

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13035, Clackamas County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL 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**

KARAM NURSERY  
C/O ISSA KARAM  
15028 S REDLAND RD  
OREGON CITY, OR 97045

**Findings of Fact**

1. On September 28, 2018, KARAM NURSERY, C/O ISSA KARAM filed an application for an additional point of appropriation under Certificate 93997. The Department assigned the application number T-13035.
2. Notice of the application for transfer was published on October 2, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 21, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13035 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 19, 2019, 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. The right to be transferred is as follows:

**Certificate:** 93997 in the name of ISSA KARAM (perfected under Permit G-11279)  
**Use:** NURSERY OPERATIONS ON 5.8 ACRES

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.

**Priority Date:** OCTOBER 4, 1990

**Rate:** 0.0725 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO 0.0725 CFS FROM WELL 1 (ORIGINAL) AND 0.04 CFS FROM WELL 2 (ADDITIONAL), NOT TO EXCEED A MAXIMUM CUMULATIVE TOTAL OF 0.725 CFS

**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 any time 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.

**Source:** TWO WELLS in ABERNETHY CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 E	WM	34	SW NW	WELL 1 (ORIGINAL) - 557 FEET NORTH AND 250 FEET EAST FROM THE E1/4 CORNER OF SECTION 33
2 S	2 E	WM	34	SW NW	WELL 2 (ADDITIONAL) - 516 FEET NORTH AND 345 FEET EAST OF THE E1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	2 E	WM	33	SE NE	2	1.6
2 S	2 E	WM	34	SW NW		4.2
					Total	5.8

5. Transfer Application T-13035 proposes an additional point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of appropriation in feet (ft.)	
2 S	2 E	WM	34	SW NW	WELL 3 - 800 FEET NORTH AND 330 FEET EAST FROM THE E1/4 CORNER OF SECTION 33	Well 1	Well 2
						255.1 ft. NE	285.0 ft. N

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

6. Water has been used within the last five years prior to the submittal of Transfer Application T-13035 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.



7. 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-13035.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

### **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-13035 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-13035 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in Transfer Application T-13035 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 93997 and any related decree.*
3. *Water right Certificate 93997 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation (Well 3), together with that diverted at the original points of appropriation (Well 1 and Well 2), 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 point of appropriation (new and existing).*
  - 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. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*

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

Dated at Salem, Oregon this           MAY 01 2019          ,



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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 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

May 1, 2019

KARAM NURSERY  
C/O ISSA KARAM  
15028 S REDLAND RD  
OREGON CITY, OR 97045

SUBJECT: Water Right Transfer Application T-13035

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13035. 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 [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-13035  
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)  
Doann Hamilton, Agent for the applicant (*via e-mail*)

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