

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

In the Matter of Transfer Application) SUPERSEDING FINAL ORDER
T-8919, Washington County) APPROVING A CHANGE IN
) CHARACTER OF USE AND PLACE OF
) USE AND CORRECTING
) SCRIVENER'S ERRORS IN PREVIOUS
) ORDERS

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Glen Walters Nursery, Inc
P.O. Box 280
Banks Oregon 97106

Findings of Fact

1. On October 24, 2001, Glen Walters Nursery, Inc., filed a transfer application to change the character of use and place of use under Certificates 23053, 26172, 26173, 46742, and 38912. The Department assigned the application number T-8919.

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

Certificate: 23053 in the name of Bernard Seus (perfected under Permit S-20943)

Use: Irrigation of 21.2 acres

Priority Date: January 22, 1952

Rate: 0.27 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Dairy Creek, tributary to the Tualatin River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC |
|-----|-----|-----|-----|-------|-----|
| 1 N | 3 W | WM | 27 | SE SE | 50 |

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | SW SW | 50 | 9.8 |
| 1 N | 3 W | WM | 27 | NE SE | 50 | 0.8 |
| 1 N | 3 W | WM | 27 | SE SE | 50 | 10.6 |

- Application T-8919 proposes to change the character of use of the right described by Certificate 23053 to agricultural (nursery) use.
- Application T-8919 also proposes to change the place of use of the right to:

| NURSERY USE | | | | | | |
|-------------|-----|-----|-----|-------|-----|-------|
| wp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | SW NW | 50 | 12.5 |
| 1 N | 3 W | WM | 27 | SE NE | 50 | 8.7 |

- The second right to be transferred is as follows:

Certificate: 26172 in the name of Bernard Seus (perfected under Permit R-1854)

Use: Storage for irrigation and supplemental irrigation

Priority Date: August 1, 1955

Quantity: 25.0 acre feet

Source: Unnamed drainage, tributary to Unnamed branch of Dairy Creek

Authorized Place of Use:

| STORAGE | | | | | |
|---------|-----|-----|-----|-------|-----|
| Twp | Rng | Mer | Sec | Q-Q | DLC |
| 1 N | 3 W | WM | 26 | SW NW | 50 |
| 1 N | 3 W | WM | 26 | NW SW | 50 |
| 1 N | 3 W | WM | 27 | NE SE | 50 |

- Application T-8919 proposes to change the character of use of the right described by Certificate 26172 to Storage for multiple purposes, including but not limited to primary and supplemental irrigation and agricultural (nursery) use.
- The portion of the third right to be transferred is as follows:

Certificate: 26173 in the name of Bernard Seus (perfected under Permit S-24161)

Use: Irrigation of 0.5 acre and supplemental irrigation of 21.2 acres

Priority Date: August 1, 1955

Rate: 0.006 cubic foot per second (cfs) from direct flow for primary irrigation

Limit/Duty: One-eightieth cfs per acre for each acre irrigated from live flow 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 from direct flow of Dairy Creek and storage from reservoir constructed under Permit R-1854 on lands described as primary, and to the use of stored water only on the lands described as supplemental.

Source: Dairy Creek and reservoir constructed under Permit R-1854, tributary to the Tualatin River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC |
|-----|-----|-----|-----|-------|-----|
| 1 N | 3 W | WM | 27 | NE SE | 50 |
| 1 N | 3 W | WM | 27 | SE SE | 50 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 27 | NE SE | 50 | 0.5 |

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | SW SW | 50 | 9.8 |
| 1 N | 3 W | WM | 27 | NE SE | 50 | 0.8 |
| 1 N | 3 W | WM | 27 | SE SE | 50 | 10.6 |

8. Application T-8919 proposes to change the character of use of both irrigation and supplemental irrigation under the right described by Certificate 26173 to agricultural (nursery) use.
9. Application T-8919 proposes to change the season of use of the stored water portion of the right described by Certificate 26173 to May 1 through November 30 of each year.
10. Application T-8919 also proposes to change the place of use of the right to:

| NURSERY USE | | | | | | | |
|-------------|-----|-----|-----|-------|-----|-------|--------------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres | Source |
| 1 N | 3 W | WM | 26 | SW NW | 50 | 12.5 | Stored water |
| 1 N | 3 W | WM | 27 | NE NE | 50 | 0.5 | Dairy Creek |
| 1 N | 3 W | WM | 27 | SE NE | 50 | 8.7 | Stored water |

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

Certificate: 46742 in the name of Cecil N Kindel (perfected under Permit S-24399)

Use: Irrigation of 5.7 acres

Priority Date: August 17, 1956

Rate: 0.07 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Dairy Creek, tributary to the Tualatin River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|-----|-----|-----|-----|-------|-----|--|
| 1 N | 3 W | WM | 26 | SW SW | 50 | 120 feet South and 210 feet West from the SW Corner of DLC 49. |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | SW NW | 50 | 0.4 |
| 1 N | 3 W | WM | 26 | SW SW | 50 | 5.3 |

12. Application T-8919 proposes to change the character of use of the right described by Certificate 46742 to agricultural (nursery) use.

13. Application T-8919 also proposes to change the place of use of the right to:

| NURSERY USE | | | | | | |
|-------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | NW NW | 50 | 0.7 |
| 1 N | 3 W | WM | 26 | SW NW | 50 | 0.3 |
| 1 N | 3 W | WM | 26 | NW SW | 50 | 4.2 |
| 1 N | 3 W | WM | 27 | NE NE | 50 | 0.5 |

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

Certificate: 38912 in the name of Cecil N Kindel (perfected under Permit S-33519)

Use: Irrigation of 0.8 acre

Priority Date: April 24, 1968

Rate: 0.01 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Dairy Creek, tributary to the Tualatin River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|-----|-----|-----|-----|-------|-----|---|
| 1 N | 3 W | WM | 26 | SW SW | 50 | 220 feet North and 720 feet East from the SW Corner of Section 26 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | SW NW | 50 | 0.8 |

15. Application T-8919 proposes to change the character of use of the right described by Certificate 38912 to agricultural (nursery) use.

