

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12462, Josephine County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND A
)	CHANGE IN 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

MATTHEW A. PORTNOFF
LUIZA PORTNOFF
22772 CHANNEL VIEW
LAGUNA NIGUEL, CA 92677

Findings of Fact

1. On August 15, 2016, MATTHEW AND LUIZA PORTNOFF filed an application to change the place of use and character of use under Certificate 91390. The Department assigned the application number T-12462.
2. Notice of the application for transfer was published on August 23, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 10, 2017, Transfer Application T-12758 was filed. This transfer modifies the same right, described by Certificate 91390, that has been proposed to be modified in Transfer Application T-12462. Certificate 91390 shall be cancelled after both transfer applications are processed.
4. On January 5, 2018, Martha Pagel, on behalf of the Applicant, informed the Department that the Applicant will submit an amended application. As of February 13, 2018, the Department had not received an amended application.

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. On February 13, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2018, for the applicants to respond.
6. On March 14, 2018, the Applicant's agent submitted an updated application signature page, a revised Table 2 and map. The revisions included the change in character of use of the domestic use portion to nursery use under Certificate 91390. The applicant also requested to extend the completion date to October 1, 2021.
7. On May 15, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of June 15, 2018, for the applicants to respond.
8. On May 22, 2018, the agent for the applicants responded to the Department and indicated there were scrivener's error in the draft Preliminary Determination sent on May 15, 2018, specifically regarding the rate and duty paragraph for the change in character of use from domestic use to nursery. Also the agent indicated that a clarification of the duty limitation determination for the irrigation portion of Certificate 91390 was not included as a Finding of Fact.
9. On July 28, 2018, the Department e-mailed a copy of the 2nd Revised Draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The 2nd revised draft Preliminary Determination cover letter set forth a deadline of August 23, 2018, for the applicants to respond.
10. On August 23, 2018 the agent for the applicants requested that the deadline for responding to the 2nd revised draft Preliminary Determination be extended to September 15, 2019.
11. On September 26, 2018, the agent for the applicants responded by email and indicated there were scrivener's error in the 2nd revised draft Preliminary Determination sent on July 28, 2018, specifically regarding the rate and duty paragraph for the change in character of use from domestic use to nursery use.
12. On September 26, 2019, the Department e-mailed a copy of the 3rd revised draft Preliminary Determination proposing to approve Transfer Application T-12462 to the applicants. The 3rd revised draft Preliminary Determination cover letter set forth a deadline of October 27, 2019, for the applicants to respond. The agent for the applicants 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.

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

Certificate: 91390 in the name of LOREN BROWN, CERISE BROWN, DOUGLAS S. JAMES, LADENA E. FRY, HARLEY E. STEVENSON, JEANETTE R. STEVENSON, HELENA Z. SALKIN - TRUSTEE, CLAYTON FINCHER, PAUL G. HOOPER, AND GLENNYS HOOPER
 (confirmed by Althouse Creek decree entered of record at Salem in the Order Record of the State of Oregon, in Volume 1, at page 209)

Use: IRRIGATION of 2.0 ACRES and DOMESTIC USE

Priority Date: 1883

Rate: 0.04 CUBIC FOOT PER SECOND FOR IRRIGATION

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, is limited to ONE-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated.

Source: ALTHOUSE CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	8 W	WM	2	NE NE	DIVERSION POINT 1 - 548 FEET SOUTH AND 1269 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	8 W	WM	2	NW NE	2.0

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
40 S	8 W	WM	2	NW NE

14. Transfer Application T-12462 also proposes to change the place of use of the domestic use portion of the right to:

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
40 S	8 W	WM	2	NW NE

15. Certificate 91390 does not specify the irrigation season. However, information is contained in the decree indicating that the irrigation season is from April 1 through October 31.

16. Certificate 91390 does not specify the season of use for domestic use. However, information is contained in the decree that water can be diverted for domestic use year round; except during the irrigation season water diverted for irrigation purposes should include the waters diverted for domestic use.

17. Certificate 91390 does not specify a rate for domestic use. The Department recognizes an allowable rate of 0.005 cubic foot per second for domestic use of one household during the period of November 1 through March 31.

18. Certificate 91390 does not list a duty of water; however, the limit of the water right is the maximum quantity that could be beneficially used without waste. The best currently available information indicates that the most consumptive crop in the area is apples, with a net irrigation requirement of 3.35 acre-feet per acre (Cuenca, 1992). Utilizing an evaporative loss quantification of 5%, the maximum duty of water to be transferred would be 3.52 acre-feet per acre per year (AF). Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for nursery use under this right should be limited to 7.04 acre-feet per year (3.52 AF x 2.0 acres) during the irrigation season.
19. Transfer Application T-12462 proposes to change the character of use to nursery use.

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

20. 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.
21. 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-12462.
22. The proposed change, as conditioned, would not result in enlargement of the right.
23. The proposed change would not result in injury to other water rights.
24. All other application requirements have been met.

Determination and Proposed Action

The changes in place of use and character of use proposed in Transfer Application T-12462 appear 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-12462 is approved, the final order will include the following:

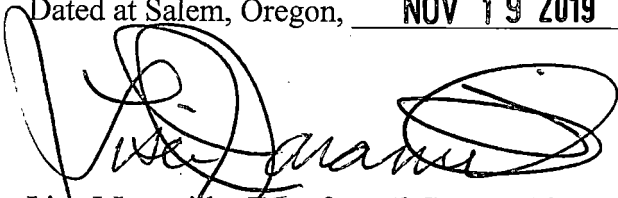
1. *The change in character of use proposed in Transfer Application T-12462 is approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 91390 and any related decree.*
3. *Water Right Certificate 91390 is modified and will be cancelled upon approval or denial of T-12758 and a new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The rate of diversion for the change in character of use from irrigation to the proposed nursery operation use shall be limited to 0.04 cfs and shall be further limited to a total*

volume diverted of 7.04 acre feet (2.0 acres x 3.52 acre feet per acre) during the original season of use, being April 1 to October 31.

5. *The change in character of use from irrigation to 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 0.02 cubic foot per second per acre and 3.52 acre feet per acre during the irrigation season of each year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to ONE-FIFTIETH of one cubic foot per second (or its equivalent) and 3.52 acre feet per acre during the irrigation season of each year.*
6. *The rate of diversion for the change in character of use from domestic use to the proposed nursery operations use shall be limited to 0.005 cfs and shall be further limited to a total volume diverted of 1.5 acre-feet (0.005 cfs x 1.98 acre feet per cfs per day) during the period of authorized use, being November 1 through March 31 of each year.*
7. *The change in character of use from domestic use to 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 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.*
 - c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.005 cubic foot per second (or its equivalent) and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.005 cubic foot per second and 1.5 acre feet during the period of authorized use, being November 1 through March 31 of each year.*
8. *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 the existing point of diversion.*

- b. *The water user shall maintain the meter or measuring device in good working order.*
- c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
9. *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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon, NOV 19 2019.



Lisa J Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Davis. If you have questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@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

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November 19, 2019

MATTHEW A. PORTNOFF
LUIZA PORTNOFF
22772 CHANNEL VIEW
LAGUNA NIGUEL, CA 92677

SUBJECT: Water Right Transfer Application T-12462

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12462. 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 Grants Pass Daily Courier 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 503-986-0806 or arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

Arla L. Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-12462
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)
Shonee D. Langford, Agent for the applicant (*via e-mail*)

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