

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12876, Clackamas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN 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

HORTA LATITUDE 45, LLC
C/O GEORGE XIDIAS
2839 SW 2ND AVE
PORTLAND, OR 97201

Findings of Fact

1. On March 23, 2018, HORTA LATITUDE 45, LLC, C/O GEORGE XIDIAS filed an application to change the point of appropriation under Certificate 87775. The Department assigned the application number T-12876.
2. Notice of the application for transfer was published on March 27, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 9, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12867 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 7, 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 August 10, 2018, the applicant requested to extend the date of complete application of the water to full beneficial use, to October 1, 2023.

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 of the right to be transferred is as follows:

Certificate: 87775 in the name of ALLEN WILLIAM KRAXBERGER JR (perfected under Permit G-15003)
Use: NURSERY USE on 9.56 ACRES
Priority Date: AUGUST 14, 2001
Rate: 0.79 CUBIC FOOT PER SECOND
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 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: A WELL, within the DOVE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	10	SE SW	454 FEET NORTH AND 1591 FEET EAST FROM THE SW CORNER OF SECTION 10

Authorized Place of Use:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	1 E	WM	10	SW SW	7.10
4 S	1 E	WM	10	SE SW	2.46
Total					9.56

6. Transfer Application T-12876 proposes to change the authorized point of appropriation, with approximate distances from the existing point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance (miles)
4 S	1 E	WM	10	SW SW	WELL 1 - 235 FEET NORTH AND 660 FEET EAST FROM THE SW CORNER OF SECTION 10	0.59
4 S	1 E	WM	10	SW SW	WELL 2 - 370 FEET NORTH AND 645 FEET EAST FROM THE SW CORNER OF SECTION 10	0.58
4 S	1 E	WM	10	SW SW	WELL 3 - 350 FEET NORTH AND 1005 FEET EAST FROM THE SW CORNER OF SECTION 10	0.36
4 S	1 E	WM	10	SW SW	WELL 4 - 95 FEET NORTH AND 1000 FEET EAST FROM THE SW CORNER OF SECTION 10	0.44

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-12876.
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

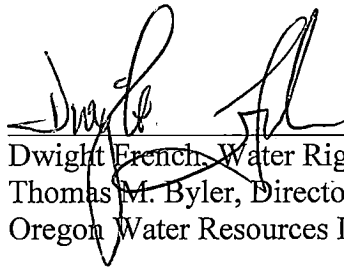
The change in point of appropriation proposed in Transfer Application T-12876 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12876 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-12876 is 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 87775 and any related decree.*
3. *Water right Certificate 87775 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 new points of appropriation, shall not exceed the quantity of water lawfully available at the original point 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 proposed wells should be sealed to a depth of at least 200 feet to limit potential interference with nearby, shallow domestic wells.*

7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *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 change and full beneficial use of the water.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon, OCT 11 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

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>



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

October 11, 2018

HORTA LATITUDE 45, LLC
C/O GEORGE XIDIAS
2839 SW 2ND AVE
PORTLAND, OR 97201

SUBJECT: Water Right Transfer Application T-12876

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12876. 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 Canby Herald 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12876
Amy J. Kim, District 20 Watermaster (via e-mail)
Doann Hamilton, Agent for the applicant (via e-mail)

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