



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 15, 2014

VIA E-MAIL

KUPLINGER NURSERY
24075 KLUPENGER DRIVE
AURORA, OR 97002
Email - Ray@klupenger.com

SUBJECT: Water Right Transfer Application T-11505

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11505. 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 and in the Canby Herald newspaper, 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 last date of newspaper publication.

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 503-986-0886 or Patrick.K.Starnes@wrđ.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Application file T-11505
Joel Plahn, District 16 Watermaster (joel.m.plahn@wrđ.state.or.us)
James Schuette, CRWE/Agent for the applicant (jmsengineering@qwestoffice.net)
Carl Casale, RAMSAC Land LLC, Receiving Landowner (casale.ag@sbcglobal.net)
Commenters

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11505, Marion County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE, POINT
)	OF APPROPRIATION 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

Klupenger Nursery
24075 NE Butteville Road
Aurora, Oregon 97002

Receiving Landowner

Carl Casale - RAMSAC Land LLC.
1446 Delaware Avenue
West Saint Paul, Minnesota 55118

Findings of Fact

1. On December 19, 2012, Klupenger Nursery filed an application to change the point of appropriation, place of use and character of use under Certificates 83504, 84230 and 56068. The Department assigned the application T-11505.
2. Notice of the application for transfer was published on December 25, 2012 pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 28, 2014, the Department contacted Ray Klupenger by telephone to discuss several issues in the application that need clarification. The applicant agreed to the character of use change to irrigation on lands whereby the nursery use rights will be limited to a diversion of not to exceed one-eightieth of cubic foot per second and a 2.5 acre-feet duty limitation for the irrigation season identified as March 1 thru October 31 of each year. In addition, the applicant agreed to and willingly designates water right Certificate 83504 for nursery use as the primary irrigation right on the "TO" lands, and designates the other nursery use Certificate 84230 as the supplemental irrigation right. In other words, the TOTAL of both rights exceeds the full one-eightieth of one cfs per acre rate and therefore, the supplemental right will essentially be required to make up any deficiency of rate.

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.
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4. On October 3, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11505 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 3, 2014, 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.

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

Certificate: 83504 in the names of Northwest Farm Credit Services, KNG INC., and RDO Farm, Inc. (perfected under Permit G-10853)

Use: NURSERY USES OF 32.9 ACRES

Priority Date: NOVEMBER 24, 1987

Rate: 153.33 GALLONS PER MINUTE (GPM) OR ITS EQUIVALENT IN CASE OF A HIGHER PUMPING RATE FOR ONLY PART OF EACH DAY or its equivalent in case of rotation, measure at the well

Limitation: This right is limited to appropriation of water only to the extent that it does not impair or substantially interfere with prior surface water rights as well as prior ground water rights of others. If use of water under this right is found to interfere with the appropriation of ground water under prior existing water rights, use of the Klupenger Well 3 shall be regulated so as to eliminate the interference.

Source: KLUPENGER WELL 3, within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	34	SW NW	10 FEET NORTH AND 352 FEET EAST FROM THE W¼ CORNER OF SECTION 34

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

Certificate: 84230 in the name of Northwest Farm Credit Services, KNG INC., and RDO Farm, Inc. (perfected under Permit G-10852)

Use: NURSERY USES on 32.9 ACRES

Priority Date: MARCH 30, 1987

Rate: 43.81 GALLONS PER MINUTE (GPM), BEING 43.81 GPM FOR RELATED NURSERY USE AND 43.81 GPM FOR CONTAINERIZED NURSERY STOCK or its equivalent in case of rotation, measured at the well. This right is limited to appropriation of water only to the extent that it does not impair or substantially interfere with prior surface water rights as well as prior ground water rights of others. If use of water under this right is found to interfere with appropriation of water from Paul D. Daily's irrigation well (35/1W-33 aad), use of the Murray Well under this right shall be regulated so as to eliminate the interference.

