



4. On January 18, 2022, the Department signed a Final Order approving Transfer T-13837, which was mailed on January 19, 2022. The order is recorded at Special Order Volume 122, Pages 318-322.
5. This order is issued multiple correct scrivener's errors and supersedes the Final Order recorded at Special Order Volume 122, Pages 318-322.
  - a) In Finding of Fact #1, Permit G-12612 was incorrectly referenced as Permit G-13837.
  - b) The authorized and proposed places of use for Certificate 88122 and Permit G-12612 in Findings of Fact #6, #7, #8, #9, and #17, below, have been corrected from Township 2 North, to Township 1 North. The application map clearly shows the proposed places of use as being in Township 1 North. The affidavit for diminution also listed the place of use as being in Township 1 North.
  - c) The priority date listed in Finding of Fact #8 and #17, below, has been corrected from as June 23, 1965 to June 23, 1995.
  - d) The rate in Finding of Fact #8 below, was changed to from 0.02 cfs to 0.022 cfs to be consistent with the rate listed for the same lands under the same water right in Finding of Fact #17.
  - e) At the applicant's request, the water user for the proposed lands has been changed from Nish Land LLC & TD Farm LLC to the most current landowner, DCA Land Oregon, LLC.

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

**Certificate:** 88122 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-35792)

**Use:** IRRIGATION of 11.9 acres

**Priority Dates:** FEBRUARY 20, 1963

**Limits/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777 and as evidenced by Certificate 81149; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein. The right is further limited to the use of stored water on the lands described as supplemental irrigation.

**Source:** SCOGGINS CREEK, GALES CREEK, AND SCOGGINS RESERVOIR / HENRY HAGG LAKE (constructed under Permit R-5777), and GALES CREEK, tributaries to the Tualatin River; and the TUALATIN RIVER, tributary to the WILLAMETTE RIVER.

**Authorized Points of Diversion:**

| Twp | Rng | Mer | Sec | Q-Q   | LATITUDE-LONGITUDE   |
|-----|-----|-----|-----|-------|--|
| 1 S | 3 W | WM  | 08  | SW SW | SHPP: 45 DEGREES 29 MINUTES 32.73 SECONDS NORTH AND -123 DEGREES 05 MINUTES 33.85 SECONDS WEST |

**Authorized Place of Use:**

| IRRIGATION |     |     |     |       |     |       |         |   |
|------------|-----|-----|-----|-------|-----|-------|---------|---|
| Twp        | Rng | Mer | Sec | Q-Q   | DLC | Acres | Tax Lot | Water User  |
| 1 N        | 3 W | WM  | 5   | NE NW | 80  | 11.9  | 700     | Dan H. Fishback and Teresa K, Fishback Living Trust |

7. Transfer Application T-13837 proposes to change the place of use to:

**Proposed Place of Use:**

| IRRIGATION    |     |     |     |       |     |             |         |                       |
|---------------|-----|-----|-----|-------|-----|-------------|---------|-----------------------|
| Twp           | Rng | Mer | Sec | Q-Q   | DLC | Acres       | Tax Lot | Water User            |
| 1 N           | 3 W | WM  | 5   | NW NE | 80  | 2.9         | 200     | DCA Land Oregon, LLC. |
| 1 N           | 3 W | WM  | 5   | SW NE | 80  | 6.3         | 200     | DCA Land Oregon, LLC. |
| 1 N           | 3 W | WM  | 5   | SE NW | 80  | 2.7         | 200     | DCA Land Oregon, LLC. |
| <b>Total:</b> |     |     |     |       |     | <b>11.9</b> |         |                       |

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

**Permit:** G-12612 in the names of Keith R Fishback, Dan H. Fishback, and the Dan H. Fishback and Teresa L. Fishback Revocable Living Trust (Application G-14113)

**Use:** IRRIGATION and AGRICULTURAL USE (NURSERY OPERATIONS) on 11.9 acres

**Priority Dates:** JUNE 23, 1995

**Rate:** 0.022 CUBIC FOOT PER SECOND FOR EACH USE

**Limits/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 during the irrigation season of each 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:** A WELL within the DAIRY CREEK BASIN

**Authorized Point of Appropriation:**

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances   |
|-----|-----|-----|-----|-------|--|
| 1 N | 3 W | WM  | 05  | NE NW | 1310 FEET SOUTH AND 1340 FEET WEST FROM THE NW CORNER OF SECTION 5 |

**Authorized Place of Use:**

| AGRICULTURAL USE (NURSERY OPERATIONS) and<br>PRIMARY IRRIGATION DIMINISHED* TO SUPPLEMENTAL IRRIGATION |     |     |     |       |     |       |         |   |
|--|-----|-----|-----|-------|-----|-------|---------|---|
| Twp  | Rng | Mer | Sec | Q-Q   | DLC | Acres | Tax Lot | Water User  |
| 1 N  | 3 W | WM  | 5   | NE NW | 80  | 11.9  | 700     | Dan H. Fishback and Teresa K, Fishback Living Trust |

