



Oregon
Kate Brown, Governor

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

March 14, 2022

Applicant

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

SUBJECT: Water Right Transfer Application T-13527

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13527. 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.

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: Transfer Application file T-13527
Joel M. Plahn, District 22 Watermaster (via e-mail)
Theodore Ressler, Agent for the applicant (via e-mail)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13527, Yamhill County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION AND AN
)	ADDITIONAL 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.

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Findings of Fact

1. On September 29, 2020, BAILEY NURSERIES, INC., ATTN: JON ESTES filed an application to change a point of appropriation and an additional point of appropriation under Certificate 31650. The Department assigned the application number T-13527.
2. Notice of the application for transfer was published on September 29, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 18, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13527 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 17, 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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4. The portion of the right to be transferred is as follows:

Certificate: 31650 in the name of NORMAN & JOYCE QUIGLEY (perfected under Permit G-1387)
Use: IRRIGATION of 117.9 ACRES
Priority Date: JULY 14, 1959
Rate: 1.06 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, 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.
Source: A WELL, a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	9	SE SW	53	POA 1 - 5 CHAINS SOUTH AND 12 CHAINS EAST FROM THE SE CORNER OF THESSING DLC 51

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	3 W	WM	8	SW SE		50	21.4
5 S	3 W	WM	8	SE SE		50	27.6
5 S	3 W	WM	9	SW SW	2		19.5
5 S	3 W	WM	9	SE SW	1		0.8
5 S	3 W	WM	9	SE SW		53	16.5
5 S	3 W	WM	9	SW SE		53	9.9
5 S	3 W	WM	16	NW NE		53	2.8
5 S	3 W	WM	16	NE NW	2		0.1
5 S	3 W	WM	16	NE NW		53	4.6
5 S	3 W	WM	16	NW NW	3		4.8
5 S	3 W	WM	17	NE NE		50	5.6
5 S	3 W	WM	17	NW NE		50	4.3
						Total	117.9

5. Transfer Application T-13527 proposes to move the authorized point of appropriation approximately 700 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	9	SE SW	WELL 3 - 520 FEET NORTH AND 1275 FEET EAST FROM THE NW CORNER OF DLC 56

6. Transfer Application T-13527 proposes an additional point of appropriation approximately 1800 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	9	NW SW	HOLBROOK WELL 2 - 2120 FEET NORTH AND 675 FEET EAST FROM THE NW CORNER OF DLC 56

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
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-13527.
9. The proposed change would not 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 and an additional point of appropriation proposed in Transfer Application T-13527 appears 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.

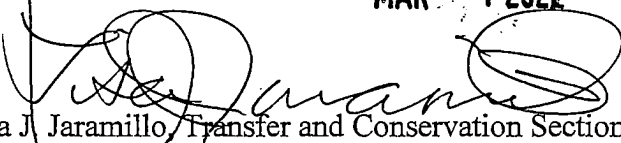
If Transfer Application T-13527 is approved, the final order will include the following:

1. *The change in point of appropriation and an additional point of appropriation proposed in Transfer Application T-13527 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 31650 and any related decree.*
3. *Water right Certificate 31650 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation (Well 3), together with that diverted at the additional point of appropriation (Holbrook Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 1).*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *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.*

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

Dated in Salem, Oregon on

MAR 14 2022


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.