



Oregon

Kate Brown, Governor

Water Resources Department

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May 2, 2022

VIA CERTIFIED MAIL AND E-MAIL

LOTS OF PLANTS, LLC
2366 S STRATFORD RD.
WINSTON SALEM, NC 27103

SUBJECT: Water Right Transfer Application T-13682

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13682. 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 Sandy Post 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@water.oregon.gov or 503-979-9607 if I may be of assistance.

Kindest regards,

A handwritten signature in dark ink, appearing to read 'Tamera Smith', with a stylized flourish at the end.

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: Transfer Application file T-13682
Amy J. Landvoigt, District 20 Watermaster (*via e-mail*)
William E. McGill, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13682, Clackamas County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	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

LOTS OF PLANTS, LLC
2366 S STRATFORD RD.
WINSTON SALEM, NC 27103

Findings of Fact

1. On April 21, 2021, LOTS OF PLANTS, LLC filed an application to change the points of appropriation under Certificates 63588, 95125, and 95126. The Department assigned the application number T-13682.
2. Notice of the application for transfer was published on May 4, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 11, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13682 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 10, 2021, for the applicants to respond.

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 18, 2021, the agent for the applicant requested the completion date be extended to October 1, 2026, siting driller schedules and water system improvement times.
5. On October 18, 2021, as the transfer would result in injury as originally proposed, the agent for the applicant amended the application, removing a well (Well 4) and limiting rates for Certificates 63588, 95125, and 95126, thereby resolving injury issues.
6. On November 5, 2021, the Department's groundwater representative agreed that the amendments in the application would resolve the same source issues detailed in the technical review.
7. To avoid injury, the Department and agent agreed on rates for wells as follows (see Finding of Fact No. 5):

Certificate	Acres	To Well	Rate
63588	9.2 ACRES	WELL 5	0.29 CFS
63588	9.2 ACRES	WELL 6	0.073 CFS
95125	8.0 ACRES	WELL 5 OR WELL 6	0.014 CFS
95126	8.0 ACRES	WELL 5 OR 6	0.028 CFS

8. On February 14, 2022, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13682 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 16, 2022, for the applicant to respond.
9. On March 1, 2022, the agent for the applicant contacted the Department with the information that the applicant had changed the name of their business. The agent provided necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On March 2, 2022, the agent for the applicant amended the application to reflect the applicant business name change from STRATFORD LANDSCAPE SUPPLY OF WINSTON SALEM INC. to LOTS OF PLANTS, LLC.
11. The portion of the first right to be transferred is as follows:

Certificate: 63588 in the name of HARRY G. and FLORENCE CHATELAIN (perfected under Permit G-10481)

Use: NURSERY OPERATIONS on 12.8 ACRES

Priority Date: OCTOBER 31, 1984, FOR USE FROM WELL 3, AND DECEMBER 24, 1984, FOR USE FROM WELLS 1 AND 2

Rate: 0.363 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for NURSERY OPERATIONS (OAR 690-11-110 (14)) 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 once

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 anytime of the year that 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: 3 WELLS IN THE TICKLE CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	2	SE NW	WELL 3 - 1260 FEET NORTH AND 970 FEET WEST FROM THE C1/4 CORNER OF SECTION 2
2 S	4 E	WM	2	SE SW	WELL 1 - 740 FEET NORTH AND 630 FEET WEST FROM THE S1/4 CORNER OF SECTION 2
2 S	4 E	WM	2	SE SW	WELL 2 - 1000 FEET NORTH AND 40 FEET WEST FROM THE S1/4 CORNER OF SECTION 2

Authorized Place of Use:

NURSERY OPERATIONS					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	11	NW NE	9.2

12. Transfer Application T-13682 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.)		
2 S	4 E	WM	11	NW NE	WELL 5 - 50 FEET SOUTH AND 40 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	WELL 1	WELL 2	WELL 3
						0.21 mi.	0.20 mi.	0.76 mi.
2 S	4 E	WM	11	NW NE	WELL 6 - 50 FEET SOUTH AND 540 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	0.27 mi.	0.23 mi.	0.79 mi.

13. Transfer Application T-13682 proposes to use the new points of appropriation as follows:

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
2 S	4 E	WM	11	NW NE	3.6	1, 2, AND 3
2 S	4 E	WM	11	NW NE	9.2	5 AND 6
TOTAL					12.8	

14. To avoid injury to nearby wells, the rate approved for Wells 5 and 6 are as follows (see Finding of Fact No. 5):

NURSERY OPERATIONS								
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells	Rate	
2 S	4 E	WM	11	NW NE	9.2	5 and 6	WELL 5	WELL 6
							0.29	0.073
							CFS	CFS

15. The portion of the second right to be transferred is as follows:

Certificate: 95125 in the name of CHATELAINS NURSERY INC; JAMES CHATELAIN, JUDY CHATELAIN (perfected under Permit G-13402)

Use: IRRIGATION AND AGRICULTURE USE FOR NURSERY OPERATIONS on 8.0 ACRES

Priority Date: JULY 9, 1997

Rate: 0.014 CUBIC FOOT PER SECOND (CFS)

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 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 anytime of the year that 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.

