

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13290, Clackamas County)	PROPOSING DENIAL 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

PATTERSON NURSERY SALES, INC.
PO BOX 99
BORING, OR 97009

Findings of Fact

1. On November 19, 2019, Patterson Nursery Sales, Inc. filed an application to change the point of appropriation under Certificate 91121. The Department assigned the application number T-13290.
2. Notice of the application for transfer was published on November 26, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 29, 2020, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13290 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 28, 2020, for the applicant to respond. The applicant did not respond by the deadline.
4. The right to be transferred is as follows:
Certificate: 91121 in the name of BILLY JOE PATTERSON, DBA PATTERSON NURSERY SALES INC. (perfected under Permit G-11167)
Use: NURSERY OPERATIONS ON 6.25 ACRES
Priority Date: NOVEMBER 5, 1990
Rate: 0.078 CUBIC FOOT PER SECOND

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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Limit/Duty: The amount of water used for NURSERY OPERATIONS (OAR 690-11-110 (14)) 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 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.

Source: A WELL in the TICKLE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	10	NE NW	1260 FEET SOUTH AND 1710 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	10	NE NW	5.44
2 S	4 E	WM	10	NW NW	0.81
Total					6.25

5. Transfer Application T-13290 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Original Well in Feet (ft.)
2 S	4 E	WM	10	NE NW	WELL 2 - 680 FEET SOUTH AND 1280 FEET WEST FROM THE N1/4 CORNER OF SECTION 10	475 ft.
2 S	4 E	WM	10	NE NW	WELL 3 - 210 FEET SOUTH AND 800 FEET WEST FROM THE N1/4 CORNER OF SECTION 10	825 ft.

Transfer Review Criteria (OAR 690-380-4010)

6. On April 2, 2020, the department determined the proposed Point of Appropriation (POA) will not develop the same aquifer (source) as the existing authorized POA. The Department's groundwater section has determined that the proposed POA wells produce from deeper portions of the local Troutdale aquifer system, in both cases sealing off the upper water-bearing zones accessed by the currently authorized POA well (CLAC 5735). As a result, static water levels are significantly lower in the proposed POA wells (CLAC 19304 and CLAC 57278).

7. Water has been used within the last five years prior to the submittal of Transfer Application T-13290 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right 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-13290.
9. The proposed change would 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

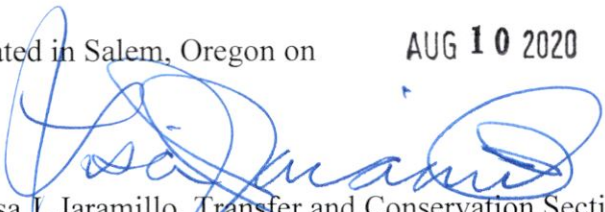
The change in point of appropriation proposed in Transfer Application T-13290 appears to be not consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be denied.

If the deficiencies are resolved and Transfer Application T-13290 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-13290 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 91121 and any related decree.*
3. *Water right Certificate 91121 is cancelled.*
4. *The quantity of water diverted at the new points of appropriation (Wells 2 and 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

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

Dated in Salem, Oregon on **AUG 10 2020**


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

This 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

August 10, 2020

Applicant

PATTERSON NURSERY SALES, INC.
PO BOX 99
BORING, OR 97009

SUBJECT: Water Right Transfer Application T-13290

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13290. 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-13290
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
Steven P. Applegate, Agent for the applicant (*via e-mail*)

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