

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-10735, Yamhill County                        )     CHANGE IN POINT OF  
  )     APPROPRIATION

**Authority**

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

**Applicant**

CARLTON NURSERY CO. LLC  
PO BOX 398  
DAYTON, OR 97114

**Agent**

PACIFIC HYDRO-GEOLOGY INC.  
MALIA OR GREG KUPILLAS  
18477 S VALLEY VISTA RD  
MULINO, OR 97042

**Findings of Fact**

**Background**

1. On November 25, 2008, CARLTON NURSERY CO., LLC filed an application to change the point of appropriation under Certificate 84840. The Department assigned the application number T-10735.

2. The right to be transferred is as follows:

**Certificate:** 84840 in the name of CARLTON NURSERY, LLC (perfected under Permit G-5442)

**Use:** IRRIGATION of 19.4 ACRES

**Priority Date:** DECEMBER 9, 1971

**Rate:** 0.24 CUBIC FOOT PER SECOND

**Limit/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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, 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.

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

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.

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	9	NW SW	51	YAMH 6439 - 1880 FEET NORTH AND 920 FEET EAST FROM THE SW CORNER OF SECTION 9

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	9	SE NW	53	19.4

- Transfer Application T-10735 proposes to move the authorized point of appropriation approximately 1850 feet northeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	9	SE NW	53	3335 FEET NORTH AND 2285 FEET EAST FROM THE SW CORNER OF SECTION 9

- Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On December 15, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10735 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 19, 2010, for the applicant to respond. The deadline was moved to February 15, 2010, at the request of the applicant. 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.
- On February 19, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10735 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 February 23, 2010, and in the News-Register newspaper on February 27, March 6, and 13, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

**Transfer Review Criteria (OAR 690-380-4010)**

- 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.
- 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-10735.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

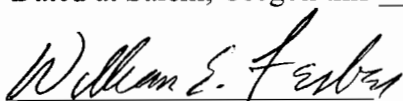
**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-10735 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 change in point of appropriation proposed in application T-10735 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 84840 and any related decree.
3. Water right certificate 84840 is cancelled.
4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point 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 diversion.
  - 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 point of appropriation.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 15<sup>th</sup> day of April, 2010.

  
for Phillip C. Ward, Director

Mailing Date: APR 19 2010