

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13087, Marion County)	PROPOSING APPROVAL OF A
)	CHANGE IN 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

THE SCOTTS COMPANY LLC
7644 KEENE ROAD NE
GERVAIS, OR 97026

Findings of Fact

1. On December 28, 2018, THE SCOTTS COMPANY LLC filed an application to change the point of appropriation under Certificate 54715. The Department assigned the application number T-13087.
2. Notice of the application for transfer was published on January 8, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 5, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department requested that the deficiency be resolved by March 6, 2019. The applicant submitted a revised Table 1 the same day, resolving the deficiency.
4. On February 5, 2019, the applicant submitted a revised Table 1, resolving the deficiency.
5. On March 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13087 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 26, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a

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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Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 54715 in the name of O. M. SCOTT AND SONS (perfected under Permit G-10015)
Use: SUPPLEMENTAL IRRIGATION of 35.7 ACRES
Priority Date: FEBRUARY 10, 1983
Rate: 0.19 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed.
Source: ONE WELL, a tributary of PUDDING RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	2 W	WM	34	SE NE	84	WEST WELL 1 - 2170 FEET SOUTH AND 1100 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	2 W	WM	34	SE NE	84	15.4
5 S	2 W	WM	34	NE SE	84	7.8
5 S	2 W	WM	35	SW NW	84	9.2
5 S	2 W	WM	35	NW SW	84	3.3
Total						35.7

7. Transfer Application T-13087 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from the original point of appropriation in feet (ft.)
5 S	2 W	WM	34	SE NE	84	EAST WELL 2 - 2170 FEET SOUTH AND 515 FEET WEST FROM THE NE CORNER OF SECTION 34	584.9 ft.
5 S	2 W	WM	35	SW NW	84	EAST WELL 1 - 2685 FEET NORTH AND 115 FEET EAST FROM THE SE CORNER OF SECTION 34	1266.2 ft.

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. 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-13087.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-13087 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-13087 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-13087 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 54715 and any related decree.*
3. *Water right Certificate 54715 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 (East Well 1 and East Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (West Well 1).*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *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.*

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

Dated at Salem, Oregon this JUN 21 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

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

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Fax (503) 986-0904

June 21, 2019

THE SCOTTS COMPANY LLC
7644 KEENE ROAD NE
GERVAIS, OR 97026

SUBJECT: Water Right Transfer Application T-13087

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13087. 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13087
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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