



Oregon

Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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October 12, 2017

ELITE SOIL, LLC
62870 JOHNSON RANCH ROAD
BEND, OR 97701

SUBJECT: Water Right Transfer Application T-12214

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12214. 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 Bend Bulletin 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-12214
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail*)
Robert Baxter, CWRE # (*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-12214, Deschutes County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE, AND A CHANGE IN
)	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

ELITE SOIL, LLC
62870 JOHNSON RANCH ROAD
BEND, OR 97701

Findings of Fact

1. On December 8, 2015, ELITE SOIL, LLC filed an application to change the point of appropriation, change the place of use, and change the character of use under Certificate 90952. The Department assigned the application number T-12214.
2. Notice of the application for transfer was published on December 15, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 22, 2016, the Department contacted the applicant's agent to notify them of deficiencies in the application and map. On January 27, 2017, the applicant's agent submitted new maps and amended application pages resolving the deficiencies.
4. On December 10, 2015, Transfer Application T-12215 was filed, on January 11, 2016, Transfer Application T-12241 was filed, on February 1, 2016, Transfer Applications T-12263, T-12264 and T-12265 were filed. These transfers all modify the same right, described by Certificate 90952, that has been proposed to be modified in T-12214. Certificate 90952 shall be canceled after all transfer applications are processed.

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. On June 16, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12214 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 16, 2017, for the applicant to respond.
6. On July 21, 2017, the Department received a request to extend the completion date to five years, the completion date will now be October 1, 2023.
7. On September 5, 2017, the applicant's agent provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

Certificate: 90952 in the name of NIKKIA SUMMER RAIN MALLOY (perfected under Permit G-11126)
Use: GROUP DOMESTIC USE FOR 7 FAMILIES AND IRRIGATION OF 0.9 ACRE
Priority Dates: SEPTEMBER 11, 1989 FOR GROUP DOMESTIC USE AND OCTOBER 12, 1990 FOR IRRIGATION USE
Rate: 0.02 CUBIC FOOT PER SECOND (CFS) FOR IRRIGATION AND 0.013 CFS FOR GROUP DOMESTIC USE
Source: ONE WELL, within the DESCHUTES RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	13 E	WM	16	SE NE	640 FEET NORTH AND 1400 FEET EAST FROM THE C1/4 CORNER OF SECTION 16

Authorized Place of Use:

GROUP DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
17 S	13 E	WM	16	SW NE

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	13 E	WM	16	NW NE	0.1
17 S	13 E	WM	16	SW NE	0.8

9. Certificate 90952 does not specify the irrigation season, nor is an irrigation season specified by basin program or decree. Consistent with OAR 690-250, the irrigation season is March 1 through October 31.
10. Certificate 90952 does not specify the period of allowed use, however, domestic use is generally considered a year-round use.

11. Transfer Application T-12214 proposes to move the authorized point of appropriation approximately 7 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	14 E	WM	23	SW SW	900 FEET NORTH AND 790 FEET EAST FROM THE SW CORNER OF SECTION 23

12. Transfer Application T-12214 proposes to change the character of use to nursery use.
13. Transfer Application T-12214 also proposes to change the place of use of the right to:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	14 E	WM	23	SW SW	0.9

14. The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre and 5.0 acre feet per acre per year. 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.

15. Using the nursery rate and duty described in Finding of Fact No. 14 above, the rate of diversion, place of use, and quantity of water for the proposed nursery use under the portion of the right for irrigation use shall be limited to a maximum rate of diversion of 0.02 cubic foot per second (cfs) during the irrigation season of each year, a place of use of 0.133 acre in area ($0.02 \text{ cfs} \div 0.15 \text{ cfs/acre} = 0.133 \text{ acre}$), and a total volume diverted of not to exceed 0.665 acre foot ($0.133 \text{ acre} \times 5.0 \text{ acre feet} = 0.665 \text{ acre foot}$) during the irrigation season of March 1 through October 31, further limited to:

