



Oregon
Kate Brown, Governor

Water Resources Department
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April 5, 2017

ALFRED MEISNER
8900 NW DICK RD
HILLSBORO, OR 97124-8512

SUBJECT: Water Right Transfer Application T-12331

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12331. 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 Hillsboro Tribune 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 503-986-0806 or arla.l.heard@oregon.gov if I may be of assistance.

Sincerely,

Arla L Heard
Transfer Specialist
Transfer and Conservation Section

cc: T-12331
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Bill Flatz, 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-12331, Washington 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.

Applicant

ALFRED MEISNER
CASCADIAN NURSERIES
8900 NW DICK RD
HILLSBORO, OR 97124-8512

Findings of Fact

1. On April 7, 2016, ALFRED MEISNER; CASCADIAN NURSERIES INC. filed an application for additional point of appropriation under Certificates 88631, 89544, 89545, 90310, and 90311. The Department assigned the application number T-12331.
2. Notice of the application for transfer was published on April 12, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 24, 2017, the Department emailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12331 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2017 to respond and was extended to March 15, 2017 by request of the applicant. 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.
4. The first right to be transferred is as follows:
Certificate: 88631 in the name of CASCADIAN NURSERIES INC. (perfected under Permit G-15372)
Use: NURSERY USES on 20.0 ACRES
Priority Date: MAY 17, 2002

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.

Rate: 0.58 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic feet per second per acre. For the irrigation of containerized nursery plants, the amount of water diverted is limited ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet 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 (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at any time, during the period of allowed use specified above, 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 per year.
Period of Use: Year-round
Source: TWO WELLS within the HOLCOMB CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NE SE	WELL 3 (WASH 1383) - 2490 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 11
1 N	2 W	WM	11	NW SE	WELL 2 (WASH 5213) - 1880 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	2 W	WM	11	SE SW	0.10
1 N	2 W	WM	11	SW SE	6.80
1 N	2 W	WM	11	SE SE	11.60
1 N	2 W	WM	14	NE NE	1.20
1 N	2 W	WM	14	NW NE	0.30

5. Transfer Application T-12331 proposes an additional point of appropriation with approximate distances from the existing points of appropriation as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation
1 N	2 W	WM	11	SW SE	Well 4 (WASH 66930) - 620 FEET NORTH AND 2630 WEST FROM THE SE CORNER OF SECTION 11	WELL 3 (WASH 1383) – 0.6 Miles WELL 2 (WASH 5213) – 0.3 Miles

6. The second right to be transferred is as follows:

Certificate: 89544 in the name of CASCADIAN NURSERIES INC. (perfected under Permit G-11038)
Use: NURSERY OPERATION ON 18.7 ACRES
Priority Date: AUGUST 25, 1988 FOR 0.40 CUBIC FOOT PER SECOND, OCTOBER 17, 1988 FOR 0.10 CUBIC FOOT PER SECOND
Rate: 0.50 CUBIC FOOT PER SECOND

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 any time 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.

USE OF WATER UNDER THIS RIGHT SHALL BE REGULATED IF THE WELL DISPLAYS:

- A. AN AVERAGE WATER LEVEL DECLINE OF THREE (3) OR MORE FEET PER YEAR FOR FIVE CONSECUTIVE YEARS OR,
- B. A WATER LEVEL DECLINE OF FIFTEEN (15) OR MORE FEET IN FEWER THAN FIVE (5) CONSECUTIVE YEARS, OR
- C. A WATER LEVEL DECLINE OF TWENTY-FIVE (25) OR MORE FEET, OR
- D. A HYDRAULIC INTERFERENCE DECLINE OF TWENTY-FIVE (25) OR MORE FEET IN ANY NEIGHBORING WELL PROVIDING WATER FOR USES EXEMPT FROM PERMIT REQUIREMENTS OR A WELL COVERED BY PRIOR RIGHTS. THE WATER RESOURCES DEPARTMENT HAS DETERMINED THAT THE INITIAL WATER LEVEL IN WELL 2 (WASH 5213) WAS 92 FEET BELOW LAND SURFACE ON MARCH 2, 1990. THAT IS THE LEVEL FROM WHICH PREVIOUSLY CITED DECLINES WILL BE REFERENCED. AS MUCH AS POSSIBLE, FUTURE LEVELS SHALL REFLECT ANNUAL HIGH LEVELS WHICH ARE USUALLY FOUND IN THE SPRING OF EACH YEAR. THE REFERENCE LEVEL FOR WELL (WASH 66390) IS 93.95 FEET BELOW LAND SURFACE.

