN ELLIOTT
PO BOX 398
DAYTON, OR 97114

Findings of Fact

1. On February 27, 2018, CARLTON NURSERY CO., LLC, C/O ALLAN ELLIOTT filed an application to substitute a supplemental groundwater right under Certificate 91744 for a portion of primary surface water rights under Certificates 83484 and 83486. The Department assigned the application number T-12856.
2. Notice of the application for transfer was published on March 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 12, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The application was requesting to substitute a supplemental right to use groundwater under Certificate 91744 and Groundwater Registration GR-2034 (Certificate of Registration GR-1960) for a portion of primary rights to use surface water under Certificates 83484, 83486, and 83487. ORS 540.524 does not allow a substitution involving a Groundwater Registration. The Department requested that the deficiency be resolved by April 12, 2019.

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 April 23, 2019, the applicant's agent submitted revised tables and maps for Certificates 83484, 83486, and 91744, removing Certificate 83487 and Groundwater Registration GR-2034 (Certificate of Registration GR-1960) from the application.
5. On June 3, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The revisions that were submitted on March 12, 2019, identified a request for an additional point of appropriation under Certificate 91744. Pursuant to ORS 540.524(1) and OAR 690-380-2330(1), no other changes can be made to a water right during the substitution process. The Department requested that the deficiency be resolved by July 2, 2019.
6. On June 18, 2019, the applicant's agent submitted revised tables for Certificate 91744, removing the request for an additional point of appropriation.
7. On August 28, 2019, the Department contacted the applicant's agent by written correspondence to notify the agent of a deficiency in the application. The revised Table 2 under Certificate 91744 submitted on June 18, 2019, identified a different amount of acres in the "TO" lands compared to the "FROM" lands. The Department requested that the deficiency be resolved by September 11, 2019. The Department did not receive a response.
8. On September 13, 2019, the Department contacted the applicant by written correspondence to notify them the Department had not received a response from the agent regarding the most recent deficiency in the application. The Department requested that the deficiency be resolved by September 27, 2019. The applicant's agent submitted a revised Table 2 for Certificate 91744 the same day, resolving the deficiencies.

9. The supplemental groundwater right to be substituted for the primary surface water right is:

Certificate: 91744 in the name of CARLTON NURSERY LLC (perfected under Permit G-12154)

Use: SUPPLEMENTAL IRRIGATION OF 20.6 ACRES

Priority Date: APRIL 4, 1991 FOR 0.02 CUBIC FOOT PER SECOND (CFS) FOR IRRIGATION; SEPTEMBER 15, 1992 FOR 0.01 CFS FOR IRRIGATION

Rate: LIMITED TO NOT MORE THAN 0.03 CFS FOR IRRIGATION

Limit/Duty: The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	28	SE SW	38	WELL 1 - 1200 FEET NORTH AND 265 FEET EAST FROM THE NE CORNER OF DLC 60

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	28	SE SW	38	13.9
5 S	3 W	WM	28	SW SE	38	6.7
Total						20.6

10. The portion of the first primary surface water right to be used as a supplemental right under the substitution with Certificate 91744 is as follows:

Certificate: 83484 in the name of CARLTON PLANTS (perfected under Permit S-13847)
Use: IRRIGATION of 12.7 ACRES
Priority Date: MAY 23, 1939
Rate: 0.16 CUBIC FOOT 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 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.
Source: LAMBERT SLOUGH, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	3 W	WM	34	NE NW	2	LAMBERT SLOUGH - 1600 FEET SOUTH AND 510 FEET EAST FROM THE NE CORNER OF MATHENY DLC 38

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	28	SE SW	38	4.7
5 S	3 W	WM	28	SW SE	38	8.0
Total						12.7

11. The second primary surface water right to be used as a supplemental right under the substitution with Certificate 91744 is as follows:

Certificate: 83486 in the name of CARLTON PLANTS (perfected under Permit S-27687)
Use: IRRIGATION of 7.9 ACRES
Priority Date: NOVEMBER 10, 1961
Rate: 0.10 CUBIC FOOT 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 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 for each acre irrigated during the irrigation season of each year.

Source: LAMBERT SLOUGH, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	3 W	WM	34	NE NW	2	LAMBERT SLOUGH - 1600 FEET SOUTH AND 510 FEET EAST FROM THE NE CORNER OF MATHENY DLC 38

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	28	SE SW	38	7.9

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

12. 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 rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-12856.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Conclusions of Law

The substitution of a portion of a supplemental groundwater right for primary surface water rights proposed in Transfer Application T-12856 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

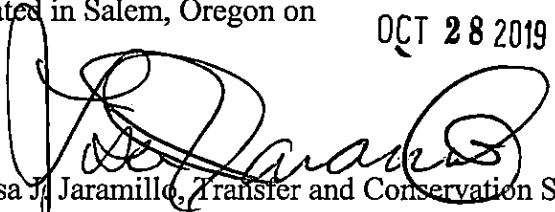
Now, therefore, it is ORDERED:

1. The substitution of a portion of a supplemental groundwater right for primary surface water rights proposed in Transfer Application T-12856 is approved and shall be effective upon issuance of this order.
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 83484, Certificate: 83484, and 91744, and any related decree.

3. The substitution of a supplemental groundwater right for a primary surface water right may be terminated upon a request by the water right holder or by order of the Director if the Director determines the use of the groundwater as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water rights shall revert to their original status.

Dated in Salem, Oregon on

OCT 28 2019


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

Mailing date: OCT 28 2019