



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 26, 2015

RAYMOND ETHELL  
BROADACRES NURSERY  
PO BOX 41  
HUBBARD, OR 97032

SUBJECT: Water Right Transfer Application T-12002

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12002. 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 Harold 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@ wrd.state.or.us](mailto:Patrick.K.Starnes@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-12002  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
Doann Hamilton, Agent/CWRE for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12002, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND PLACE OF
	)	USE

**Authority**

Oregon Revised Statute (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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

RAYMOND ETHELL  
BROADACRES NURSERY  
PO BOX 41  
HUBBARD, OR 97032

**Findings of Fact**

1. On March 10, 2015, RAYMOND ETHELL, BROADACRES NURSERY filed an application to change the point of appropriation and place of use under Certificate 26990. The Department assigned the application number T-12002.
2. Notice of the application for transfer was published on March 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 17, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12002 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 18, 2015, 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

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.
--

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

**Certificate:** 26990 in the name of ISAAC HARVEY DeGROFF (perfected under Permit-G-331)  
**Use:** IRRIGATION OF 2.0 ACRES  
**Priority Date:** AUGUST 9, 1956  
**Rate:** 0.02 CUBIC FOOT 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, 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.  
**Source:** A WELL within the SENEAL CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	31	NE NW	59	WELL (MARI 873) - 42 CHAINS WEST AND 11.2 CHAINS NORTH FROM THE SE CORNER OF G. SENESCHAL DLC 59

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	31	NW NE	59	1.8
4 S	1 W	WM	31	NE NW	59	0.2
Total						2.0

5. Transfer Application T-12002 proposes to move the authorized point of appropriation approximately  $\frac{3}{4}$  of a mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	36	NE NE	52	WELL 1 (MARI 1408) - 860 FEET SOUTH AND 1110 FEET WEST FROM THE NE CORNER OF SECTION 36

6. Transfer Application T-12002 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	36	NE NE	52	2.0

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

7. 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.
8. 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-12002.

9. The proposed changes would not result in enlargement of the right.
10. The proposed changes would not result in injury to other water rights.
11. All other application requirements are met.

### **Determination and Proposed Action**

The change in point of appropriation and place of use proposed in Transfer Application T-12002 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-12002 is approved, the final order will include the following:*

1. *The change in point of appropriation and place of use proposed in Transfer Application T-12002 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 26990 and any related decree.*
3. *Water right Certificate 26900 is cancelled. A new certificate will be issued describing that 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 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 point of appropriation (new and existing).*
  - b. *The water user shall maintain the meters or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are 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 point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2017. 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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 27 day of October 2015.



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or [marcy.j.osborn@wrdd.state.or.us](mailto:marcy.j.osborn@wrdd.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.