



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
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March 13, 2017

VIA E-MAIL

AGILE DEVELOPMENT, LLC
C/O ERICK POLK
805 SW BROADWAY SUITE 2400
PORTLAND, OR 97205

SUBJECT: Water Right Transfer Application T-12333

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12333. 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 503-986-0890 or Sarah.A.Henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12333
Amy J. Kim, District 20 Watermaster (*via e-mail*)
Doann Hamilton, Agent and CWRE 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-12333, Clackamas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION 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

AGILE DEVELOPMENT, LLC
C/O ERICK POLK
805 SW BROADWAY SUITE 2400
PORTLAND, OR 97205

Findings of Fact

1. On April 12, 2016, AGILE DEVELOPMENT, LLC C/O ERICK POLK filed an application to change the point of appropriation and to change the character of use under Certificate 58345. The Department assigned the application number T-12333.
2. Notice of the application for transfer was published on April 19, 2016 and re-noticed with the correct Certificate on November 22, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notices.
3. On January 27, 2017, the Department notified the applicants' agent about the deficiency regarding the information for the additional Well 3. On January 31, 2017, the agent submitted amended application pages and map removing Well 3 and resolving the deficiency.
4. On February 13, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12333 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2017, 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.
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5. The right to be transferred is as follows:

Certificate: 58345 in the name of LEONARD JOHNSON, C/O DARREL JOHNSON
(perfected under Permit G-7673)

Use: IRRIGATING 9.84 ACRES

Priority Date: JUNE 14, 1977

Rate: 0.12 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 GRIBBLE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	16	SE NE	1600 FEET SOUTH AND 1550 FEET EAST FROM THE N1/4 CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	16	SW NE	6.54
4 S	1 E	WM	16	SE NE	3.30
Total					9.84

6. Certificate 58345 does not specify the irrigation season. However, the Willamette Basin Program establishes the irrigation season for the area as March 1 to October 31.

7. Transfer Application T-12333 proposes to move the authorized point of appropriation approximately 288.3 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	16	SE NE	WELL 2 – 1875 FEET SOUTH AND 1460 FEET EAST FROM THE N1/4 CORNER OF SECTION 16

8. Transfer Application T-12333 proposes to change the character of use to Nursery use. The use will be limited to the irrigation season of March 1 to October 31.

9. The total volume of water that may be diverted for Nursery use is 24.6 acre-feet, March 1 to October 31. ($2.5 \times 9.84 = 24.6$)

Transfer Review Criteria (OAR 690-380-4010)

10. 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.

11. 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-12333.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

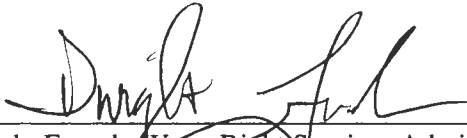
The change in point of appropriation and change in character of use proposed in Transfer Application T-12333 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12333 is approved, the final order will include the following:

1. *The change in point of appropriation and change in character of use proposed in Transfer Application T-12333 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 58345 and any related decree.*
3. *Water right Certificate 58345 is cancelled.*
4. *The use of water under the right described by Certificate 58345 under the proposed nursery use shall be limited to a rate of diversion of 0.12 cfs and further limited to a total quantity of water diverted of 24.6 acre-feet during the irrigation season March 1 to October 31.*
5. *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.*
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 the 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.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 13 day of March 2017.


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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@oregon.gov

Protests should be addressed to the attention of Water Rights 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>