

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12611, Polk County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE, AND
)	CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, 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

SALT CREEK FARMS, LLC
PO BOX 1089
DALLAS, OR 97338

Findings of Fact

1. On March 20, 2017, SALT CREEK FARMS, LLC filed an application to change the place of use and to change the character of use under Certificate 39323. The Department assigned the application number T-12611.
2. Notice of the application for transfer was published on March 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant initially proposed to change the character of use to irrigation but amended the application on April 27, 2018, to change the character of use to nursery use.
4. On May 10, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12611 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 8, 2018, 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.

5. The right to be transferred is as follows:

Certificate: 39323 in the name of BERNHARD LANGE (perfected under Permit S-35588)
Use: DOMESTIC USE FOR ONE FAMILY AND STOCK
Priority Date: OCTOBER 7, 1970
Rate: 0.015 CUBIC FOOT PER SECOND, BEING 0.01 CUBIC FOOT PER SECOND FOR DOMESTIC AND 0.005 CUBIC FOOT PER SECOND FOR STOCK
Source: A SPRING, a tributary of an UNNAMED STREAM (SALT CREEK)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
7 S	5 W	WM	8	SW SE	4	620 FEET SOUTH AND 2340 FEET WEST FROM THE SE CORNER OF DLC 39

Authorized Place of Use:

DOMESTIC USE FOR ONE FAMILY AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	DLC
7 S	5 W	WM	8	SE NE	39

6. Transfer Application T-12611 proposes to change the character of use to nursery.
 7. Transfer Application T-12611 proposes to change the place of use to:

NURSERY							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
7 S	5 W	WM	8	NW SE		39	0.8
7 S	5 W	WM	8	SW SE	4		0.4
						Total	1.2

8. Certificate 39323 does not specify a period of allowed use, however, domestic and stock use are generally considered year-round uses.
9. Certificate 39323 does not specify a total quantity of water to be diverted annually for domestic use; however, ORS 540.610 states “beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.” If the domestic use was diverted continuously at the authorized rate of 0.01 cfs for 365 days per year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.24 acre-feet per year), is the maximum that could have been diverted. However, water for domestic use is not continuously diverted for 24 hours per day, 365 days per year.
10. Use of more water per year than what could have been used for maximum beneficial use for the original domestic use would constitute enlargement of the right, which is not allowed. Therefore, to avoid enlarging the right under the proposed nursery use, an annual volume limit should be added to the right based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic use during a year.
11. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and Penn State

Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, or approximately 0.47 acre-feet per year for a household that includes six people. Therefore, the annual volume limitation to be placed on the domestic use for this right is 0.47 acre-feet per year (0.47 acre-feet per year x 1 homes = 0.47 acre feet per year).

12. Certificate 39323 does not specify a total quantity of water to be diverted annually for stock use. If diverted continuously at the authorized rate of 0.005 cfs for 365 days per year (0.005 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 3.62 acre-feet per year), is the maximum that could have been diverted for stock.

Transfer Review Criteria [OAR 690-380-4010(2)]

13. 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.
14. A diversion structure and pipeline 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-12611.
15. The proposed changes, as conditioned, would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.
17. 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-12611 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

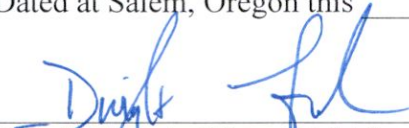
If Transfer Application T-12611 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-12611 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 39323 and any related decree.*
3. *Water right Certificate 39323 is cancelled.*
4. *The rate of diversion for the proposed nursery use shall be limited to 0.015 cubic foot per second and shall be further limited to a total quantity of (0.47 af + 3.62 af) = 4.09 acre feet during the entire year.*

5. *The proposed nursery use shall be further limited such that:*
 - a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.015 cubic foot per second per acre and (4.09 af ÷ 1.2 acres) 3.4 acre feet per acre per year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 3.4 acre feet per acre per year.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 3.4 acre feet per acre per year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.015 cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 1.2 acres.*
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, 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.*

JUL 13 2018

Dated at Salem, Oregon this _____.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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>