Source: MURRAY WELL, within the WILLAMETTE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	34	NW NW	147 FEET NORTH AND 132 FEET EAST FROM THE NW CORNER OF THE SW¼ NW¼ OF SECTION 34

Authorized Place of Use for the above described rights:

NURSERY USES (CERTIFICATES 83504 & 84230)					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	34	NE NW	2.8
3 S	1 W	WM	34	NW NW	29.0
3 S	1 W	WM	34	SW NW	1.1
TOTAL:					32.9

7. Transfer Application T-11505 proposes to change the character of use for the above described rights from nursery uses to irrigation. The new proposed use will be limited to the irrigation season, which is March 1 through October 31st of each year. The applicant has also agreed to an instantaneous rate of one-eightieth of one cubic foot per second for each acre irrigated under Certificates 83504 and 84230 at the new proposed place of use, further restricted to an amount not to exceed the actual, permitted rate prescribed in the originating rights.
8. Transfer Application T-11505 also proposes to change the place of use of the above described water rights, designating water right Certificate 83504 as the primary right and Certificate 84230 as the supplemental right for irrigation at the new place of use located:

PRIMARY (IR) AND SUPPLEMENTAL IRRIGATION (IS)						
Twp	Rng	Mer	Sec	Q-Q	Certificate (acres)	
					83504 (IR)	84230 (IS)
3 S	1 W	WM	34	SE NW	17.7	17.7
3 S	1 W	WM	34	NE SW	5.9	5.9
3 S	1 W	WM	34	NW SW	9.3	9.3
TOTAL:					32.9	32.9

9. The third right to be transferred is as follows:

Certificate: 56068 in the name of KLUPENGER'S NURSERY AND GREENHOUSES, INC. (perfected under Permit G-7786)

Use: IRRIGATION of 9.6 ACRES

Priority Date: AUGUST 24, 1977

Rate: 0.12 CUBIC FOOT PER SECOND

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: TWO WELLS within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL #1 - 260 FEET NORTH AND 30 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 33
3 S	1 W	WM	33	SE NE	WELL #2 - 150 FEET NORTH AND 190 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	34	NW SW	9.6

10. Transfer Application T-11505 proposes to change the point of appropriation of the above described right east approximately 475 feet to Well #3 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL #3 (MARI 163) - 10 FEET NORTH AND 352 FEET EAST FROM THE W $\frac{1}{4}$ CORNER OF SECTION 34

11. The Department has determined that the proposed point of appropriation, Well #3 (MARI 163) develops the same (source) aquifer as that of the original authorized Wells #1 and #2 (MARI 160 and MARI 154), and complies with the Department's administrative rule under OAR 690-380-4010 (2)(e).

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the five years prior to the submittal of Transfer Application T-11505 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.
13. Wells, pumps, pipeline, and sprinkler systems 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-11505.
14. The proposed change would not result in enlargement of the rights. The use of water at the proposed place of use for irrigation under Certificates 83504 (IR) and 84230 (IS) will be limited to a diversion of not to exceed one-eightieth of one cfs and 2.5 acre-feet per acre duty limitation for the irrigation season identified as March 1 thru October 31 of each year, and, shall be subject to all other conditions and limitations contained in the Certificates.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The changes in point of appropriation, character of use, and place of use proposed in Transfer Application T-11505 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-11505 is approved, the final order will include the following:

- 1. The changes in point of appropriation, character of use and place of use proposed in Transfer Application T-11505 are approved.*
- 2. Water right Certificates 83504, 84230 and 56068 are cancelled. New certificates will be issued describing those portions of the Certificates 83504 and 84230 not affected by this transfer.*
- 3. The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 83504, 84230, 56068, and any related decree.*
- 4. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points 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 new point of appropriation.*
 - b. The water user shall maintain the meter or measuring device in good working order.*
 - c. The water user 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.*
- 6. Water shall be acquired from the same aquifer (water source) as the original points of appropriation described in Certificate 56068.*
- 7. The former places of use of the transferred rights shall no longer receive water under the rights.*
- 8. The quantity of water allowed for irrigation use under the right described by Certificate 83504 shall not exceed a rate of diversion of ONE-EIGHTIETH of one cubic foot per second for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre during the irrigation season of March 1 to October 31 of each year.*

9. *The quantity of water allowed for supplemental irrigation use under the right described by Certificate 84230, together with any other right existing for the same lands, shall not exceed a rate of diversion of ONE-EIGHTIETH of one cubic foot per second for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre during the irrigation season of March 1 to October 31 of each year.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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 changes and full beneficial use of the water.*
11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15 day of December, 2014.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrđ.state.or.us.