\*See Finding of Facts #16 and #17 for Diminution

9. Transfer Application T-13837 proposes to change the place of use to:

**Proposed Place of Use:**

| AGRICULTURAL USE (NURSERY OPERATIONS) and<br>SUPPLEMENTAL IRRIGATION DIMINISHED FROM PRIMARY IRRIGATION |     |     |     |       |     |             |         |                       |
|---|-----|-----|-----|-------|-----|-------------|---------|-----------------------|
| Twp   | Rng | Mer | Sec | Q-Q   | DLC | Acres       | Tax Lot | Water User            |
| 1 N   | 3 W | WM  | 5   | NW NE | 80  | 2.9         | 200     | DCA Land Oregon, LLC. |
| 1 N   | 3 W | WM  | 5   | SW NE | 80  | 6.3         | 200     | DCA Land Oregon, LLC. |
| 1 N   | 3 W | WM  | 5   | SE NW | 80  | 2.7         | 200     | DCA Land Oregon, LLC. |
| <b>Total:</b>   |     |     |     |       |     | <b>11.9</b> |         |                       |

10. The Department finds that the district permanent transfer application was submitted according to ORS 540.580 and OAR 690-385-4000, contains the information required under OARs 690-385-4200 and 690-385-2000, and includes maps meeting the requirements of OARs 690-385-4300 and 690-385-2200.
11. The Department finds that the proposed district permanent transfer meets all the criteria set forth in ORS 540.580 and OAR 690-385-4000.
12. The water right is subject to transfer as defined in OAR 690-385-0100(17).
13. The proposed change in places of use will not result in enlargement of the right as defined in OAR 690-385-0100(4).
14. The proposed change in place of use will not result in injury to other water rights as defined in OAR 690-385-0100(6).
15. Any other applicable requirements for district permanent water right transfers are met as required in OAR 690-385-4500.

**Partial Diminution of Permit G-12612**

16. The portion of water right Certificate 88122 involved in this transfer is layered with a portion of the authorized place of use place of use under Permit G-12612. The application requests the water uses be transferred to the same proposed place of use under both water rights. Therefore, to avoid layering of two primary water rights for irrigation, the portion of layered lands under Permit G-12612 will be diminished to supplemental irrigation as a result of this order.
17. On November 30, 2021, Dan H. Fishback and Teresa K, Fishback, trustees of the Dan H. Fishback and Teresa K, Fishback Living Trust, owner of lands to which a portion of Permit G-12612 is appurtenant, submitted an affidavit requesting a portion of Permit G-12612 be

diminished from primary irrigation to supplemental irrigation. The portion to be diminished is described as follows:

**Permit:** G-12612 in the names of Keith R Fishback, Dan H. Fishback, and the Dan H. Fishback and Teresa L. Fishback Revocable Living Trust (Application G-14113)

**Use:** IRRIGATION on 11.9 acres

**Priority Dates:** JUNE 23, 1995

**Rate:** 0.022 CUBIC FOOT PER SECOND FOR EACH USE

**Source:** A WELL within the DAIRY CREEK BASIN

**Place of Use to be diminished:**

| DIMINUTION FROM PRIMARY IRRIGATION TO<br>SUPPLEMENTAL IRRIGATION ON PERMIT G-12612 |     |     |     |       |     |       |         |
|--|-----|-----|-----|-------|-----|-------|---------|
| Twp  | Rng | Mer | Sec | Q-Q   | DLC | Acres | Tax Lot |
| 1 N  | 3 W | WM  | 5   | NE NW | 80  | 11.9  | 700     |

### Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-13837 comply with and satisfy the requirements of ORS 540.580 and OAR 690-385-4500, and the portion of the permit requested to be diminished from primary to supplemental irrigation should be diminished.

### Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 122, Pages 318 to 322 is withdrawn and of no further force and effect and is superseded by this order.
2. The proposed change in place of use to the water right evidenced by Certificates 88122 is approved.
3. The place of use from which the water right is transferred off by Transfer T-13837 shall no longer be irrigated and is cancelled from Certificate 88122.
4. The right to the use of the water at the place of use NOT modified by this order is restricted to beneficial and is subject to all other conditions and limitations contained in Certificate 88122.
5. The portion of the water right for the use of 0.022 cfs of well water for irrigation on 11.9 acres, as described in Finding of Facts #16, and 17, above, is diminished from a right for primary irrigation to a right for supplemental irrigation. The proposed change in place of use for agricultural use (nursery operations) and supplemental irrigation under Permit G-12612. is approved. Permit G-12612, is hereby modified by this transfer. The water use shall be in accordance with the terms and conditions of Permit G-12612.
6. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

