

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

In the Matter of Transfer Application)
T-13269, Yamhill County) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF CHANGE
) OF PLACE 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

BAILEY NURSERIES, INC.
9855 NW PIKE RD
YAMHILL, OR 97148

Findings of Fact

1. On October 15, 2019, BAILEY NURSERIES, INC. filed an application to change the place of use under Certificates 42579 and 44240. The Department assigned the application number T-13269.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 29, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13269 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 27, 2020 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 portion of the first right to be transferred is as follows:

Certificate: 42579 in the name of FIDEL BROTHERS (perfected under Permit S-33951)
Use: IRRIGATION of 7.7 ACRES
Priority Date: SEPTEMBER 5, 1968

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.

Rate: 0.09 CUBIC FOOT PER SECOND, being 0.07 CFS from UNNAMED STREAM and 0.02 from SALT CREEK

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 from direct flow 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 from direct flow and storage from reservoir constructed under permit No. R-5378 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 herein, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: UNNAMED STREAM, SALT CREEK AND RESERVOIR CONSTRUCTED under Application No. R-45354, Permit No. R-5378, a tributary of YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 W	WM	31	SE NE	POD 1 - 50 FEET NORTH AND 1420 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE NE	POD 2 - 220 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE SE	POD 3 - 1960 FEET SOUTH AND 2260 FEET WEST FROM THE SE CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION - STREAM, CREEK AND RESERVOIR						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	5.8
2 S	4 W	WM	31	NW SE	54	1.2
2 S	4 W	WM	31	SW SE	54	0.4
2 S	4 W	WM	31	SE SE	54	0.3
Total						7.7

5. Transfer Application T-13269 proposes to change the place of use of the right to:

IRRIGATION - STREAM, CREEK AND RESERVOIR						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	2.8
2 S	4 W	WM	31	SE SE	54	1.5
2 S	4 W	WM	32	SW NW	54	2.3
2 S	4 W	WM	32	NW SW	54	1.1
Total						7.7

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

Certificate: 44240 in the name of FIDEL BROTHERS, by FRED FIDEL (perfected under Permit S-39919)

Use: SUPPLEMENTAL IRRIGATION of 7.7 ACRES

Priority Date: MARCH 26, 1975

Rate: 0.10 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: NORTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 W	WM	31	SE SW	POD 5 - 2180 FEET SOUTH AND 4280 FEET WEST FROM THE SE CORNER OF DLC 55

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	5.8
2 S	4 W	WM	31	NW SE	54	1.2
2 S	4 W	WM	31	SW SE	54	0.4
2 S	4 W	WM	31	SE SE	54	0.3
Total						7.7

7. Transfer Application T-13269 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	2.8
2 S	4 W	WM	31	SE SE	54	1.5
2 S	4 W	WM	32	SW NW	54	2.3
2 S	4 W	WM	32	NW SW	54	1.1
Total						7.7

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

8. Water has been used within the last five years. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-13269.
10. The proposed change would not result in enlargement of the rights.
11. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13269 appears 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.

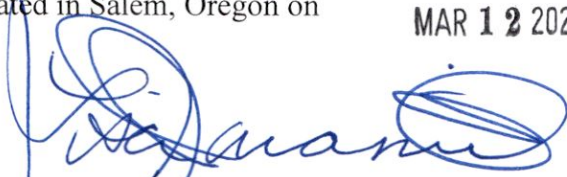
If Transfer Application T-13269 is approved, the final order will include the following:

- 1. The change in place of use proposed in Transfer Application T-13269 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 Certificates 42579 and 44240 and any related decree.*
- 3. Water right Certificates 42579 and 44240 are cancelled. New certificates will be issued describing the portion of the rights not affected by this transfer.*
- 4. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 5. 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 changes and full beneficial use of the water.*

6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

MAR 12 2020



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This draft Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon
Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

March 12, 2020

Applicant

BAILEY NURSERIES INC.
9855 NW PIKE RD
YAMHILL, OR 97148

SUBJECT: Water Right Transfer Application T-13269

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13269. 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 contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: T-13269
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Bill Flatz, Agent for the applicant (*via e-mail*)

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