

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-13035, Clackamas County) ADDITIONAL POINT OF
) APPROPRIATION

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

KARAM NURSERY
C/O ISSA KARAM
15028 S REDLAND RD
OREGON CITY, OR 97045

Findings of Fact

1. On September 28, 2018, KARAM NURSERY, C/O ISSA KARAM filed an application for an additional point of appropriation under Certificate 93997. The Department assigned the application number T-13035.
2. Notice of the application for transfer was published on October 2, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 21, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13035 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 19, 2019, 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.

4. On May 1, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-13035 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 May 7, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The right to be transferred is as follows:

Certificate: 93997 in the name of ISSA KARAM (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), FURTHER LIMITED TO 0.0725 CFS FROM WELL 1 (ORIGINAL) AND 0.04 CFS FROM WELL 2 (ADDITIONAL), NOT TO EXCEED A MAXIMUM CUMULATIVE TOTAL OF 0.725 CFS
Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at any time of the year that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.
Source: TWO WELLS in ABERNETHY CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 E	WM	34	SW NW	WELL 1 (ORIGINAL) - 557 FEET NORTH AND 250 FEET EAST FROM THE E1/4 CORNER OF SECTION 33
2 S	2 E	WM	34	SW NW	WELL 2 (ADDITIONAL) - 516 FEET NORTH AND 345 FEET EAST OF THE E1/4 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
					Total	5.8

6. Transfer Application T-13035 proposes an additional point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of appropriation in feet (ft.)	
2 S	2 E	WM	34	SW NW	WELL 3 - 800 FEET NORTH AND 330 FEET EAST FROM THE E1/4 CORNER OF SECTION 33	Well 1	Well 2
						255.1 ft. NE	285.0 ft. N

Transfer Review Criteria (OAR 690-380-4010)

7. Water has been used within the last five years prior to the submittal of Transfer Application T-13035 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.
8. 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-13035.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-13035 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of appropriation proposed in Transfer Application T-13035 is 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 93997 and any related decree.
3. Water right Certificate 93997 is cancelled.
4. The quantity of water diverted at the additional point of appropriation (Well 3), together with that diverted at the original points of appropriation (Well 1 and Well 2), shall not exceed the quantity of water lawfully available at the original points of appropriation.
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 appropriation (new and existing).

- b. The water user shall maintain the meters 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. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.
 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Signed at Salem, Oregon this **JUN 12 2019** ,



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

Mailing date: **JUN 13 2019**