

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13497, Yamhill County	)	PROPOSING APPROVAL FOR AN
	)	ADDITIONAL POINT OF DIVERSION

**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., JON ESTES  
PO BOX 398  
DAYTON, OR 97114

**Findings of Fact**

1. On June 23, 2020, BAILEY NURSERIES INC., JON ESTES filed an application for an additional point of diversion under Certificate 94391. The Department assigned the application number T-13497.
2. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. After proof of completion, any water right certificate issued to confirm the changes to Certificate 94391 under Transfer T-13497 is to remain in the name of the Palmer Creek Water District Improvement Company.
4. On January 25, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13497 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2021, 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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5. The right to be transferred is as follows:

**Certificate:** 94391 in the name of PALMER CREEK WATER DISTRICT  
IMPROVEMENT COMPANY (perfected under Permit S-54756)  
**Use:** IRRIGATION of 48.0 ACRES  
**Priority Date:** JULY 13, 1992  
**Volume:** 48.0 ACRE-FEET STORED WATER ONLY  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31 OR AS MAY BE FURTHER  
LIMITED BY THE BUREAU OF RECLAMATION WATER SUPPLY  
CONTRACT  
**Source:** WILLAMETTE RIVER BASIN PROJECT RESERVOIR,  
CONSTRUCTED UNDER PERMIT R-1625, A TRIBUTARY OF  
WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	3 W	WM	4	NW SW	PCWDIC POD - 4700 FEET NORTH AND 1290 FEET EAST FROM THE SE CORNER OF DLC 58

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	3 W	WM	8	SW NE	51	9.8
5 S	3 W	WM	8	SE NW	51	0.2
5 S	3 W	WM	8	NE SW	51	1.0
5 S	3 W	WM	8	SE SW	51	0.9
5 S	3 W	WM	8	NW SE	51	26.9
5 S	3 W	WM	8	SW SE	51	9.2
Total						48.0

6. Transfer Application T-13497 proposes an additional point of diversion approximately 7.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	10	NW NW	CP POD - 608 FEET NORTH AND 40 FEET WEST FROM THE NORTHERLY NW CORNER OF DLC 54

7. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

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-13497.
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 additional point of diversion proposed in Transfer Application T-13497 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.

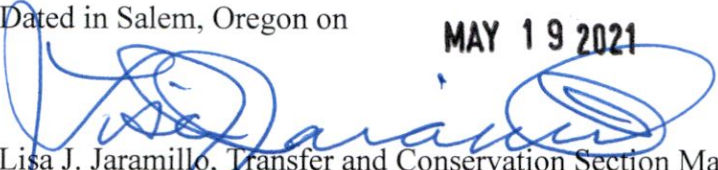
*If Transfer Application T-13497 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-13497 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 94391 and any related decree.*
3. *Water right Certificate 94391 is cancelled.*
4. *The quantity of water diverted at the new additional point of diversion (CP POD), together with that diverted at the original point of diversion (PCWDIC POD), shall not exceed the quantity of water lawfully available at the original point of diversion (PCWDIC POD).*
5. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2022. 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 in Salem, Oregon on

MAY 19 2021

  
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](mailto: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.*

**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

May 19, 2021

BAILEY NURSERIES INC., JON ESTES  
PO BOX 398  
DAYTON, OR 97114

SUBJECT: Water Right Transfer Application T-13497

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13497. 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 News Register 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 if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-13497  
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)  
Malia R. Kupillas, Agent for the applicant (*via e-mail*)

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