



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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June 7, 2013

Applicant

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

SUBJECT: Water Right Transfer Application T-11399

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11399. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice or 30 days after the last date of newspaper publication for T-11400, whichever is later.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11399
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Greg Kupillas, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11399, Yamhill County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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
ATTN: ALLAN ELLIOTT
PO BOX 398
DAYTON, OR 97114

Findings of Fact

Background

1. On April 12, 2012, CARLTON NURSERY CO. LLC filed an application to change the place of use under Certificates 79467 and 79468. The Department assigned the application number T-11399.
2. Notice of the application for transfer was published on April 17, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 17, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11399 to the applicant. The draft Preliminary Determination cover letter noted some deficiencies in the maps that would need to be corrected before a Final Order could be issued. The cover letter set forth a deadline of January 17, 2013, for the applicant to respond. The applicant's agent clarified that a re-description of the right was being requested, and submitted revisions to the application and maps, as well as providing the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
4. Revised application pages and maps were submitted on January 2, March 6 and April 1, 2013.

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.

5. On April 11, 2013, the Department sent a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11399 to the applicant. The revised draft Preliminary Determination cover letter also requested a replacement map (1 of 3). The applicant's agent requested that the Department proceed with issuance of a Preliminary Determination.

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

Certificate: 79467 in the name of U. S. ALDERMAN (perfected under Permit S-27687)
Use: IRRIGATION of 139.1 ACRES
Priority Date: NOVEMBER 10, 1961
Rate: 1.74 CUBIC FEET 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: LAMBERT SLOUGH, tributary to the WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances (on Final Proof map)
5 S	3 W	WM	3	SW SW	8	550 FEET SOUTH AND 100 FEET EAST FROM THE SE CORNER OF DLC 52
5 S	3 W	WM	10	NW NW	5	430 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF LOT 5

Authorized Place of Use (as listed in Certificate 79467):

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	13.2
5 S	3 W	WM	4	NE SW	52	24.4
5 S	3 W	WM	4	SE SW	52	5.0
5 S	3 W	WM	4	SE SW	53	30.0
5 S	3 W	WM	4	NW SE	52	3.4
5 S	3 W	WM	4	SW SE	52	0.4
5 S	3 W	WM	4	SW SE	53	30.4
5 S	3 W	WM	4	SE SE	53	19.8
5 S	3 W	WM	9	NE NE	53	7.3
5 S	3 W	WM	9	NW NE	53	3.6
5 S	3 W	WM	9	SW NE	53	1.6
Total						139.1

7. Certificate 79467 describes the authorized place of use as listed in Finding of Fact #6. However, the transfer application depicts how the Public Land Survey subdivisions overlie the place of use differently, as shown below, based on comparison with other property surveys and aerial photos:

Place of Use (as re-described by T-11399 application and map):

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	13.2
5 S	3 W	WM	4	NE SW	52	24.4
5 S	3 W	WM	4	SE SW	52	5.0
5 S	3 W	WM	4	SE SW	53	30.0
5 S	3 W	WM	4	NW SE	52	3.4
5 S	3 W	WM	4	SW SE	52	0.4
5 S	3 W	WM	4	SW SE	53	30.4
5 S	3 W	WM	4	SE SE	53	19.8
5 S	3 W	WM	9	NE NE	53	7.3
5 S	3 W	WM	9	NW NE	53	3.6
5 S	3 W	WM	9	SW NE	53	1.6
Total						139.1

8. The transfer application and map also re-describe the locations of the points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	3 W	WM	10	NW NW		53	POD 1: 608 FEET NORTH AND 40 FEET WEST FROM THE NORTHERLY NW CORNER OF DLC 54
5 S	3 W	WM	3	SW SW	8		POD 2: 520 FEET NORTH AND 1140 FEET EAST FROM THE SW CORNER OF SECTION 3

