

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12948, Clackamas 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**

ROSEMARY A. PARK REVOCABLE LIVING TRUST  
ATTN: ROSEMARY PARK  
9395 SW ASPEN  
BEAVERTON, OR 97005-4259

**Findings of Fact**

1. On June 11, 2018, ROSEMARY A. PARK REVOCABLE LIVING TRUST filed an application for additional points of appropriation under Certificate 91569. The Department assigned the application number T-12948.
2. Notice of the application for transfer was published on June 19, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 20, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12948 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 18, 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.
4. On September 10, 2018, the applicant requested to extend the complete application of the water to beneficial use to October 1, 2021.

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

**Certificate:** 91569 in the name of BARRY R. BUSHUE AND HELEN JOY BUSHUE (perfected under Permit G-12291)

**Use:** NURSERY OPERATIONS ON 14.0 ACRES

**Priority Date:** DECEMBER 18, 1990

**Rate:** 66.0 GALLONS PER MINUTE (GPM), BEING 54.1 GPM FROM WELL 1 (NEW WELL 1) AND 11.9 GPM FROM WELL 2 (OLD WELL 1)

**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 anytime 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 IN JOHNSON CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 E	WM	29	NE SE	WELL 2 (OLD WELL 1) – 1670 FEET NORTH AND 355 FEET WEST FROM THE SE CORNER OF SECTION 29
1 S	4 E	WM	29	SE SE	WELL 1 (NEW WELL 1) – 410 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF THE SE1/4 SE1/4 OF SECTION 29

**Authorized Place of Use:**

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 E	WM	29	NE SE	14.0

6. Transfer Application T-12948 proposes additional points of appropriation with approximate distances from the existing points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance (feet)	
						Well 1	Well 2
1 S	4 E	WM	29	NE SE	WELL 3 – 1760 FEET NORTH AND 910 FEET WEST FROM THE SE CORNER OF SECTION 29	850	550
1 S	4 E	WM	29	NE SE	WELL 4 – 2460 FEET NORTH AND 980 FEET WEST FROM THE SE CORNER OF SECTION 29	1500	950

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

7. 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.
8. 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-12948.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

**Determination and Proposed Action**

The additional points of appropriation proposed in Transfer Application T-12948 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-12948 is approved, the final order will include the following:*

1. *The additional points of appropriation proposed in Transfer Application T-12948 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 91569 and any related decree.*
3. *Water right Certificate 91569 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
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 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 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. *The new proposed points of appropriation shall obtain groundwater from only the Deep Troutdale aquifer, consistent with proposed well construction details provided with the application.*
7. *Use of water from the well, as allowed herein, shall be regulated if the well displays:*
  - a) *An average water level decline of three or more feet per year for five consecutive years; or*
  - b) *A total water level decline of fifteen or more feet; or*
  - c) *A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.*
8. *The water user shall be responsible for complying with each of the following requirements for measuring water levels in the well:*
  - a) *Use of water from a new well shall not begin until the initial water level in the well has been measured. A measurement of initial water level shall be made at the time a pump is installed, but before pumping begins.*
  - b) *In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year at the time of spring high water during the period March 15 through April 15.*
  - c) *All water level measurements shall be made by a qualified individual. Qualified individuals include certified water rights examiners, licensed water well drillers, registered geologists, registered professional engineers, registered land surveyors, licensed well constructor, pump installer licensed by the Construction Contractors Board, or the permittee/appropriator.*
  - d) *Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.*
9. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*

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

Dated at Salem, Oregon, OCT 08 2018.



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](mailto:corey.a.courchane@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>



# Oregon

Kate Brown, Governor

**Water Resources Department**

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 8, 2018

ROSEMARY A. PARK REVOCABLE LIVING TRUST  
ATTN: ROSEMARY PARK  
9395 SW ASPEN  
BEAVERTON, OR 97005-4259

SUBJECT: Water Right Transfer Application T-12948

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12948. 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 Sandy Post 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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12948  
Amy J. Kim, District 20 Watermaster (*via e-mail*)  
Rodney Park, Agent for the applicant (*via e-mail*)

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