



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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October 31, 2017

KCK FARMS  
c/o KEVIN COLEMAN  
11483 SE AMITY-DAYTON HIGHWAY  
DAYTON OR 97114

SUBJECT: Water Right Transfer Application T-12601

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12601. 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 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 Department's notice.

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 503-986-0886 or [Patrick.K.Starnes@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-12601  
Joel Plahn, Watermaster 16 District *(via e-mail)*  
Doann Hamilton, Pacific Hydro-Geology, Inc., Agent 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-12601, Yamhill County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT 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**

KCK FARMS  
c/o KEVIN COLEMAN  
11483 SE AMITY-DAYTON HWY  
DAYTON, OR 97114

**Agent**

DOANN HAMILTON  
PACIFIC-HYDRO-GEOLOGY, INC.  
18487 S. VALLEY VISTA RD.  
MULINO, OR 97042

**Findings of Fact**

1. On March 2, 2017, KCK FARMS filed an application to change the point of appropriation under Certificate 87998. The Department assigned the application number T-12601.
2. Notice of the application for transfer was published on March 14, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 19, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12601 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 19, 2017, for the applicant to respond. On September 23, 2017, the agent and 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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4. The right to be transferred is as follows:

**Certificate:** 87998 in the name of KCK FARMS (perfected under Permit G-13597)

**Use:** IRRIGATION AND AGRICULTURAL USE FOR NURSERY OPERATIONS OF 114.98 ACRES

**Priority Date:** JANUARY 12, 1998

**Rate:** 3.02 CUBIC FEET PER SECOND (cfs), BEING 0.49 CFS FROM WELL 1, 1.34 CFS FROM WELL 3 and 1.19 CFS FROM WELL 4 as measured at the well.

**Period of Use:** March 1 through October 31

**Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second. 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 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 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:** THREE WELLS within the PALMER CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	36	SW SE		91	WELL 1 - 495 FEET NORTH AND 625 FEET WEST FROM THE SE CORNER OF DLC 91
4 S	4 W	WM	36	NE SW		91	WELL 3 - 1429 FEET NORTH AND 1828 FEET WEST FROM THE SE CORNER OF DLC 91
4 S	4 W	WM	36	NW SW	3		WELL 4 - 1100 FEET NORTH AND 3200 FEET WEST FROM THE SE CORNER OF DLC 91

**Authorized Place of Use:**

IRRIGATION AND AGRICULTURAL USE FOR NURSERY OPERATIONS							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	4 W	WM	35	NE SE	1		0.03
4 S	4 W	WM	35	SE SE	1		1.52
4 S	4 W	WM	36	SW NE		91	0.85
4 S	4 W	WM	36	SW NW	2		0.29
4 S	4 W	WM	36	SW NW		91	0.20
4 S	4 W	WM	36	SE NW		91	1.54
4 S	4 W	WM	36	NE SW		91	29.90
4 S	4 W	WM	36	NW SW		91	4.93
4 S	4 W	WM	36	SW SW		91	2.02
4 S	4 W	WM	36	NW SW	3		27.69
4 S	4 W	WM	36	SW SW	10		14.74
4 S	4 W	WM	36	SE SW		91	16.05
4 S	4 W	WM	36	NW SE		91	15.22

- Transfer Application T-12601 proposes to change the point of appropriation for Well No. 3 approximately 100 feet west to Well No. 5 located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	4 W	WM	36	NE SW	91	WELL No. 5 - 1395 FEET NORTH AND 1925 FEET WEST FROM THE SE CORNER OF DLC 91

***Transfer Review Criteria (OAR 690-380-4010)***

- Water has been used within the last five years prior to the submittal of Transfer Application T-12601 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.
- Wells, pumps, 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-12601.
- The Department has determined that the new proposed point of appropriation Well No. 5 would develop the same groundwater aquifer as the authorized points of appropriation, Well No. 1, Well No. 3, and Well No. 4. Under OAR 690-380-2110, any request for a change in point of appropriation is restricted to the same aquifer.
- The proposed change, as conditioned, would not result in enlargement of the right. The quantity of water diverted at the new point of appropriation, Well No. 5, shall not exceed 1.34 cfs, the rate authorized for Well No. 3.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation proposed in Transfer Application T-12601 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-12601 is approved, the final order will include the following:*

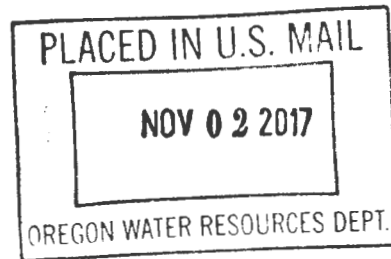
- The change in point of appropriation proposed in Transfer Application T-12601 is approved.*
- The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 87998 and any related decree.*
- Water right Certificate 87998 is cancelled.*
- The quantity of water diverted at the new point of appropriation (1.34 cfs) shall not exceed the quantity of water lawfully available at the original point of appropriation Well No. 3.*

5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation Well No. 3.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 31 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 Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or [Ken.D.Dowden@oregon.gov](mailto:Ken.D.Dowden@oregon.gov)

*Protests should be addressed to the attention of Transfer and Conservation Section, 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>