16. Application T-8919 also proposes to change the place of use of the right to:

| NURSERY USE | | | | | | |
|-------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 1 N | 3 W | WM | 26 | NW NW | 50 | 0.7 |
| 1 N | 3 W | WM | 27 | SE NE | 50 | 0.1 |

17. On November 11, 2001, notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
18. On June 19, 2006, the Department issued a preliminary determination proposing to approve Transfer T-8919 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on June 27, 2006, and in the Hillsboro Argus on July 7, 14, and 21, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
19. On September 14, 2006 the Department issued a Final Order for the transfer, recorded at Special Order Volume 70, Pages 202-208. Following issuance of the order the Department recognized scrivener's errors in the statements of the rate and duty being transferred under Certificate 26173 (Finding of Fact #7, and Conditions #7 and #8 of the original order). Because of these errors, remaining right Certificate 81922 issued for the portion of Certificate 26173 not involved in the transfer also had a scrivener's error in the remaining rate. A correcting order was issued on July 30, 2012, recorded at Special Order Volume 88, pages 272-273, and remaining right Certificate 87712 was issued to supersede Certificate 81922.
20. Unfortunately, both the correcting order recorded at Special Order Volume 88, pages 272-273 and correcting Certificate 87712 also had errors in the transferred and remaining rates and duties for the right previously evidenced by Certificate 26173.
21. This order is issued to correct the scrivener's errors and to supersede the previous orders recorded at Special Order Volume 70, Pages 202-208 and Volume 88, pages 272-273. Certificate 87742 is issued to supersede Certificate 87712 and correctly state the rate from direct flow remaining for primary irrigation after approval of T-8919.
22. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
23. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
24. The proposed changes would not result in enlargement of the rights.
25. The proposed changes would not result in injury to other water rights.
26. The Certified Water Right Examiner for this transfer application and the watermaster have determined that there is an error in acreage description for Certificate 23053. The final proof map for Certificate 23053 needs to be shifted approximately 100 feet to the east in order to match the correct location of the water right shown in the final proof map for Certificate 26173.
27. The correct authorized place of use description for Certificate 23053 and the supplemental irrigation portion of Certificate 26173 is:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
|-----|-----|-----|-----|-------|-----|-------|
| 1 N | 3 W | WM | 26 | NW SW | 50 | 1.3 |
| 1 N | 3 W | WM | 26 | SW SW | 50 | 15.2 |
| 1 N | 3 W | WM | 27 | NE SE | 50 | 1.1 |
| 1 N | 3 W | WM | 27 | SE SE | 50 | 12.4 |

Conclusions of Law

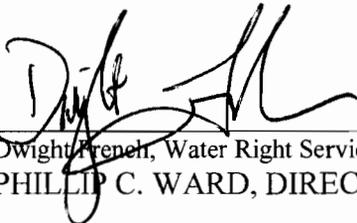
The changes in character of use and place of use in application T-8919 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000 and the scrivener’s error in Special Order Volume 70, Pages 192 to 195 should be corrected in the record.

Now, therefore, it is ORDERED:

1. The orders entered at Special Order Volume 70, Pages 202-208 and Special Order Volume 88, Pages 272-273 are withdrawn and of no further force and effect, and are superseded by this order. Certificate 87712 is cancelled and superseded by Certificate 87742.
2. The changes in character of use and place of use proposed in application T-8919 are approved.
3. Water right certificates 23053, 26172, 26173, 38912, and 46742 are cancelled. New certificates will be issued describing those portions of the rights described by Certificates 23053 and 26173 (incorporating the changed description of place of use stated in Finding of Fact #27), 38912, and 46742 not involved in this transfer. The description of the place of use for the remainder of the right evidenced by Certificate 23053 will incorporate corrections.
4. 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 23053, 26172, 26173, 38912, and 46742, and any related decree.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.
6. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The use of water for agricultural (nursery) use, under the right described by Certificate 23053, shall be limited to a rate of diversion of 0.27 cfs and shall not exceed a total quantity of 53.0 acre feet during the time period May 1 to September 30 of each year.

8. The use of water for agricultural (nursery) use from direct flow only from Dairy Creek, under the right described by Certificate 26173, shall be limited to a rate of diversion of 0.006 cfs and shall not exceed a total quantity of 1.25 acre feet during the time period May 1 to September 30 of each year.
9. The use of water for agricultural (nursery) use from stored water only, under the right described by Certificate 26173, shall not exceed a total quantity of 54.25 acre feet, further limited to 2.5 acre feet per acre in conjunction with any other right on the same lands, during the time period May 1 to November 30 of each year.
10. The use of water for agricultural (nursery) use, under the right described by Certificate 46742 shall be limited to a rate of diversion of 0.07 cfs and shall not exceed a total quantity of 14.25 acre feet during the time period May 1 to September 30 of each year.
11. The use of water for agricultural (nursery) use, under the right described by Certificate 38912 shall be limited to a rate of diversion of 0.01 cfs and shall not exceed a total quantity of 2.0 acre feet during the time period May 1 to September 30 of each year.
12. The former places of use of the transferred water shall no longer receive water as part of these rights.
13. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 22 day of August, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: **AUG 30 2012**