

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

In the Matter of Transfer Application            )  
T-9812, Yamhill County                            )  
  )  
  )     FINAL ORDER APPROVING A  
  )     CHANGE IN POINT OF  
  )     APPROPRIATION AND PARTIAL  
  )     DIMINISHMENT OF A WATER RIGHT

**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 LLC  
P.O. BOX 398  
DAYTON, OREGON 97114

**Findings of Fact**

**Background**

1. On November 1, 2004, Carlton Nursery, LLC filed an application to change the point of appropriation under Permit G-12154. The Department assigned the application number T-9812.
2. On June 24, 2005, the Department issued Water Right Certificate 81498 confirming Permit G-12154.
3. The portion of the right to be transferred is as follows:

**Certificate:** 81498 in the name of Roy and Darlene Smith (perfected under Permit G-12154)  
**Use:** Irrigation of 20.6 acres and agricultural use (orchard spraying)  
**Priority Dates:** APRIL 4, 1991 for 0.02 cubic foot per second (cfs) for irrigation; SEPTEMBER 15, 1992 for 0.01 cfs for irrigation; SEPTEMBER 15, 1992 for 2080.8 gallons per day (gpd) for agricultural use  
**Rate:** Limited to not more than 0.03 cfs for irrigation and 2080.8 gpd for agricultural use (orchard spraying)

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.

**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Period of Use:** Irrigation: March 1 through October 31; Agricultural use: year round.

**Source:** A well within the Willamette River Basin

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	33	NE NW	38	35 FEET NORTH AND 310 FEET EAST FROM THE NE CORNER OF A. MATHENY DLC 60.

**Authorized Place of Use:**

IRRIGATION AND AGRICULTURAL USES						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	28	SE SW	38	13.9
5 S	3 W	WM	28	SW SE	38	6.7

4. Transfer Application T-9812 proposes to move the authorized point of appropriation approximately 1200 feet North from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	28	SE SW	38	1220 FEET NORTH AND 270 FEET EAST FROM THE NE CORNER OF A. MATHENY DLC 60.

5. Notice of the application for transfer was published on November 9, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On March 20, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9812 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of April 20, 2009, 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.
7. On April 17, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9812 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 April 21, 2009 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)**

8. Water has been used within the last five years prior to the submittal of Transfer Application T-9812 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.

9. 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-9812.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

***Partial Diminution of a Water Right***

12. On November 1, 2004, an affidavit was received from Carlton Plants LLC, by Alan Elliott requesting that a portion of a water right be diminished to supplemental irrigation. The right to be diminished is as follows:

**Certificate:** 81498 in the name of Roy and Darlene Smith (perfected under Permit G-12154)  
**Use:** Irrigation of 20.6 acres  
**Priority Dates:** APRIL 4, 1991 for 0.02 cubic foot per second (cfs) for irrigation; SEPTEMBER 15, 1992 for 0.01 cfs for irrigation  
**Rate:** Limited to not more than 0.03 cfs for irrigation  
**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Period of Use:** Irrigation: March 1 through October 31  
**Source:** A well within the Willamette River Basin

**Authorized Place of Use to be diminished:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	28	SE SW	38	13.9
5 S	3 W	WM	28	SW SE	38	6.7

**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-9812 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the portion of the right proposed to be diminished will be diminished.

**Now, therefore, it is ORDERED:**

1. The change in point of appropriation proposed in Transfer Application T-9812 is approved.
2. The portion of the water right for the irrigation of 20.6 acres as described in Finding No. 12 is diminished from primary irrigation to supplemental irrigation.

3. 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 81498 and any related decree.
4. Water right certificate 81498 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and diminution.
5. 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.
6. Prior to water use from the proposed point of appropriation, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order.

The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

7. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
8. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 21<sup>ST</sup> day of May 2009.

  
Phillip C. Ward, Director

Mailing Date: JUN 01 2009