9. Application T-11399 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	4	NE SW	52	23.4
5 S	3 W	WM	4	SE SW	51	1.1
5 S	3 W	WM	4	SE SW	52	2.8
5 S	3 W	WM	4	SE SW	53	32.5
5 S	3 W	WM	4	NW SE	52	2.6
5 S	3 W	WM	4	SW SE	53	30.4
5 S	3 W	WM	4	SE SE	53	6.7
5 S	3 W	WM	9	NE NE	53	6.5
5 S	3 W	WM	9	NW NE	53	3.6
5 S	3 W	WM	9	SW NE	53	1.6
5 S	3 W	WM	16	NE NW	56	3.3
5 S	3 W	WM	16	NW NW	56	0.6
5 S	3 W	WM	16	SW NW	56	4.7
5 S	3 W	WM	16	SE NW	56	16.8
5 S	3 W	WM	16	NE SW	56	1.9
5 S	3 W	WM	16	NW SW	56	0.6
Total						139.1

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

Certificate: 79468 in the name of THOMAS J. CAMPBELL (perfected under Permit S-51918)

Use: NURSERY OPERATIONS ON 163.2 ACRES, BEING PRIMARY IRRIGATION OF 28.1 ACRES, SUPPLEMENTAL IRRIGATION OF 135.1 ACRES AND AGRICULTURAL USE

Priority Date: MARCH 11, 1993

Rate: 2.505 CUBIC FEET PER SECOND (CFS) AND 408.25 ACRE FEET (AF)

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cfs per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cfs (or its equivalent) and 5.0 AF per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cfs, (or its equivalent) and 2.5 AF 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 cfs (or equivalent) and 2.5 AF per acre during the irrigation season of each year. Water from live flow for AGRICULTURAL USE may be appropriated year-round. The use of water for irrigation from live flow is allowed March 1 through June 30 and September 1 through October 31. The use of water for irrigation from stored water is allowed March 1 through October 31 or as may be limited by the Bureau of Reclamation water supply contract.

Source: LAMBERT SLOUGH, tributary to the WILLAMETTE RIVER and WILLAMETTE BASIN RESERVOIRS constructed under PERMITS R-1625 and R-5363

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	3 W	WM	3	SW SW	8	POD 2: 550 FEET SOUTH AND 100 FEET EAST FROM THE SE CORNER OF DLC 52
5 S	3 W	WM	10	NW NW	5	POD 1: 430 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER OF LOT 5

Authorized Place of Use (as listed in Certificate 79468):

NURSERY USES: PRIMARY IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	2.6
5 S	3 W	WM	4	NW SE	52	5.5
5 S	3 W	WM	4	SW SE	52	1.4
5 S	3 W	WM	9	SW NE	53	12.4
5 S	3 W	WM	9	NE NW	53	1.4
5 S	3 W	WM	9	NE NW	51	0.1
5 S	3 W	WM	9	NW NW	51	0.6
5 S	3 W	WM	9	SW NW	51	1.3
5 S	3 W	WM	9	SE NW	51	0.2
5 S	3 W	WM	9	SE NW	53	2.3
5 S	3 W	WM	10	NW NW	53	0.3
Total						28.1

NURSERY USES: SUPPLEMENTAL IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	13.2
5 S	3 W	WM	4	NW SE	52	9.8
5 S	3 W	WM	4	SW SE	52	2.4
5 S	3 W	WM	4	SW SE	53	3.2
5 S	3 W	WM	4	SE SE	53	21.4
5 S	3 W	WM	9	NE NE	53	6.3
5 S	3 W	WM	9	NW NE	53	17.9
5 S	3 W	WM	9	SW NE	53	14.2
5 S	3 W	WM	9	NE NW	53	16.5
5 S	3 W	WM	9	NW NW	51	10.6
5 S	3 W	WM	9	SW NW	51	3.8
5 S	3 W	WM	9	SE NW	53	13.9
5 S	3 W	WM	10	NW NW	53	1.9
Total						135.1

11. Certificate 79468 describes the authorized place of use as listed in Finding of Fact #10. However, the transfer application depicts how the Public Land Survey subdivisions overlie the place of use differently, as shown below, based on comparison with other property surveys and aerial photos:

Place of Use (as re-described by T-11399 application and map):

