



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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SEPTEMBER 1, 2021

DUSTIN GREUTTER
44 ACRE FARMS, LLC
11251 SE 232ND AVE.
DAMASCUS, OR 97089

SUBJECT: Water Right Transfer Application T-13598

Please find enclosed the REVISED Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13598. 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. The Department is issuing a REVISED Preliminary Determination due to a scrivener's error in the measured distances from the authorized wells to the proposed wells. Further, the transfer must be noticed in the Gresham Outlook newspaper.

A public notice is being published in the Department's weekly publication and in the Gresham Outlook newspaper, simultaneously with issuance of the REVISED 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 REVISED 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 REVISED 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 503-979-9607 if I may be of assistance.

Kindest regards,



Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13598
Amy J. Landvoigt, District 20 Watermaster *(via e-mail)*
Doann Hamilton, Agent for the applicant *(via e-mail)*
Albert and Debby Winemiller, Interested party *(via e-mail)*
Jennie Bricker, Interested party *(via e-mail)*

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

In the Matter of Transfer Application
T-13598, Clackamas County

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R E V I S E D

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A CHANGE IN
POINTS OF APPROPRIATION AND A
CHANGE IN PLACE OF USE

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

44 ACRE FARMS, LLC
DUSTIN GRUETTER
11251 SE 232ND AVE
DAMASCUS, OR 97089

Findings of Fact

1. On January 19, 2021, 44 ACRE FARMS, LLC., DUSTIN GRUETTER, filed an application to change the points of appropriation and to change the place of use under Certificate 94783. The Department assigned the application number T-13598.
2. Notice of the application for transfer was published on February 2, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 29, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13598 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 28, 2021, for the applicant to

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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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. On July 14, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13598 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 20, 2021, pursuant to ORS 540.520 and OAR 690-380-4020.
5. Further review of Transfer Application T-13598 revealed that the Preliminary Determination inadvertently listed the distance from the authorized wells to the proposed wells incorrectly. This REVISED Preliminary Determination, therefore, is issued to correctly reflect those distances. A newspaper notice will also need to be published.
6. The portion of the right to be transferred is as follows:

Certificate: 94783 in the names of DAVID TILLSTROM AND MICHELLE TILLSTROM, AND DUSTIN GRUETTER, 44 ACRE FARMS LLC (perfected under Permit G-4058)

Use: NURSERY USE ON 5.5 ACRES

Priority Date: NOVEMBER 26, 1968

Rate: 0.05 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO NO MORE THAN 0.05 CFS FROM WELL 1 AND 0.05 CFS FROM WELL 2, NOT TO EXCEED 0.05 CFS, IN ANY COMBINATION

Maximum Volume: 13.75 ACRE FEET EACH CALENDAR YEAR

Period of Use: YEAR ROUND

Source: TWO WELLS, TRIBUTARIES OF JOHNSON CREEK (WILLAMETTE RIVER)

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 E	WM	34	NW NE	WELL 1 – ORIGINAL - 890 FEET SOUTH AND 680 FEET EAST FROM THE N1/4 CORNER OF SECTION 34
1 S	3 E	WM	34	SW NE	WELL 2 – ADDITIONAL - 2060 FEET SOUTH AND 2270 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

NURSERY USE							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water User
1 S	3 E	WM	34	SW NE	800	5.5	44 Acre Farms, LLC c/o Dustin Gruetter

7. Transfer Application T-13598 proposes to move the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Wells in Miles (mi.)	
1 S	3 E	WM	34	SW NE	WELL 3 - 545 FEET NORTH AND 70 FEET EAST FROM THE CENTER CORNER OF SECTION 34	Well 1	Well 2
						0.26 mi.	0.07 mi.
1 S	3 E	WM	34	SW NE	WELL 4 - 80 FEET NORTH AND 415 FEET EAST FROM THE CENTER CORNER OF SECTION 34	0.32 mi.	0.09 mi.

8. Transfer Application T-13598 also proposes to change the place of use of the right to:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 E	WM	34	SW NE	5.5

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years according to the terms and conditions of the right.
10. 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-13598.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation and change in place of use proposed in Transfer Application T-13598 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.

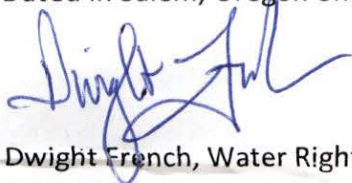
If Transfer Application T-13598 is approved, the final order will include the following:

1. *The change in points of appropriation and change in place of use proposed in Transfer Application T-13598 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 Certificate 94783 and any related decree.*
3. *Water right Certificate 94783 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
4. *The quantity of water diverted at the new points of appropriation, (Well 3 and Well 4) shall not exceed the quantity of water lawfully available at the original points of appropriation (Well 1 and Well 2).*
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 point of appropriation, (new and existing).*
 - 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 points of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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 changes and full beneficial use of the water.*

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

Dated in Salem, Oregon on SEP 07 2021



Dwight French, Water Rights Administrator, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This REVISED Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 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.

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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.

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