



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
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November 3, 2017

SCM PROPERTIES LLC
ATTN: MIKE NELSON
5933 MONFORTON SCHOOL ROAD
BOZEMAN MT 59718

SUBJECT: Water Right Transfer Application T-12589

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12589. 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 Dalles Chronicle 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Advisor
Transfer and Conservation Section

cc: Transfer Application file T-12589
Robert L. Wood, Watermaster 3 District [REDACTED]
Larry Toll, CWRE for the applicant [REDACTED]

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12589, Wasco County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	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

SCM PROPERTIES, LLC
Attn: MIKE NELSON
5933 MONFRONTON SCHOOL ROAD
BOZEMAN MT 59718

Findings of Fact

1. On February 21, 2017, SCM Properties, LLC, filed an application to change the place of use and character of use under Certificate 62490. The Department assigned the application number T-12589.
2. Notice of the application for transfer was published on March 7, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 10, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12589 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 9, 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.

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

Certificate: 62490 in the name of MONTE B. AND JANET WASSON (perfected under Permit G-9372)
Use: IRRIGATION OF 1.0 ACRE
Priority Date: APRIL 24, 1981
Rate: 0.013 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, within the EIGHTMILE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	21	NW NE	850 FEET SOUTH AND 1870 FEET WEST FROM THE NE CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	21	NW NE	0.6
1 S	13 E	WM	21	SW NE	0.4
Total					1.0

5. Certificate 62490 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.

6. Transfer Application T-12589 proposes to change the place of use of the right to:

AGRICULTURAL NURSERY USE (<i>footprint</i>)					
Twp	Rng	Mer	Sec	Q-Q	
1 S	13 E	WM	21	NW NE	

7. Transfer Application T-12589 also proposes to change the character of use of the above described 1.0 acre to agricultural nursery use. The use will be limited to the irrigation season of March 1 through October 31.

8. The total volume of water that may be diverted for agricultural nursery use is 3.0 acre-feet March 1 through October 31. (1.0 ac x 3.0 ac/ft per acre = 3.0 ac/ft).

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-12589 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.
10. A well, 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-12589.
11. The proposed changes, as conditioned, would not result in enlargement of the right. The applicant has stated that the new transferred portion for agricultural nursery use will be limited to the irrigation season.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-12589 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-12589 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-12589 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 62490 and any related decree.*
3. *Water right Certificate 62490 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The use of water for the proposed agricultural nursery use shall be limited to a rate of diversion of 0.013 cubic foot per second (cfs) and further limited to a total quantity of water diverted of 3.0 acre-feet during the irrigation season March 1 through October 31.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*

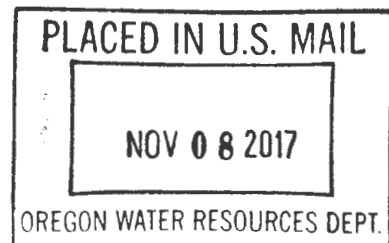
6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at the existing point of diversion.*
 - b. *The water user shall maintain the meter(s) or measuring device(s) in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter(s) or measuring device(s); provided however, where the meter(s) or measuring device(s) are located within a private structure, the Watermaster shall request access upon reasonable notice.*

7. *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 changes 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 3 day of November, 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

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>