

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-12408, Marion County	)	CHANGE IN PLACE OF USE AND A
	)	CHANGE IN 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**

KRAEMER'S NURSERY, INC.  
PO BOX 930  
MT ANGEL, OR 97362

**Findings of Fact**

1. On June 9, 2016, KRAEMER'S NURSERY, INC. filed an application to change in place of use and a change in point of appropriation under Certificate 82906. The Department assigned the application number T-12408.
2. Notice of the application for transfer was published on June 14, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 23, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-12408 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on March 28, 2017, and in the Silverton Appeal Tribune newspaper on March 27, 2017 and April 12, 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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 February 23, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12408 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 24, 2017, for the applicant to respond. The applicant brought to the Department's attention that the Well ID noted for the proposed well on the application map contained a scrivener's error and should be labeled as MARI 9254. A revised map was submitted on March 2, 2017. The applicant requested to that the Department proceed with issuance of a Preliminary Determination and provided necessary information to demonstrate that the applicant is authorized to pursue the transfer.

5. The right to be transferred is as follows:

**Certificate:** 82906 in the name of ALAN J. KRAEMER  
(perfected under Permit G-10619)

**Use:** CONTAINERIZED NURSERY STOCK ON 8.0 ACRES AND  
IRRIGATION AND RELATED NURSERY USE ON 1.0 ACRE

**Priority Date:** APRIL 22, 1986

**Rate:** 111.732 GALLONS PER MINUTE (GPM) FOR CONTAINERIZED  
NURSERY STOCK AND 100.0 GPM FOR IRRIGATION AND  
RELATED NURSERY USE.

**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 in the WILLAMETTE BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	10	NE NE	480 FEET SOUTH AND 440 FEET WEST FROM THE NE CORNER OF SECTION 10

**Authorized Places of Use:**

CONTAINERIZED NURSERY STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	10	NE NE	8.0

IRRIGATION AND RELATED NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	10	SE NE	1.0

6. Transfer Application T-12408 proposes to move the authorized point of appropriation approximately 2900 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	2	NE SW	ROCK WELL - 1360 FEET NORTH AND 920 FEET WEST FROM THE S1/4 CORNER OF SECTION 2

7. Transfer Application T-12408 proposes to change the place of use of the right to:

CONTAINERIZED NURSERY STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	NE SW	8.0

IRRIGATION AND RELATED NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	SE SW	1.0

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

8. 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.
9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12408.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

**Conclusions of Law**

The change in place of use and point of appropriation proposed in Transfer Application T-12408 is consistent with the requirements of 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in place of use and point of appropriation proposed in Transfer Application T-12408 are 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 82906 and any related decree.
3. Water right Certificate 82906 is cancelled. A new certificate will be issued describing the portion of the right not affected by this transfer.
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 shall be acquired from the same aquifer (water source) as the original point of appropriation.

6. The former place of use of the transferred right shall no longer receive water under the right.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.

Dated at Salem, Oregon this 18 day of May, 2017.



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing date: MAY 26 2017