



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

January 31, 2022

VIA CERTIFIED MAIL AND E-MAIL

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

SUBJECT: Water Right Transfer Application T-13455

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13455. 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 do not hesitate to contact me at 503-986-0892 or Joan.M.Smith@oregon.gov if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: TRANSFER APPLICITON FILE- T-13455
Joel M. Plahn, District 22 Watermaster (*via e-mail*)
Stuntzner Engineering, Agent for the applicant (*via e-mail*)

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.

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-13455, Yamhill County) PROPOSING APPROVAL OF A CHANGE IN
) 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 May 28, 2020, BAILEY NURSERIES INC. filed an application to change the place of use under Certificate 90079. The Department assigned the application number T-13455.
2. Notice of the application for transfer was published on June 16, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 23, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13455 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 23, 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.
4. The portion of the right to be transferred is as follows:

Certificate: 90079 in the name of BAILEY NURSERIES, INC. (perfected under Permit S-51934)
Use: AGRICULTURAL USE (NURSERY OPERATIONS) on 11.9 ACRES
Priority Date: MARCH 2, 1990
Rate: 0.10 CUBIC FEET 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.

Period of

Allowed Use: NOVEMBER 1 THROUGH APRIL 30 FROM LIVE FLOW AND STORED WATER;

MAY 1 THROUGH OCTOBER 31 FROM STORED WATER ONLY

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the 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 acre 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 any time of the year 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: SALT CREEK AND FIDEL BROTHERS RESERVOIR, tributary to the NORTH YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	4 W	WM	31	NE NE	55	DIVERSION POINT A - 1265 FEET NORTH AND 1360 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	NE NE	55	DIVERSION POINT B - 1255 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE NE	55	DIVERSION POINT C - 675 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE NE	55	DIVERSION POINT D - 220 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF DLC 55
2 S	4 W	WM	31	SE SE	54	DIVERSION POINT E - 660 FEET NORTH AND 2780 FEET WEST FROM THE SE CORNER OF DLC 61

Authorized Place of Use:

AGRICULTURAL USE (NURSERY OPERATIONS)						
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	3.6
2 S	4 W	WM	31	SW SE	54	2.0
2 S	4 W	WM	31	SE SE	54	0.5
Total:						11.9

5. Transfer Application T-13455 proposes to change the place of use of the right to:

AGRICULTURAL USE (NURSERY OPERATIONS)						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	4 W	WM	31	NE SE	54	3.0
2 S	4 W	WM	31	SE SE	54	1.8
2 S	4 W	WM	32	SW NW	54	3.5
2 S	4 W	WM	32	SW NW	54	1.5
2 S	4 W	WM	32	NW SW	54	1.9
2 S	4 W	WM	32	NW SW	54	0.2
Total:						11.9

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

6. 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.
7. 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-13455.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-13455 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.

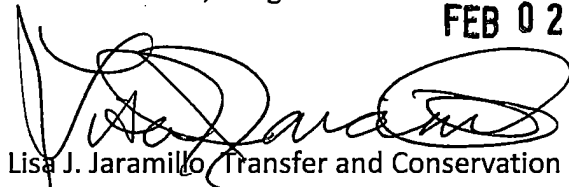
If Transfer Application T-13455 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-13455 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 90079 and any related decree.*
3. *Water right Certificate 90079 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

FEB 02 2022



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

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or Joan.M.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 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.