

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING  
T-12462, Josephine County                            )     A CHANGE IN PLACE OF USE AND A  
  )     CHANGE IN 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**

MATTHEW A. PORTNOFF  
LUIZA PORTNOFF  
22772 CHANNEL VIEW  
LAGUNA NIGUEL, CA 92677

**Findings of Fact**

1. On August 15, 2016, MATTHEW AND LUIZA PORTNOFF filed an application to change the place of use and character of use under Certificate 91390. The Department assigned the application number T-12462.
2. Notice of the application for transfer was published on August 23, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 10, 2017, Transfer Application T-12758 was filed. This transfer modifies the same right, described by Certificate 91390, that has been proposed to be modified in Transfer Application T-12462. Certificate 91390 shall be cancelled after both transfer applications are processed.
4. On January 5, 2018, Martha Pagel, on behalf of the Applicant, informed the Department that the Applicant will submit an amended application. As of February 13, 2018, the Department had not received an amended application.
5. On February 13, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2018, for the applicants to respond.

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 March 14, 2018, the Applicant's agent submitted an updated application signature page, a revised Table 2 and map. The revisions included the change in character of use of the domestic use portion to nursery use under Certificate 91390. The applicant also requested to extend the completion date to October 1, 2021.
7. On May 15, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of June 15, 2018, for the applicants to respond.
8. On May 22, 2018, the agent for the applicants responded to the Department and indicated there were scrivener's error in the draft Preliminary Determination sent on May 15, 2018, specifically regarding the rate and duty paragraph for the change in character of use from domestic use to nursery. Also the agent indicated that a clarification of the duty limitation determination for the irrigation portion of Certificate 91390 was not included as a Finding of Fact.
9. On July 28, 2018, the Department e-mailed a copy of the 2<sup>nd</sup> Revised Draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The 2<sup>nd</sup> revised draft Preliminary Determination cover letter set forth a deadline of August 23, 2018, for the applicants to respond.
10. On August 23, 2018 the agent for the applicants requested that the deadline for responding to the 2<sup>nd</sup> revised draft Preliminary Determination be extended to September 15, 2019.
11. On September 26, 2018, the agent for the applicants responded by email and indicated there were scrivener's error in the 2<sup>nd</sup> revised draft Preliminary Determination sent on July 28, 2018, specifically regarding the rate and duty paragraph for the change in character of use from domestic use to nursery use.
12. On September 26, 2019, the Department e-mailed a copy of the 3<sup>rd</sup> revised draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The 3<sup>rd</sup> revised draft Preliminary Determination cover letter set forth a deadline of October 27, 2019, for the applicants to respond. The agent for the applicants 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.
13. On November 19, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12462 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 November 19, 2019, and in the Grants Pass Daily Courier newspaper on November 26 and December 3, 2019 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 91390 in the name of LOREN BROWN, CERISE BROWN, DOUGLAS S. JAMES, LADENA E. FRY, HARLEY E. STEVENSON, JEANETTE R. STEVENSON, HELENA Z. SALKIN - TRUSTEE, CLAYTON FINCHER, PAUL G. HOOPER, AND GLENNYS HOOPER  
 (confirmed by Althouse Creek decree entered of record at Salem in the Order Record of the State of Oregon, in Volume 1, at page 209)

**Use:** IRRIGATION of 2.0 ACRES and DOMESTIC USE

**Priority Date:** 1883

**Rate:** 0.04 CUBIC FOOT PER SECOND FOR IRRIGATION

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right for the same lands, is limited to ONE-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated.

**Source:** ALTHOUSE CREEK, tributary to the ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	8 W	WM	2	NE NE	DIVERSION POINT 1 - 548 FEET SOUTH AND 1269 FEET WEST FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	8 W	WM	2	NW NE	2.0

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
40 S	8 W	WM	2	NW NE

15. Transfer Application T-12462 also proposes to change the place of use of the domestic use portion of the right to:

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
40 S	8 W	WM	2	NW NE

16. Certificate 91390 does not specify the irrigation season. However, information is contained in the decree indicating that the irrigation season is from April 1 through October 31.

17. Certificate 91390 does not specify the season of use for domestic use. However, information is contained in the decree that water can be diverted for domestic use year round; except during the irrigation season water diverted for irrigation purposes should include the waters diverted for domestic use.

18. Certificate 91390 does not specify a rate for domestic use. The Department recognizes an allowable rate of 0.005 cubic foot per second for domestic use of one household during the period of November 1 through March 31.

19. Certificate 91390 does not list a duty of water; however, the limit of the water right is the maximum quantity that could be beneficially used without waste. The best currently

available information indicates that the most consumptive crop in the area is apples, with a net irrigation requirement of 3.35 acre-feet per acre (Cuenca, 1992). Utilizing an evaporative loss quantification of 5%, the maximum duty of water to be transferred would be 3.52 acre-feet per acre per year (AF). Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for nursery use under this right should be limited to 7.04 acre-feet per year (3.52 AF x 2.0 acres) during the irrigation season.

20. Transfer Application T-12462 proposes to change the character of use to nursery use.

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

21. 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.

22. 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-12462.

23. The proposed change, as conditioned, would not result in enlargement of the right.

24. The proposed change would not result in injury to other water rights.

25. All other application requirements have been met.

**Conclusions of Law**

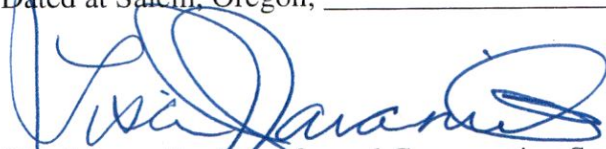
The changes in place of use and character of use proposed in Transfer Application T-12462 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore it is ORDERED:**

1. The changes in place of use and character of use proposed in Transfer Application T-12462 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 91390 and any related decree.
3. Water Right Certificate 91390 is modified and will be cancelled upon approval or denial of T-12758 and a new certificate will be issued describing that portion of the right not affected by this transfer.
4. The rate of diversion for the change in character of use from irrigation to the proposed nursery operation use shall be limited to 0.04 cfs and shall be further limited to a total volume diverted of 7.04 acre feet (2.0 acres x 3.52 acre feet per acre) during the original season of use, being April 1 to October 31.

9. 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.
10. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon, FEB 05 2020.



Lisa J Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: FEB 06 2020

5. The change in character of use from irrigation to 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 0.02 cubic foot per second per acre and 3.52 acre feet per acre during the irrigation season of each year.
  - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.
  - c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.
  - d) For the irrigation of any other crop, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.
  
6. The rate of diversion for the change in character of use from domestic use to the proposed nursery operations use shall be limited to 0.005 cfs and shall be further limited to a total volume diverted of 1.5 acre-feet (0.005 cfs x 1.98 acre feet per cfs per day) during the period of authorized use, being November 1 through March 31 of each year.
  
7. The change in character of use from domestic use to 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 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.
  - b) For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.
  - c) For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.005 cubic foot per second (or its equivalent) and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.
  - d) For the irrigation of any other crop, the amount of water diverted is limited to 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.
  
8. 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 the existing point of diversion.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.