Source: TWO WELLS within the HOLCOMB CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	WELL 2 (WASH 5213) - 1880 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 11
1 N	2 W	WM	11	SW SE	WELL 4 (WASH 66930) - 620 FEET NORTH AND 2630 FEET WEST FROM THE SE CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	2 W	WM	11	NE SW	2	3.00
1 N	2 W	WM	11	NE SE		5.20
1 N	2 W	WM	11	NW SE		10.50

7. Transfer Application T-12331 proposes an additional point of appropriation with approximate distances from the existing points of appropriation as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation
1 N	2 W	WM	11	NE SE	WELL 3 (WASH 1383) - 2490 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) – 0.4 Miles WELL 4 (WASH 66930) – 0.6 Miles

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

Certificate: 89545 in the name of CASCADIAN NURSERIES INC. (perfected under Permit G-15127)

Use: NURSERY OPERATIONS on 13.95 ACRES

Priority Date: JANUARY 16, 2001

Rate: 0.668 CUBIC FOOT PER SECOND

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 any time 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.

Period of Use: Year Round

Source: TWO WELLS within the HOLCOMB CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	WELL 2 (WASH 5213) - 1880 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 11
1 N	2 W	WM	11	SW SE	WELL 4 (WASH 66930) - 620 FEET NORTH AND 2630 FEET WEST FROM THE SE CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	2 W	WM	11	NE SW	2	2.00
1 N	2 W	WM	11	NE SE		4.40
1 N	2 W	WM	11	NW SE		7.55

9. Transfer Application T-12331 proposes an additional point of appropriation with approximate distances from the existing points of appropriation as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation
1 N	2 W	WM	11	NE SE	WELL 3 (WASH 1383) - 2490 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) - 0.4 Miles WELL 4 (WASH 66930) - 0.6 Miles

10. The fourth right to be transferred is as follows:

Certificate: 90310 in the name of ALFRED AND JOHANNA C. MEISNER and NORTHWEST FARM CREDIT SERVICES, FLCA (perfected under Permit G-13531)

Use: NURSERY OPERATIONS on 20.88 ACRES

Priority Date: OCTOBER 21, 1997

Rate: 0.780 CUBIC FOOT PER SECOND

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 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 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 any time of the year 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: WELL 2 within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	1870 FEET NORTH AND 2275 FEET WEST FROM THE SE CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	2 W	WM	11	NE SE	19.21
1 N	2 W	WM	11	NW SE	1.67

11. The Department has received information that better describes the location of the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	WELL 2 (WASH 5213) 1880 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 11

12. Transfer Application T-12331 proposes additional points of appropriation with approximate distances from the existing point of appropriation as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation
1 N	2 W	WM	11	NE SE	WELL 3 (WASH 1383) - 2490 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) - 0.4 Miles
1 N	2 W	WM	11	NW SE	WELL 4 (WASH 66930) - 620 FEET NORTH AND 2630 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) - 0.3 Miles

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

Certificate: 90311 in the name of CASCADIAN NURSERIES INC.; ALFRED MEISNER; (perfected under Permit G-15334)

Use: NURSERY USE on 18.7 ACRES

Priority Date: DECEMBER 7, 2001

Rate: 0.78 CUBIC FOOT PER SECOND

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 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 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 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: A WELL within the HOLCOMB CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	1870 FEET NORTH AND 365 FEET EAST FROM THE S1/4 CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	2 W	WM	11	NE SW	2	5.20
1 N	2 W	WM	11	SE SW	3	12.50
1 N	2 W	WM	11	NW SE		0.40
1 N	2 W	WM	11	SW SE		0.60

14. The Department has received information that better describes the location of the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	2 W	WM	11	NW SE	WELL 2 (WASH 5213) 1880 FEET NORTH AND 2280 FEET WEST FROM THE SE CORNER OF SECTION 11

15. Transfer Application T-12331 proposes additional points of appropriation with approximate distances from the existing point of appropriation as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Point of Appropriation
1 N	2 W	WM	11	NE SE	WELL 3 (WASH 1383) - 2490 FEET NORTH AND 370 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) - 0.4 Miles
1 N	2 W	WM	11	NW SE	WELL 4 (WASH 66930) - 620 FEET NORTH AND 2630 FEET WEST FROM THE SE CORNER OF SECTION 11	WELL 2 (WASH 5213) - 0.3 Miles

Transfer Review Criteria (OAR 690-380-4010)

16. Water has been used 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.
17. 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-12231.
18. The proposed change would not result in enlargement of the rights.
19. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12331 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-12331 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12331 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 88631, 89544, 89545, 90310, and 90311 and any related decree.*
3. *Water right Certificates 88631, 89544, 89545, 90310, and 90311 are 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 **totalizing flow meters**, or, with prior approval of the Director, another suitable measuring device, at each point of diversion/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. *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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 6 day of April 2017.



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

This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0806 or arla.l.heard@oregon.gov

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>