



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

April 21, 2016

VIA E-MAIL

CITY OF DAYTON
ATTN: SCOTT PINGEL
PO BOX 339
DAYTON, OR 97114-0339

SUBJECT: Water Right Transfer Application T-12140

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12140. 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 Yamhill Valley News Register 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 Tracy.L.Fox@wrđ.state.or.us or 503-986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-12140
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Ted Ressler, Agent for the applicant and CWRE (*via e-mail*)
enclosure

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12140, Yamhill County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, ADDITIONAL
)	POINTS OF APPROPRIATION, PLACE
)	OF USE AND CHARACTER OF USE

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

CITY OF DAYTON
ATTN: SCOTT PINGEL, CITY MANAGER
PO BOX 339
DAYTON, OR 97114-0339

Findings of Fact

1. On August 20, 2015, the CITY OF DAYTON filed an application for additional points of appropriation and to change the place of use and to change the character of use under Certificates 68768, 82997, and 89940. The Department assigned the application number T-12140.
2. Notice of the application for transfer was published on September 1, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

3. On February 9, 2016, the Department contacted the applicant's agent by telephone and by written correspondence (email) to notify them of deficiencies in the application. The deficiencies being discrepancies in the "measured distances" description of a couple of the points of appropriation; clarification of the location of the types of use on Certificate 82997; clarification of the type changes on Certificate 68768; and an authorized point of appropriation missing from the application map. The Department requested that the deficiencies be resolved by March 10, 2016.
4. On March 9, 2016, revised application pages and maps were submitted, resolving the deficiencies. As part of the resolution, for Certificate 68768, it was determined that the type of change is a change in point of appropriation as opposed to adding additional points of appropriation.
5. On March 14, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12140 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 13, 2016, for the applicant to respond. The applicant noted a scrivener's error in the number of acres for greenhouse use under the description of Certificate 82997 and requested that clarification of the total duty be included in the order. With that change and correction, 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. The changes are in **bold and underlined** in this Preliminary Determination.
6. The portion of the first right to be transferred is as follows:

Certificate: 68768 in the name of LOUIS J. SCALVINI (perfected under Permit G-10797)

Use: NURSERY OPERATIONS, INCLUDING CONTAINERIZED NURSERY STOCK ON 3.15 ACRES, GREENHOUSE USE ON 0.72 ACRE AND RELATED NURSERY USES ON 5.45 ACRES

Priority Date: OCTOBER 1, 1987

Rate: 110.2 GALLONS PER MINUTE (GPM)

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 110.2 GPM, BEING 110.2 GPM FOR CONTAINERIZED NURSERY STOCK, 87.5 GPM FOR GREENHOUSE, AND 110.2 GPM FOR RELATED NURSERY USES or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: WELL NO. 3 in the WILLAMETTE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	19	SE NE	WELL 3: 2410 FEET SOUTH AND 870 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	3 W	WM	19	SW NE	0.07
4 S	3 W	WM	19	SE NE	9.25
Total:					9.32

7. Transfer Application T-12140 proposes to change the point of appropriation, described as follows, with the approximate distances in feet from the existing point of appropriation as identified below:

MUNICIPAL							
Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance
4 S	3 W	WM	19	SE NE	48	WELL 1: 830 FEET NORTH AND 1100 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	491
4 S	3 W	WM	19	SE NE	48	WELL 2: 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19	371
4 S	3 W	WM	19	SE NE	48	WELL 3: 220 FEET NORTH AND 880 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	354
4 S	3 W	WM	19	NW SE	48	WELL 4: 545 FEET SOUTH AND 1840 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1560
4 S	3 W	WM	19	SE NE	48	WELL 5: 685 FEET NORTH AND 1140 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	457
4 S	3 W	WM	19	SE NE	48	WELL 6: 1085 FEET NORTH AND 1010 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	630
4 S	3 W	WM	19	NW SE	48	WELL 7: 300 FEET SOUTH AND 2190 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1697
4 S	3 W	WM	19	SW NE	48	WELL 8: 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19	1400
4 S	3 W	WM	19	NW NE	48	WELL 9: 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19	1617

8. Transfer Application T-12140 also proposes to change the place of use of the right to:
WITHIN THE CITY OF DAYTON SERVICE AREA
9. As a point of clarification, the authorized point of appropriation (Well No. 3) is a different well than Well 3 in the above table.
10. The portion of the second right to be transferred is as follows:
Certificate: 82997 in the name of LOUIS SCALVINI (perfected under Permit G-10738)

Use: GENERAL NURSERY USES on 9.32 ACRES AND GREENHOUSE USES ON 5.12 ACRES
Priority Date: SEPTEMBER 19, 1986
Rate: 81 GALLONS PER MINUTE (GPM), BEING 52 GPM FROM WELL 1 AND 29 GPM FROM WELL 2
Source: WELL 1 and WELL 2 in the WILLAMETTE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 1: 1800 FEET SOUTH AND 1040 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 2: 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	General Nursery Acres	General Nursery & Greenhouse Acres
4 S	3 W	WM	19	SW NE	48	0.07	0
4 S	3 W	WM	19	SE NE	48	4.13	5.12
Total:						4.2	5.12

11. Transfer Application T-12140 proposes seven additional points of appropriation, described as follows, with the approximate distances in feet from the existing points of appropriation as identified below:

