

BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application
T-13769, Marion County

) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF ADDITIONAL
) 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

THE BUCK FAMILY TRUST
C/O CAM BUCK
17728 BUTTEVILLE RD. NE
WOODBURN, OR 97071

Findings of Fact

1. On July 9, 2021, THE BUCK FAMILY TRUST, C/O CAM BUCK filed an application for additional points of appropriation and a change in place of use under Certificate 90946. The Department assigned the application number T-13769.
2. Notice of the application for transfer was published on July 27, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 25, 2021, the Department contacted the applicant via regular mail regarding deficiencies in the application, specifically incorrect or missing information in the proposed acres on Table 2, and incorrect or missing information on the Land Use Form submitted with the application. The Department set a deadline of November 24, 2021, for the applicant to respond.
4. On October 26, 2021, the applicant's agent submitted amended application pages and maps to the Department.
5. On January 19, 2022, the applicant's agent submitted a corrected Land Use form to the Department.

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

6. On March 3, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13769 to the applicant. The proposed transfer would result in another, existing water right not receiving previously available water to which it is legally entitled. The draft Preliminary Determination cover letter set forth a deadline of April 2, 2022, for the applicant to respond.
7. On April 11, 2022, the applicant's agent submitted amended Table 1 and Table 2 application pages along with amended maps that propose new locations for proposed Wells BR #3 and RU #1, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. Based upon receipt of the amended map and tables, the Department evaluated the information and completed a revised groundwater injury review on September 8, 2023.
9. On April 3, 2025, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to approve Transfer Application T-13769. The draft Preliminary Determination cover letter provided a deadline of May 3, 2025, for the applicant to respond and submit the required information. 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.
10. On June 9, 2025, the applicant's agent provided sufficient and compelling information and timelines, requesting an additional ten years to complete the transfer works.
11. The portion of the right to be transferred is as follows:

Certificate: 90946 in the name of BLUE SKY FARMS, CAM BUCK (perfected under Permit G-13763)

Use: NURSERY OPERATIONS on 252.0 ACRES

Priority Date: DECEMBER 17, 1998

Rate: 1.71 CUBIC FEET PER SECOND

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-FOURTIETH 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, during the period of allowed use specified above, 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: A WELL in the MISSION CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	15	NE NW	84	WELL 2 –1486 FEET NORTH AND 2185 FEET WEST FROM THE SOUTHERLY SE CORNER OF DLC 85

Authorized Place of Use:

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	9	SW NE	85	4.8
4 S	2 W	WM	9	SE NE	85	1.7
4 S	2 W	WM	9	NE SW	84	1.0
4 S	2 W	WM	9	SE SW	84	3.0
4 S	2 W	WM	9	NE SE	85	21.8
4 S	2 W	WM	9	NE SE	84	8.0
4 S	2 W	WM	9	NW SE	84	21.0
4 S	2 W	WM	9	NW SE	85	4.6
4 S	2 W	WM	9	SW SE	84	6.0
4 S	2 W	WM	9	SE SE	84	35.7
4 S	2 W	WM	9	SE SE	85	0.3
4 S	2 W	WM	10	NE SW	85	5.0
4 S	2 W	WM	10	NW SW	85	16.0
4 S	2 W	WM	10	SW SW	85	16.3
4 S	2 W	WM	10	SW SW	84	18.3
4 S	2 W	WM	10	SE SW	85	37.4
4 S	2 W	WM	10	SE SW	84	0.5
4 S	2 W	WM	10	SW SE	85	13.8
4 S	2 W	WM	15	NW NE	85	12.2
4 S	2 W	WM	15	NE NW	84	3.1
4 S	2 W	WM	15	NE NW	85	9.3
4 S	2 W	WM	15	SW NW	84	0.3
4 S	2 W	WM	16	NE NE	84	11.8
4 S	2 W	WM	16	NW NE	84	0.1
TOTAL						252.0