Period of Use: YEAR ROUND

Source: WELL 3 IN DEEP CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	2	SE NW	WELL 3 - SOUTH 76 DEGREES EAST, 370 FEET FROM THE NW1/16 CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	11	NW NE	8.0

AGRICULTURAL				
Twp	Rng	Mer	Sec	Q-Q
2 S	4 E	WM	11	NW NE

16. The agent has provided measured distances to better describe the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	2	SE NW	WELL 3 (CLAC 5365) – 1260 FEET NORTH AND 970 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 2

17. Transfer Application T-13682 proposes to move the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Well in Miles (mi.)
2 S	4 E	WM	11	NW NE	WELL 5 - 50 FEET SOUTH AND 40 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	0.76 mi.
2 S	4 E	WM	11	NW NE	WELL 6 - 50 FEET SOUTH AND 540 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	0.79 mi.

18. Transfer Application T-13682 proposes to use the new points of appropriation as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
2 S	4 E	WM	11	NW NE	8.0	5 and 6

AGRICULTURAL					
Twp	Rng	Mer	Sec	Q-Q	Wells
2 S	4 E	WM	11	NW NE	5 and 6

19. To avoid injury to nearby wells, the rate approved for Wells 5 and 6 are as follows (see Finding of Fact No. 5):

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells	Rate
2 S	4 E	WM	11	NW NE	8.0	5 and 6	WELL 5 OR 6
							0.014 CFS

20. The portion of the third right to be transferred is as follows:

Certificate: 95126 in the name of CHATELAINS NURSERY INC., JAMES CHATELAIN, JUDY CHATELAIN (perfected under Permit G-13403)

Use: IRRIGATION AND AGRICULTURE USE FOR NURSERY OPERATIONS ON 8.0 ACRES

Priority Date: JULY 9, 1997

Rate: 0.028 CUBIC FOOT PER SECOND (CFS)

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 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 anytime of the year that 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.

Period of Use: YEAR ROUND

Source: WELLS 1 AND 2 IN DEEP CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	2	SE SW	WELL 1 - NORTH 39 DEGREES WEST AND 930 FEET FROM THE S 1/4 CORNER OF SECTION 2
2 S	4 E	WM	2	SE SW	WELL 2 - SOUTH 7 DEGREES WEST AND 350 FEET FROM THE C-S 1/16 CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	11	NW NE	8.0
TOTAL					8.0

AGRICULTURAL				
Twp	Rng	Mer	Sec	Q-Q
2 S	4 E	WM	2	SE NW
2 S	4 E	WM	11	NW NE

21. The agent has provided measured distances to better describe the authorized points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	2	SE SW	WELL 1 (CLAC 6664) – 740 FEET NORTH AND 630 FEET WEST FROM THE S¼ CORNER OF SECTION 2
2 S	4 E	WM	2	SE SW	WELL 2 – (CLAC 5383) – 1000 FEET NORTH AND 40 FEET WEST FROM THE S¼ CORNER OF SECTION 2

22. Transfer Application T-13682 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.)	
2 S	4 E	WM	11	NW NE	WELL 5 - 50 FEET SOUTH AND 40 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	WELL 1	WELL 2
						0.21 mi.	0.20 mi.
2 S	4 E	WM	11	NW NE	WELL 6 - 50 FEET SOUTH AND 540 FEET EAST FROM THE N1/4 CORNER OF SECTION 11	0.27 mi.	0.23 mi.

23. Transfer Application T-13682 proposes to use the new points of appropriation as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells
2 S	4 E	WM	11	NW NE	8.0	5 and 6

AGRICULTURAL					
Twp	Rng	Mer	Sec	Q-Q	Wells
2 S	4 E	WM	11	NW NE	5 and 6

24. To avoid injury to nearby wells, the rate approved for Wells 5 and 6 are as follows (see Finding of Fact No. 5):

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Wells	Rate
2 S	4 E	WM	11	NW NE	8.0	5 and 6	WELL 5 OR 6
							0.028 CFS

Transfer Review Criteria (OAR 690-380-4010)

25. 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.
26. 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-13682.
27. The proposed changes, as conditioned, would not result in enlargement of the rights.
28. The proposed changes, as conditioned, would not result in injury to other water rights.
29. All other application requirements are met.

Determination and Proposed Action

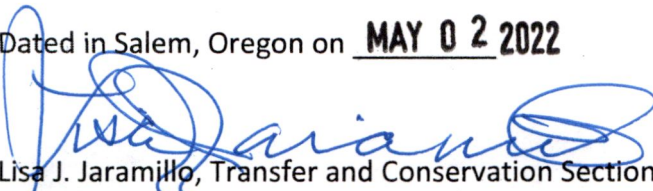
The change in points of appropriation proposed in Transfer Application T-13682 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13682 is approved, the final order will include the following:

- 1. The change in points of appropriation proposed in Transfer Application T-13682 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 63588, 95125, 95126, and any related decree.*
- 3. Water right Certificates 63588, 95125, and 95126 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
- 4. Under the right described by Certificate 63588, the quantity of water diverted shall not exceed 0.29 cfs for proposed Well 5 and 0.073 cfs for proposed Well 6 and shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 5. Under the right described by Certificate 95125, the combined quantity of water diverted at proposed wells 5 and 6 shall not exceed 0.014 cfs and shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 6. Under the right described by Certificate 95126, the combined quantity of water diverted at proposed wells 5 and 6, shall not exceed 0.028 cfs and shall not exceed the quantity of water lawfully available at the original points of appropriation.*
- 7. 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 new point of appropriation.*
 - 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.*
- 8. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.*

10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **MAY 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: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-979-9607 or tamera.l.smith@water.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.