NURSERY USES: PRIMARY IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	2.6
5 S	3 W	WM	4	NW SE	52	5.9
5 S	3 W	WM	4	SW SE	52	1.0
5 S	3 W	WM	9	SW NE	53	10.4
5 S	3 W	WM	9	NE NW	53	1.0
5 S	3 W	WM	9	NW NW	51	1.4
5 S	3 W	WM	9	SW NW	51	1.5
5 S	3 W	WM	9	SE NW	53	4.0
5 S	3 W	WM	10	NW NW	53	0.3
Total						28.1

NURSERY USES: SUPPLEMENTAL IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	13.2
5 S	3 W	WM	4	NW SE	52	9.8
5 S	3 W	WM	4	SW SE	52	1.3
5 S	3 W	WM	4	SW SE	53	6.3
5 S	3 W	WM	4	SE SE	53	21.4
5 S	3 W	WM	9	NE NE	53	6.2
5 S	3 W	WM	9	NW NE	53	17.9
5 S	3 W	WM	9	SW NE	53	14.2
5 S	3 W	WM	9	NE NW	53	16.5
5 S	3 W	WM	9	NW NW	51	10.6

NURSERY USES: SUPPLEMENTAL IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	9	SW NW	51	3.8
5 S	3 W	WM	9	SE NW	53	13.9
Total						135.1

12. The transfer application and map also re-describe the locations of the points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	3 W	WM	10	NW NW		53	POD 1: 608 FEET NORTH AND 40 FEET WEST FROM THE NORTHERLY NW CORNER OF DLC 54
5 S	3 W	WM	3	SW SW	8		POD 2: 520 FEET NORTH AND 1140 FEET EAST FROM THE SW CORNER OF SECTION 3

13. Application T-11399 proposes to change the place of use of the right to:

NURSERY USES: PRIMARY IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	3	SW SW	53	2.6
5 S	3 W	WM	4	NW SE	52	5.9
5 S	3 W	WM	4	SW SE	52	1.0
5 S	3 W	WM	9	SW NE	53	10.4
5 S	3 W	WM	9	NE NW	53	1.0
5 S	3 W	WM	9	NW NW	51	1.4
5 S	3 W	WM	9	SW NW	51	1.5
5 S	3 W	WM	9	SE NW	53	4.0
5 S	3 W	WM	10	NW NW	53	0.3
Total						28.1

NURSERY USES: SUPPLEMENTAL IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	4	NW SE	52	9.8
5 S	3 W	WM	4	SW SE	52	1.3
5 S	3 W	WM	4	SW SE	53	6.3
5 S	3 W	WM	4	SE SE	53	7.4
5 S	3 W	WM	9	NE NE	53	5.5
5 S	3 W	WM	9	NW NE	53	17.9
5 S	3 W	WM	9	SW NE	53	14.2
5 S	3 W	WM	9	NE NW	53	16.5
5 S	3 W	WM	9	NW NW	51	10.6
5 S	3 W	WM	9	SW NW	51	3.8
5 S	3 W	WM	9	SE NW	53	13.9
5 S	3 W	WM	16	NE NW	56	3.3
5 S	3 W	WM	16	NW NW	56	0.6
5 S	3 W	WM	16	SW NW	56	4.7
5 S	3 W	WM	16	SE NW	56	16.8
5 S	3 W	WM	16	NE SW	56	1.9
5 S	3 W	WM	16	NW SW	56	0.6

NURSERY USES: SUPPLEMENTAL IRRIGATION & AGRICULTURE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
Total						135.1

Transfer Review Criteria [OAR 690-380-4010(2)]

14. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11399.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

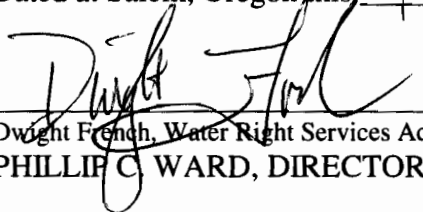
Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11399 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11399 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11399 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 Certificates 79467 and 79468 and any related decree.*
3. *Water right certificates 79467 and 97468 are cancelled. New certificates will be issued describing portions of the rights not affected by this transfer.*
4. *The former place of use of the transferred rights shall no longer receive water under the rights.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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.*
6. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of June, 2013.


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

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

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.