12. Transfer Application T-13769 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance from Authorized POA in Miles
4 S	2 W	WM	25	SW SE	52	BH #1 – 525 FEET NORTH AND 1090 FEET EAST FROM THE SE CORNER OF DLC 51	3.75 MILES SE
4 S	2 W	WM	25	SE SE	52	BH #2 – 450 FEET NORTH AND 1385 FEET EAST FROM THE SE CORNER OF DLC 51	3.9 MILES SE
4 S	2 W	WM	35	NW SE	90	SSH #1 – 1765 FEET NORTH AND 2715 FEET EAST FROM THE SW CORNER OF DLC 90	3.92 MILES SE

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approx. Distance from Authorized POA in Miles
4 S	2 W	WM	36	SE NW	82	BR #3 – 1880 FEET SOUTH AND 1390 FEET WEST FROM THE NW CORNER OF SECTION 36	3.7 MILES SE
5 S	2 W	WM	2	NW NE	94	SSH #2 – 600 FEET SOUTH AND 1595 FEET EAST FROM THE SW CORNER OF DLC 94	4.3 MILES SE
5 S	2 W	WM	2	NE NW	94	SSH #3 – 260 FEET SOUTH AND 825 FEET EAST FROM THE SW CORNER OF DLC 94	3.9 MILES SE
5 S	2 W	WM	10	NE NW	81	RU #1 – 1200 FEET NORTH AND 30 FEET EAST FROM THE SE CORNER OF DLC 81	5.1 MILES S
5 S	2 W	WM	10	SW NE	81	RU #2 – 150 FEET NORTH AND 190 FEET WEST FROM THE SE CORNER OF DLC 81	5.2 MILES S

13. Transfer Application T-13769 also proposes to change the place of use of the right to:

NURSERY OPERATIONS								
Twp	Rng	Mer	Sec	Q-Q	DLC	Tax Lot	Acres	POA
4 S	2 W	WM	35	NE SW	90	800	0.2	SSH #1, #2, & #3
4 S	2 W	WM	35	SE SW	90	800	11.7	SSH #1, #2, & #3
4 S	2 W	WM	35	NW SE	90	700, 800, & 900	18.3	SSH #1, #2, & #3
4 S	2 W	WM	35	SW SE	90	800 & 900	22.1	SSH #1, #2, & #3
4 S	2 W	WM	35	SW SE	52	400	5.4	BH #1, #2, & BR #3
4 S	2 W	WM	35	SE SE	52	400	5.8	BH #1, #2, & BR #3
4 S	2 W	WM	36	NW NE	52	801	13.6	BH #1, #2, & BR #3
4 S	2 W	WM	36	NE NW	52	801	10.3	BH #1, #2, & BR #3
4 S	2 W	WM	36	NE NE	52	400	4.9	BH #1, #2, & BR #3
4 S	2 W	WM	36	NW NE	52	400	8.8	BH #1, #2, & BR #3
5 S	2 W	WM	2	NW NE	94	800 & 900	4.5	SSH #1, #2, & #3
5 S	2 W	WM	2	NE SW	94	800 & 900	7.7	SSH #1, #2, & #3
5 S	2 W	WM	9	NE NE	81	600	21.7	RU #1 & #2
5 S	2 W	WM	9	NW NE	81	600	24.6	RU #1 & #2
5 S	2 W	WM	9	SW NE	81	600	3.2	RU #1 & #2
5 S	2 W	WM	9	SE NE	81	600	9.2	RU #1 & #2
5 S	2 W	WM	9	NE NW	81	600	5.2	RU #1 & #2
5 S	2 W	WM	10	NW NE	80	600	2.5	RU #1 & #2
5 S	2 W	WM	10	SW NE	80	600	3.1	RU #1 & #2
5 S	2 W	WM	10	NE NW	80	600	15.3	RU #1 & #2
5 S	2 W	WM	10	NW NW	80	600	18.4	RU #1 & #2
5 S	2 W	WM	10	SW NW	80	600	14.9	RU #1 & #2
5 S	2 W	WM	10	SE NW	80	600	20.6	RU #1 & #2
							TOTAL	252.0

14. Certificate 90946 contains a condition requiring the water user to discontinue use, or reduce the rate of withdrawal from the authorized well (WELL 2) if annual water measurements reveal any of the following events:

