

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10882, Washington County) PROPOSING APPROVAL OF
) CHANGES IN PLACE OF USE AND
) CHARACTER OF USE

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

HILLSBORO LANDFILL INC
C/O MARK REEVES, LANDFILL ENGINEER
7227 NE 55TH AVENUE
PORTLAND OR 97218

Findings of Fact

Background

1. On May 19, 2009, HILLSBORO LANDFILL INC filed an application to change the place of use and to change the character of use under Certificate 85423. The Department assigned the application number T-10882.
2. On November 2, 2009, the agent for the applicant submitted revised transfer application maps and a revised Supplemental Form A.
3. The portion of the right to be transferred is as follows:

Certificate:	85423 in the name of OREGON GARDEN PRODUCTS (perfected under Permit G-12247)
Use:	NURSERY OPERATIONS ON 10.0 ACRES
Priority Date:	DECEMBER 13, 1990
Rate:	0.36 CUBIC FOOT PER SECOND (CFS), BEING 0.19 CFS FROM WELL NW3 AND 0.17 CFS FROM WELL NW5
Limit/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 diverted is limited to ONE-

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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 per year. The use of water for NURSERY OPERATIONS may be made at anytime 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.

Sources: WELLS NW3 AND NW5, in the TUALATIN RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	2 W	WM	7	NE SE	68	WELL NW3 - 1870 FEET NORTH AND 360 FEET WEST FROM THE SW CORNER OF SECTION 8
1 S	2 W	WM	7	NE SE	68	WELL NW5 - 2440 FEET NORTH AND 330 FEET WEST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	2 W	WM	7	NE SE	68	5.20
1 S	2 W	WM	8	NW SW	68	4.80

4. Transfer Application T-10882 proposes to change the character of use of 10.0 acres to INDUSTRIAL.
5. Transfer Application T-10882 also proposes to change the place of use of the right to:

INDUSTRIAL USE				
Twp	Rng	Mer	Sec	Q-Q
1S	2W	WM	7	SW NE
1S	2W	WM	7	SE NE
1S	2W	WM	7	NE SE
1S	2W	WM	7	NW SE
1S	2W	WM	7	SW SE
1S	2W	WM	7	SE SE
1S	2W	WM	8	NW SW
1S	2W	WM	8	SW SW
1S	2W	WM	18	NE NE
1S	2W	WM	18	NW NE
1S	2W	WM	18	SW NE
1S	2W	WM	18	NE NW
1S	2W	WM	18	SE NW

6. Notice of the application for transfer was published on May 26, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. The application maps did not initially show the same breakdown of acreage by quarter-quarter section as the final proof maps. This discrepancy was resolved by revision of the application maps.
8. On December 23, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10882 to the applicant. The draft Preliminary Determination set forth a deadline of December 23, 2009, for the applicant to respond. The applicant requested the Department extend the deadline several times in order to obtain consent to the transfer from the landholder.
9. On January 11, 2012, 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.

Transfer Review Criteria (OAR 690-380-4010)

10. Water has been used within the last five years prior to the submittal of Transfer Application T-1088210882 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
11. Pumps, pipelines, and a 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-1088210882.
12. The proposed change in character of use would not result in enlargement of the right provided the rate of diversion for industrial use is limited to a maximum of 0.36 cubic foot per second and further limited to a total volume diverted of 50 acre feet per year.
13. The proposed changes, as conditioned, would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-10882 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-10882 is approved, the final order will include the following:

1. *The changes in place of use and character of use proposed in Transfer Application T-10882 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 85423 and any related decree.*
3. *Water right certificate 85423 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

4. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of appropriation. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *The maximum rate of diversion for industrial use shall be limited to 0.36 cubic foot per second and further limited to a total volume diverted of 50 acre feet per year.*
7. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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 changes and full beneficial use of the water.*
8. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 12 day of January 2012.



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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrđ.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.