

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF A
T-12611, Polk County)	CHANGE IN PLACE OF USE AND
)	CHARACTER 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

SALT CREEK FARMS, LLC
PO BOX 1089
DALLAS, OR 97338

Findings of Fact

1. On March 20, 2017, SALT CREEK FARMS, LLC filed an application to change the place of use and to change the character of use under Certificate 39323. The Department assigned the application number T-12611.
2. Notice of the application for transfer was published on March 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant initially proposed to change the character of use to irrigation but amended the application on April 27, 2018, to change the character of use to nursery use.
4. On May 10, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12611 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 8, 2018, 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.

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. On July 13, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12611 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 July 17, 2018, and in the Dallas Itemizer-Observer newspaper on July 18, and 25, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

6. The right to be transferred is as follows:

Certificate: 39323 in the name of BERNHARD LANGE (perfected under Permit S-35588)
Use: DOMESTIC USE FOR ONE FAMILY AND STOCK
Priority Date: OCTOBER 7, 1970
Rate: 0.015 CUBIC FOOT PER SECOND, BEING 0.01 CUBIC FOOT PER SECOND FOR DOMESTIC AND 0.005 CUBIC FOOT PER SECOND FOR STOCK
Source: A SPRING, a tributary of an UNNAMED STREAM (SALT CREEK)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
7 S	5 W	WM	8	SW SE	4	620 FEET SOUTH AND 2340 FEET WEST FROM THE SE CORNER OF DLC 39

Authorized Place of Use:

DOMESTIC USE FOR ONE FAMILY AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	DLC
7 S	5 W	WM	8	SE NE	39

7. Transfer Application T-12611 proposes to change the character of use to nursery.

8. Transfer Application T-12611 proposes to change the place of use to:

NURSERY							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
7 S	5 W	WM	8	NW SE		39	0.8
7 S	5 W	WM	8	SW SE	4		0.4
						Total	1.2

9. Certificate 39323 does not specify a period of allowed use, however, domestic and stock use are generally considered year-round uses.

10. Certificate 39323 does not specify a total quantity of water to be diverted annually for domestic use; however, ORS 540.610 states "beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state." If the domestic use was diverted continuously at the authorized rate of 0.01 cfs for 365 days per year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.24 acre-feet per year), is the maximum that could have been diverted. However, water for domestic use is not continuously diverted for 24 hours per day, 365 days per year.

11. Use of more water per year than what could have been used for maximum beneficial use for the original domestic use would constitute enlargement of the right, which is not allowed.

Therefore, to avoid enlarging the right under the proposed nursery use, an annual volume limit should be added to the right based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic use during a year.

12. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and Penn State Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, or approximately 0.47 acre-feet per year for a household that includes six people. Therefore, the annual volume limitation to be placed on the domestic use for this right is 0.47 acre-feet per year (0.47 acre-feet per year x 1 homes = 0.47 acre feet per year).
13. Certificate 39323 does not specify a total quantity of water to be diverted annually for stock use. If diverted continuously at the authorized rate of 0.005 cfs for 365 days per year ($0.005 \text{ cfs} \times 60 \text{ sec/min} \times 60 \text{ min/hr} \times 24 \text{ hr/day} \times 365 \text{ days/year} \div 43,560 \text{ square feet per acre} = 3.62 \text{ acre-feet per year}$), is the maximum that could have been diverted for stock.

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

14. 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.
15. A diversion structure and pipeline 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-12611.
16. The proposed changes, as conditioned, would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.
18. All other application requirements are met.

Conclusions of Law

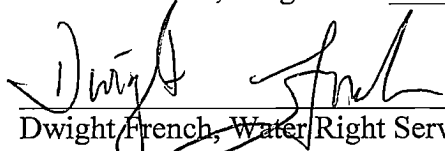
The change in place of use and change in character of use proposed in Transfer Application T-12611 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use and change in character of use proposed in Transfer Application T-12611 are 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 39323 and any related decree.

3. Water right Certificate 39323 is cancelled.
4. The rate of diversion for the proposed nursery use shall be limited to 0.015 cubic foot per second and shall be further limited to a total quantity of $(0.47 \text{ af} + 3.62 \text{ af}) = 4.09$ acre feet during the entire year.
5. The proposed nursery use shall be further limited such that:
 - a) The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.015 cubic foot per second per acre and $(4.09 \text{ af} \div 1.2 \text{ acres})$ 3.4 acre feet per acre per year.
 - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 3.4 acre feet per acre per year.
 - c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 3.4 acre feet per acre per year.
 - d) For the irrigation of any other crop, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 1.2 acres.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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 changes and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this SEP 11 2018



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

Mailing date: SEP 12 2018