

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13432, Marion County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS 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

LOEN NURSERY INC.
C/O KURTIS T. LOEN
19205 SW CIPOLE RD.
SHERWOOD, OR 97140

Findings of Fact

1. On May 1, 2020, LOEN NURSERY INC. C/O KURTIS T. LOEN, filed an application for additional points of appropriation under Certificates 56069 and 88308. The Department assigned the application number T-13432.
2. Notice of the application for transfer was published on May 12, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 14, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13432 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 15, 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.

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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4. On October 21, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13432 and mailed a copy to the applicant.
5. On October 23, 2020, the agent for the applicant discovered a scrivener's error in the transferred acres for Certificate 56069. The agent for the applicant also requested a later Completion Date of October 1, 2024.
6. On January 19, 2021, the Preliminary Determination was withdrawn. Below are the correct transferred supplemental irrigation acres and corresponding rate for Certificate 56069.
7. On January 22, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13432 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 19, 2021, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

Certificate: 56069 in the name of KLUPENGER'S NURSERY AND GREENHOUSES, INC. (perfected under Permit G-9846).

Use: SUPPLEMENTAL IRRIGATION OF 42.57 ACRES, RELATED NURSERY USES, CONTAINERIZED NURSERY OPERATION, AND GREENHOUSE NURSERY OPERATION

Priority Date: DECEMBER 31, 1980

Rate: 2.23 CUBIC FEET PER SECOND (CFS): BEING 0.53 CFS FOR SUPPLEMENTAL IRRIGATION, AND 2.23 CFS FOR RELATED NURSERY USES, CONTAINERIZED NURSERY OPERATION, AND GREENHOUSE NURSERY OPERATION, PROVIDED THE TOTAL QUANTITY OF WATER DIVERTED FOR ALL USES SHALL NOT EXCEED 2.23 CFS

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 in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right, and shall be further limited to a diversion of not to exceed 1.0 acre-foot per acre for each acre irrigated during the period from October 1 to March 31, provided further that the right allowed herein, together with the amount secured under any other right existing for the same land, shall not exceed 2.5 acre-feet for each acre irrigated in any one year. The use of water during the period from October 1 to March 31 as authorized here in shall not establish priority of right as against future appropriations of ground water for beneficial uses other than similar rights for irrigation from October 1 to March 31, and shall conform

to such reasonable rotation system as may be ordered by the proper state officer. The use allowed for supplemental irrigation may be made any time between October 1 and March 31 when water can be put to beneficial use by irrigation for immediate crop growth.

Source: WELLS 1 & 2, a tributary of WILLAMETTE RIVER

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL 1 - 260 FEET NORTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 33
3 S	1 W	WM	33	SE NE	150 FEET NORTH AND 190 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	33	SW NE	30.10
3 S	1 W	WM	33	SE NE	2.76
3 S	1 W	WM	33	SE NW	9.71
TOTAL					42.57

CONTAINERIZED NURSERY OPERATION				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE
3 S	1 W	WM	33	SE NW

GREENHOUSE NURSERY OPERATION				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE

RELATED NURSERY USE				
Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	33	SW NE
3 S	1 W	WM	33	SE NE
3 S	1 W	WM	33	SE NW
3 S	1 W	WM	34	NW SW

9. Transfer Application T-13432 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized Wells in Feet (ft.)	
						WELL 1	WELL 2
3 S	1 W	WM	33	SW NE	WELL 4 - 285 FEET NORTH AND 1475 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	792 ft.	633 ft.
						1406 ft.	1267 ft.
3 S	1 W	WM	33	SE NE	WELL 5 - 295 FEET NORTH AND 805 FEET WEST FROM THE E1/4 CORNER OF SECTION 33		

10. The second right to be transferred is as follows:

Certificate: 88308 in the name of KLUPENGERS NURSERY AND GREENHOUSES INC. (perfected under Permit G-3136)

Use: IRRIGATION of 89.0 ACRES

Priority Date: JANUARY 18, 1966

Rate: 1.11 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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.

Source: A WELL, a tributary of the WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	33	SE NE	WELL 1 - 260 FEET NORTH AND 30 FEET WEST FROM THE E1/4 CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	33	SW NE	40.0
3 S	1 W	WM	33	SE NE	33.0
3 S	1 W	WM	33	SE NW	16.0
TOTAL					89.0

11. Transfer Application T-13432 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from Authorized Well in Feet (ft.)
3 S	1 W	WM	33	SW NE	WELL 4 - 285 FEET NORTH AND 1475 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	792 ft.
3 S	1 W	WM	33	SE NE	WELL 5 - 295 FEET NORTH AND 805 FEET WEST FROM THE E1/4 CORNER OF SECTION 33	633.6 ft.

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. 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-13432.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-13432 appear 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-13432 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-13432 are 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 56069 and 88308 and any related decree.*
3. *Water right Certificates 56069 and 88308 are cancelled.*
4. *The quantity of water diverted for Certificate 56069, at the new additional points of appropriation (Well 4 and Well 5), 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, (Well 1 and Well 2).*

5. *The quantity of water diverted for Certificate 88308, at the new additional points of appropriation (Well 4 and Well 5), together with that diverted at the original point of appropriation, (Well 1), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 1).*
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, 2024**. 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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **FEB 23 2021**



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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.

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 service members have a right to stay these proceedings under the Federal Service Members 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

FEBRUARY 23, 2021

VIA E-MAIL

LOEN NURSERY INC.
C/O KURTIS T. LOEN
19205 SW CIPOLE RD.
SHERWOOD, OR 97140

SUBJECT: Water Right Transfer Application T-13432

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13432. 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 Wilsonville Spokesman 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.

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.

Please do not hesitate to contact me at tamera.l.smith@oregon.gov or 503-986-0864 if I may be of assistance.

Kindest regards,

Transfer Caseworker
Transfer and Conservation Section

cc: Transfer application file T-13432
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

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