



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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August ~~22~~, 2016

DON AND LE'ANN MARJAMA
DON MARJAMA NURSERY CO.
11333 SE BLUFF RD
SANDY, OR 97055

SUBJECT: Water Right Transfer Application T-12118

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12118. 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 Sandy Post 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@ wrd.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-12118
Amy J. Kim, District 20 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant and CWRE #85503 (*via e-mail*)

enclosures

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12118, Clackamas County) **PROPOSING APPROVAL OF**
) **ADDITIONAL POINTS OF**
) **APPROPRIATION**

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.

Applicants

DON AND LE’ANN MARJAMA
DON MARJAMA NURSERY CO.
11641 SE BLUFF RD
SANDY, OR 97055

Findings of Fact

1. On July 31, 2015, DON AND LE’ANN MARJAMA / DON MARJAMA NURSERY CO. filed an application for additional points of appropriation under Certificate 67130. The Department assigned the application number T-12118.
2. Notice of the application for transfer was published on August 4, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 23, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12118 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 22, 2016, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

Certificate: 67130 in the name of DON AND LE’ANN MARJAMA DBA
DON MARJAMA NURSERY CO. (perfected under Permit G-11066)
Use: NURSERY OPERATIONS ON 69.65 ACRES
Priority Date: SEPTEMBER 7, 1989
Rate: 1.24 CUBIC FEET PER SECOND (CFS), BEING 0.31 CFS FROM
WELL 1 AND 0.93 CFS FROM WELL 2

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.

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 of water diverted is limited to ONE-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.

Source: TWO WELLS, within the SANDY RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 E	WM	35	SW NE	WELL 1 - 420 FEET NORTH AND 707.65 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 35
1 S	4 E	WM	35	SE NW	WELL 2 - 292.67 FEET NORTH AND 624.58 FEET WEST FROM THE C ¹ / ₄ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 E	WM	35	SW NE	28.75
1 S	4 E	WM	35	SE NW	29.30
1 S	4 E	WM	35	NW SE	11.60
Total:					69.65

5. Transfer Application T-12118 proposes four additional points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Wells
1 S	4 E	WM	35	NE SW	WELL 3 - 215 FEET SOUTH AND 395 FEET WEST FROM THE C ¹ / ₄ OF SECTION 35	WELL 1 - 1350 FEET WELL 2 - 550 FEET
1 S	4 E	WM	35	SE NW	WELL 4 - 360 FEET NORTH AND 1310 FEET WEST FROM THE C ¹ / ₄ OF SECTION 35	WELL 1 - 2000 FEET WELL 2 - 695 FEET
1 S	4 E	WM	35	SE NW	WELL 5 - 830 FEET NORTH AND 1080 FEET WEST FROM THE C ¹ / ₄ OF SECTION 35	WELL 1 - 1350 FEET WELL 2 - 620 FEET
1 S	4 E	WM	35	SE NW	WELL 6 - 30 FEET NORTH AND 1300 FEET WEST FROM THE C ¹ / ₄ OF SECTION 35	WELL 1 - 2053 FEET WELL 2 - 725 FEET

Transfer Review Criteria (OAR 690-380-4010)

6. 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.

7. 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-12118.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12118 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-12118 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12118 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 67130 and any related decree.*
3. *Water right Certificate 67130 is cancelled.*
4. *The quantity of water diverted at 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. *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 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. *Static Water Level Conditions:*

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each new point of appropriation. The static water level shall be measured in the month of March. Reports shall be submitted to the

Department within 30 days of measurement.

The Department requires the water user to measure and report annual static water levels for each new point of appropriation. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The water user shall submit an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to measure and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and*
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and*
- C. Specify the method of measurement; and*
- D. Certify the accuracy of all measurements and calculations submitted to the Department.*

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the wells if any of the following events occur:

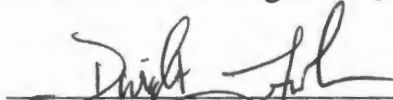
- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or*
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or*
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or*
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.*

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow

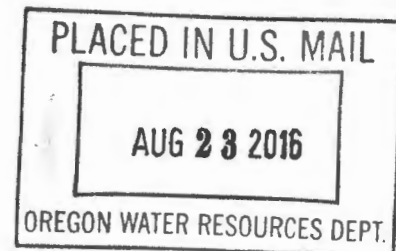
excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The proposed wells must be continuously cased and continuously sealed into the deep Troutdale Formation and must produce water from between 260 feet and 600 feet below land surface.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 22 day of August, 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@wr.d.state.or.us.

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

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>