Containerized nursery plants – A maximum rate of diversion of 0.02 cfs, a place of use of 0.8 acre ($0.02 \text{ cfs} \div 0.025 \text{ cfs/acre}$), and a maximum total volume diverted of 4.0 acre feet ($0.8 \text{ acre} \times 5.0 \text{ acre feet per acre}$) during the irrigation season of March 1 through October 31, or

In-ground nursery plants– A maximum rate of diversion of 0.02 cfs, a place of use of 1.6 acres ($0.02 \text{ cfs} \div 0.0125 \text{ cfs/acre}$), and a maximum total volume diverted of 4.0 acre feet ($1.6 \text{ acre} \times 2.5 \text{ acre feet per acre}$) during the irrigation season of March 1 through October 31.

16. Using the nursery rate and duty described in Finding of Fact No. 14 above, the rate of diversion, place of use, and quantity of water for the proposed nursery use under the portion of the right for domestic use shall be limited to a maximum rate of diversion of 0.013 cubic foot per second (cfs) during the year, a place of use of 0.087 acre in area ($0.013 \text{ cfs} \div$

0.15 cfs/acre = 0.087 acre), and a total volume diverted of not to exceed 0.435 acre foot (0.087 acre x 5.0 acre feet = 0.435 acre foot) during the entire year, further limited to:

Containerized nursery plants – A maximum rate of diversion of 0.013 cfs, a place of use of 0.52 acre (0.013 cfs ÷ 0.025 cfs/acre), and a maximum total volume diverted of 2.6 acre feet (0.52 acre x 5.0 acre feet per acre) during the entire year, or

In-ground nursery plants– A maximum rate of diversion of 0.013 cfs, a place of use of 1.04 acres (0.013 cfs ÷ 0.0125 cfs/acre), and a maximum total volume diverted of 2.6 acre feet (1.04 acre x 2.5 acre feet per acre) during the entire year.

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 right. There is no information in the record that would demonstrate that the right is 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 right were present within the five-year period prior to submittal of Transfer Application T-12214.
19. The proposed changes, as conditioned, would not result in enlargement of the right.
20. The proposed changes would not result in injury to other water rights.
21. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12214 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-12214 is approved, the final order will include the following:

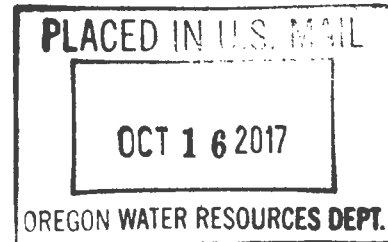
1. *The change in point of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12214 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 90952 and any related decree.*
3. *Water right Certificate 90952 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and transfers T-12215, T-12241, T-12263, T-12264 and T-12265.*

4. *The quantity of water and place of use allowed for the proposed nursery use under the portion of the right for irrigation use shall not exceed a rate of diversion of 0.02 cubic foot per second (cfs), a place of use of 0.133 acre in area, and a total volume diverted of not to exceed 0.665 acre foot during the irrigation season of March 1 through October 31. Containerized nursery plant use shall be limited to a rate of diversion of 0.02 cfs and a place of use of 0.8 acre in area, further limited to a total volume of water diverted of 4.0 acre feet during the irrigation season of March 1 to October 31. In-ground nursery plant use shall be limited to a rate of diversion of 0.02 cfs and a place of use of 1.6 acres in area, further limited to a total volume of water diverted of 4.0 acre feet during the irrigation season of March 1 through October 31.*
5. *The quantity of water and place of use allowed for the proposed nursery use under the portion of the right for domestic use shall not exceed a rate of diversion of 0.013 cubic foot per second (cfs), a place of use of 0.087 acre in area, and a total volume diverted of not to exceed 0.435 acre foot during the entire year. Containerized nursery plant use shall be limited to a rate of diversion of 0.013 cfs and a place of use of 0.52 acre in area, further limited to a total volume of water diverted of 2.6 acre feet during the entire year. In-ground nursery plant use shall be limited to a rate of diversion of 0.013 cfs and a place of use of 1.04 acres in area, further limited to a total volume of water diverted of 2.6 acre feet during the entire year.*
6. *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.*
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. *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 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.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*

11. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 11 day of October 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>