

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING OF A
T-12577, Jackson County)	CHANGE IN CHARACTER OF USE
)	AND 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

3020 COLEMAN CREEK, LLC
c/o TOMAS PALM
PO BOX 2767
WIMBERLEY, TX 78676

Findings of Fact

1. On January 25, 2017, TOMAS PALM filed an application to change the place of use and change the character of use under Certificates 64369 and 64370. The Department assigned the application number T-12577.
2. Notice of the application for transfer was published on April 18, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 20, 2017, the Department notified the applicant's agent that the Land Use Information Form submitted was not completed on the proper Department form.
4. On July 19, 2017, the applicant's agent submitted a completed Land Use Information Form.
5. On August 7, 2017, the Department notified the applicant's agent of several deficiencies in the transfer application and map that needed to be resolved prior to issuance of a draft preliminary determination. The agent submitted a revised application, map, and evidence of use form on August 7, 2017.

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.

6. On August 8, 2017, the Department contacted the applicant's agent regarding clarification of the revised application, map, and evidence of use affidavit submitted on August 7, 2017.
7. On August 10, 2017, the Department received a revised application and map.
8. On August 16, 2017, the Department contacted the applicant's agent in regards to a discrepancy with the revised application and map submitted on August 10, 2017, more specifically related to Table 2 of the application for Certificate 64370 and the application map.
9. On August 21, 2017, the Department received a revised application map and an amended Evidence of Use Affidavit.
10. On August 22, 2017, the Department contacted the applicant's agent in regards to the map received on August 21, 2017. The map was not signed by a Certified Water Right Examiner.
11. On August 28, 2017, the Department received a revised map.
12. On October 27, 2017, the Applicant submitted a revised signature page of the application requesting to change the name listed on the application to 3020 Coleman Creek, LLC, in which Tomas Palm, is the authorized agent and owner.
13. On October 26, 2017 the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12577 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 27, 2017, 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.
14. On December 19, 2017, the Department identified a scrivener's error in the Draft Preliminary Determination and the Preliminary Determination. The lands that are changing location in place of use are all within the NW¼ SE¼, Sec. 8, T38S, R1W, WM.
15. The portion of the first right to be transferred is as follows:
 - Certificate:** 64369 in the name of CRYSTAL SPRINGS PACKING COMPANY, INC. (perfected under Permit R-8437)
 - Use:** FROST PROTECTION
 - Priority Date:** FEBRUARY 17, 1982
 - Quantity:** 1.09 ACRE-FEET (AF), BEING 0.66 AF IN BLACK OAK NORTH RESERVOIR AND 0.43 AF IN BLACK OAK SOUTH RESERVOIR
 - Source:** AN UNNAMED STREAM WITH ANY DEFICIENCY IN SUPPLY FROM HILL CREEK, AND EMIGRANT CREEK VIA THE TALENT IRRIGATION DISTRICT CANAL, IN BLACK OAK NORTH AND BLACK OAK SOUTH RESERVOIRS

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
38 S	1 W	WM	8	NW SE	45

16. Certificate 64369 does not describe the location of the points of diversion, however, information is available from the applicant and the secondary water right Certificate 64370, indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
38 S	1 W	WM	8	NW SE	45	BLACK OAK NORTH RESERVOIR - 2200 FEET NORTH AND 1450 FEET WEST FROM THE SE CORNER OF SECTION 8
38 S	1 W	WM	8	NW SE	45	BLACK OAK SOUTH RESERVOIR - 1790 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 8

17. Transfer Application T-12577 proposes to change the character of use to Multiple Purpose.
18. Certificate 64369 does not specify the season of use. However, the Rogue Basin Program generally establishes the storage season for the area as November 1 through March 30.
19. The portion of the second right to be transferred is as follows:

Certificate: 64370 in the name of CRYSTAL SPRINGS PACKING COMPANY, INC.
(perfected under Permit S-46742)

Use: FROST PROTECTION ON 8.72 ACRES

Priority Date: FEBRUARY 17, 1982

Quantity: 1.09 ACRE-FEET OF STORED WATER ONLY

Sources: BLACK OAK NORTH AND BLACK OAK SOUTH RESERVOIRS

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
38 S	1 W	WM	8	NW SE	45	BLACK OAK NORTH RESERVOIR - 2200 FEET NORTH AND 1450 FEET WEST FROM THE SE CORNER OF SECTION 8
38 S	1 W	WM	8	NW SE	45	BLACK OAK SOUTH RESERVOIR - 1790 FEET NORTH AND 1430 FEET WEST FROM THE SE CORNER OF SECTION 8

Authorized Place of Use:

FROST PROTECTION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
38 S	1 W	WM	8	NE SE	45	4.00
38 S	1 W	WM	8	NW SE	45	4.72
TOTAL						8.72

20. Transfer Application T-12577 proposes to change the character of use to Nursery Use.

21. Transfer Application T-12577 proposes to change the place of use of the right to:

NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
38 S	1 W	WM	8	NW SE	45	1.02

22. Certificate 64370 does not specify the season of use for frost protection. However, the Rogue Basin Program establishes the season for frost protection as year round.

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

23. 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.
24. A diversion structure and ditch 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-12577.
25. The proposed changes, as conditioned, would not result in enlargement of the rights.
26. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusions of Law

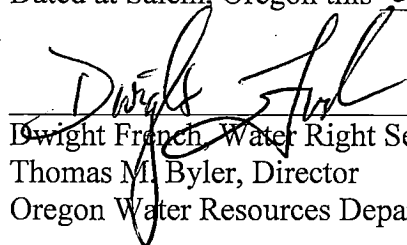
The changes in character of use and place of use proposed in Transfer Application T-12577 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use proposed in Transfer Application T-12577 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 Certificates 64369, 64370, and any related decree.
3. Water right Certificates 64369 and 64370 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The proposed nursery use shall be limited such that:
 - a) The amount of water used for NURSERY OPERATIONS is limited to a diversion of 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.
 - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.

- c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre per year.
 - d) For the irrigation of any other crop, the amount of water diverted is limited to 1.09 acre-feet (or its equivalent) stored water only and 0.125 acre feet per acre during the irrigation season of each year.
5. Water use measurement conditions:
- a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meter or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. 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.
7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 22 day of December, 2017.


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

Mailing date: JAN 05 2017