



Oregon

Kate Brown, Governor

Water Resources Department

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March 22, 2017

Applicant

KRAEMER'S NURSERY, INC.
PO BOX 930
MT ANGEL, OR 97362

SUBJECT: Water Right Transfer Application T-12408

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12408. 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 Silverton Appeal 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 Jessica.L.Joye@oregon.gov or by phone at (503)986-0814, if I may be of assistance.

Sincerely,

Jessica L. Joye
Transfer Specialist
Transfer and Conservation Section

cc: T-12408 File
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12408, Marion County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND A CHANGE IN
)	PLACE 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.

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Findings of Fact

1. On June 9, 2016, KRAEMER'S NURSERY, INC. filed an application to change the point of appropriation and to change the place of use under Certificate 82906. The Department assigned the application number T-12408.
2. Notice of the application for transfer was published on June 14, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 23, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12408 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 24, 2017, for the applicant to respond. The applicant brought to the Department's attention that the Well ID noted for the proposed well on the application map contained a scrivener's error and should be labeled as MARI 9254. A revised map was submitted on March 2, 2017. The applicant requested to that the Department proceed with issuance of a Preliminary Determination and provided 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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4. The right to be transferred is as follows:

- Certificate:** 82906 in the name of ALAN J. KRAEMER
(perfected under Permit G-10619)
- Use:** CONTAINERIZED NURSERY STOCK ON 8.0 ACRES AND
IRRIGATION AND RELATED NURSERY USE ON 1.0 ACRE
- Priority Date:** APRIL 22, 1986
- Rate:** 111.732 GALLONS PER MINUTE (GPM) FOR CONTAINERIZED
NURSERY STOCK AND 100.0 GPM FOR IRRIGATION AND
RELATED NURSERY USE.
- Limit/Duty:** The amount of water used for irrigation, together with the amount secured
under any other right existing for the same lands, is limited to a diversion
of ONE-EIGHTIETH of one cubic foot per second, 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 in the WILLAMETTE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	10	NE NE	480 FEET SOUTH AND 440 FEET WEST FROM THE NE CORNER OF SECTION 10

Authorized Places of Use:

CONTAINERIZED NURSERY STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	10	NE NE	8.0

IRRIGATION AND RELATED NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	10	SE NE	1.0

5. Transfer Application T-12408 proposes to move the authorized point of appropriation approximately 2900 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	1 W	WM	2	NE SW	ROCK WELL - 1360 FEET NORTH AND 920 FEET WEST FROM THE S1/4 CORNER OF SECTION 2

6. Transfer Application T-12408 proposes to change the place of use of the right to:

CONTAINERIZED NURSERY STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	NE SW	8.0

IRRIGATION AND RELATED NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	1 W	WM	2	SE SW	1.0

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 was present within the five-year period prior to submittal of Transfer Application T-12408.
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

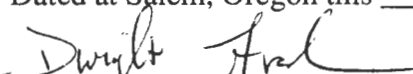
The change in point of appropriation and change in place of use proposed in Transfer Application T-12408 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12408 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in Transfer Application T-12408 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 82906 and any related decree.*
3. *Water right Certificate 82906 is cancelled. A new certificate will be issued describing the 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 shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*

7. *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 change and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 23 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 Jessica Joye. If you have any questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@oregon.gov

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, 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>