MUNICIPAL								
Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance from:	
							Well 1	Well 2
4 S	3 W	WM	19	SE NE	48	WELL 3: 220 FEET NORTH AND 880 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	648	695
4 S	3 W	WM	19	NW SE	48	WELL 4: 545 FEET SOUTH AND 1840 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1562	1817
4 S	3 W	WM	19	SE NE	48	WELL 5: 685 FEET NORTH AND 1140 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	150	454
4 S	3 W	WM	19	SE NE	48	WELL 6: 1085 FEET NORTH AND 1010 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	270	327
4 S	3 W	WM	19	NW SE	48	WELL 7: 300 FEET SOUTH AND 2190 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1570	1882
4 S	3 W	WM	19	SW NE	48	WELL 8: 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19	1009	1374

MUNICIPAL								
Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance from:	
							Well 1	Well 2
4 S	3 W	WM	19	NW NE	48	WELL 9: 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19	1126	1395

12. Transfer Application T-12140 also proposes to change the place of use of the right to:
WITHIN THE CITY OF DAYTON SERVICE AREA

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

Certificate: 89940 in the name of CITY OF DAYTON (perfected under Permit G-15906)

Use: NURSERY USE on 5.87 ACRES

Priority Date: AUGUST 22, 2001

Rate: 0.56 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for nursery use is limited to a maximum of 5.0 acre-feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second and 5.0 acre-feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre per year. The use of water for nursery use may be made any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre during the irrigation season of each year.

Period of Use: YEAR ROUND

Source: TWO WELLS in the PALMER CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 1 (YAMH 5370): 830 FEET NORTH AND 1100 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 3 (YAMH 52469): 220 FEET NORTH AND 880 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19

Authorized Place of Use:

NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	19	SW NE	48	0.07
4 S	3 W	WM	19	SE NE	48	5.80
Total:						5.87

14. Transfer Application T-12140 proposes seven additional points of appropriation, described as follows, with the approximate distances in feet from the existing points of appropriation as identified below:

MUNICIPAL								
Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance from:	
							Well 1	Well 3
4 S	3 W	WM	19	SE NE	48	WELL 2: 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19	366	695
4 S	3 W	WM	19	NW SE	48	WELL 4: 545 FEET SOUTH AND 1840 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1562	1228
4 S	3 W	WM	19	SE NE	48	WELL 5: 685 FEET NORTH AND 1140 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	150	533
4 S	3 W	WM	19	SE NE	48	WELL 6: 1085 FEET NORTH AND 1010 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	270	875
4 S	3 W	WM	19	NW SE	48	WELL 7: 300 FEET SOUTH AND 2190 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 19	1570	1410
4 S	3 W	WM	19	SW NE	48	WELL 8: 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19	1009	1311
4 S	3 W	WM	19	NW NE	48	WELL 9: 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19	1126	1710

15. Transfer Application T-12140 also proposes to change the place of use of the right to:
 WITHIN THE CITY OF DAYTON SERVICE AREA

16. Transfer Application T-12140 proposes to change the character of use to MUNICIPAL.

Transfer Review Criteria (OAR 690-380-4010)

17. 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.
18. 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-12140.
19. **The proposed change in character of use from nursery to municipal use could result in enlargement of the right, unless conditioned to limit the rate of diversion under the rights to a total of 442.5 gallons per minute (gpm), being 110.2 gpm under Certificate 68768; 81 gpm under Certificate 82997 and 251.3 gpm under Certificate 89940 and further limit the total volume of water being diverted under the rights to 46.6 acre feet (9.32 acres X 5.0 acre feet/acre) under Certificate 68768 annually; 46.6 acre feet (9.32**

acres X 5.0 acre feet/acre) under Certificate 82997 annually; and 29.35 acre feet (5.87 acres X 5.0 acre feet/acre) under Certificate 89940 annually.

20. The proposed changes, as conditioned, would not result in enlargement of the rights.
21. The proposed changes, as conditioned, would not result in injury to other water rights.
22. All other application requirements are met.

Determination and Proposed Action

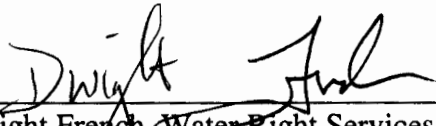
The change in point of appropriation, additional points of appropriation, change in place of use and change in character of use proposed in Transfer Application T-12140 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12140 is approved, the final order will include the following:

1. *The change in point of appropriation, additional points of appropriation, change in place of use and change in character of use proposed in Transfer Application T-12140 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 Certificates 68768, 82997, and 89940 and any related decree.*
3. *Water right Certificates 68768, 82997, and 89940 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation, or the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. **The amount of water used for the proposed municipal use shall be limited to a rate of 442.5 gallons per minute (gpm), being 110.2 gpm under Certificate 68768; 81 gpm under Certificate 82997 and 251.3 gpm under Certificate 89940 and shall not exceed a total volume of water diverted of 46.6 acre feet under Certificate 68768; 46.6 acre feet under Certificate 82997; and 29.35 acre feet (5.87 acres X 5.0 acre feet/acre) under Certificate 89940, annually.**
6. *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.*
 - 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.*

7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2036**. 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.*
10. *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 April, 2016.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266