- (a) An average water level decline of three or more feet per year for five consecutive years; or
- (b) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (c) A water level decline of 25 or more feet; or
- (d) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

15. As part of the revised Groundwater Review completed on September 8, 2023, the Department determined the reference level for the condition set forth in Certificate 90946 applying to the authorized well (WELL 2), against which any future measurements will be compared, is 35.83 feet below land surface (bls). Because the proposed Points of Appropriation (POAs) are at a substantial distance from the authorized well, different reference levels should be established for the proposed POAs based on the land surface elevation at the proposed POAs locations. The Department has determined these water level measurements from nearby wells taken as close to the original date of issuance (October 26, 1999) for Permit G-13763, under which Certificate 90946 was perfected. The measurements are as follows:

Proposed Point of Appropriation	Proposed Reference Level (ft bls)	Source Well(s)
BH #1	26.5	MARI 60011, Permit Condition Measurement, 3/12/2008, 154.90 ft amsl
BH #2	25.1	MARI 60011, Permit Condition Measurement, 3/12/2008, 154.90 ft amsl
BR #3	36.2	MARI 1423, Permit Condition Measurement, 3/15/2006, 145.10 ft amsl
RU #1	7.05	MARI 55427, Permit Condition Measurement, 3/21/2002, 169.20 ft amsl
RU #2	10.46	MARI 55427, Permit Condition Measurement, 3/21/2002, 169.20 ft amsl
SSH #1	18.2	Average of Permit Condition Measurements: MARI 53178, 3/17/2000, 156.80 ft amsl MARI 54047, 3/27/2000, 158.34 ft amsl
SSH #2	22.8	Average of Permit Condition Measurements: MARI 53178, 3/17/2000, 156.80 ft amsl MARI 54047, 3/27/2000, 158.34 ft amsl
SSH #3	22.4	Average of Permit Condition Measurements: MARI 53178, 3/17/2000, 156.80 ft amsl MARI 54047, 3/27/2000, 158.34 ft amsl

Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2), and OAR 690-380-2110(2)]

16. Water has been used within the last five years.
17. A water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13769.
18. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
19. The proposed points of appropriation develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
20. The proposed changes, as conditioned, would not result in enlargement of the right.
21. The proposed change, as conditioned, would not result in injury to other existing water rights.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-13769, as conditioned, 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-13769 is approved, the final order will include the following:

1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-13769 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 90946 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new points of appropriation or the new place of use.*
4. *Water right Certificate 90946 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.*
5. *The quantity of water diverted at the new additional points of appropriation (BH #1, BH #2, BR #3, RU #1, RU #2, SSH #1, SSH #2, and SSH #3), together with that diverted at the original point of appropriation (Well #2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well #2).*

6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *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.*

9. *The proposed additional points of appropriation shall have the following reference level measurements established to trigger the decline condition set in Certificate 90946:*

Proposed Point of Appropriation	Reference Level Measurement (ft bls)
BH #1	26.5
BH #2	25.1
BR #3	36.2
RU #1	7.05
RU #2	10.46
SSH #1	18.2
SSH #2	22.8
SSH #3	22.4

10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2037**. 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.*

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

Dated in Salem, Oregon on OCT 13 2025


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Dante Luongo. If you have any questions about the information in this document, you may reach me at 971-304-5006 or dante.j.luongo@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$725 required by ORS 536.050; and

- If you are not the applicant, a protest fee of \$1420 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



Oregon

Tina Kotek, Governor

October 13, 2023

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone 503 986-0900
Fax 503 986-0904
www.oregon.gov/owrd

VIA CERTIFIED MAIL AND E-MAIL

THE BUCK FAMILY TRUST
C/O CAM BUCK
17728 BUTTEVILLE RD. NE
WOODBURN, OR 97071

SUBJECT: Water Right Transfer Application T-13769

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13769. 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 Woodburn Independent 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 don't hesitate to contact me at 971 304-5006 or Dante.J.Luongo@water.oregon.gov, if I may be of assistance.

Sincerely,

Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13769
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Eric Anthony Urstadt, Agent for the applicant (*via e-mail*)