

**CLAIM OF  
BENEFICIAL USE  
for Transfers  
Place of Use Only**



**Oregon Water Resources Department**  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)

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**A fee of \$230 must accompany this form for any transfer final orders including a water right with a priority date of July 9, 1987, or later.**

**Example – A transfer involves 5 rights and one of the rights has a priority date of July 9, 1987, or later, the fee is required.**

**This COBU is for a transfer involving water rights with priority dates of 9/5/1968 (former Certificate 42579) and 3/26/1975 (former Certificate 44240); the referenced \$230 fee is not applicable**

**A separate form shall be completed for each transfer.**

This form is subject to revision. **Begin each new claim** by checking for a new version of this form at:

<https://www.oregon.gov/OWRD/Forms/Pages/default.aspx>

The completion of this form is required by OAR 690-014-0100(1) and 690-014-0110(4).

Please type or print in dark ink. If this form is found to contain errors or omissions, it may be returned to you. **Every item must have a response.** If any requested information does not apply to the claim, insert "NA." **Do not delete or alter any section of this form unless directed by the form.** The Department may require the submittal of additional information from any water user or authorized agent.

"Section 7" of this form is intended to aid in the completion of this form and should not be submitted.

A claim of beneficial use includes both this report and a map. If the map is being mailed separately from this form, please include a note with this form indicating such.

If you have questions regarding the completion of this form, please call 503-979-9103.

The Department has a program that allows it to enter into a voluntary agreement with an applicant for expedited services. Under such an agreement, the applicant pays the cost to hire additional staff that would not otherwise be available. This program means a certificate may be issued in about a month. For more information on this program see:

<https://www.oregon.gov/OWRD/programs/WaterRights/RA/Pages/default.aspx>

**SECTION 1**

**GENERAL INFORMATION**

**Type of Authorized Change**

This Claim is being submitted for a transfer where the only authorized change was a change in place of use.

*If additional changes were authorized, you will need to select a different form.*

1. File Information

|  |
|--|
| APPLICATION #<br><b>T-13269 (former Certificate 42579)</b> |
|--|

2. Property Owner (current owner information)

|   |                    |                                  |  |
|---|--------------------|----------------------------------|--|
| APPLICANT/BUSINESS NAME<br><b>Bailey Nurseries, Inc.; ATTN: Jon Estes</b> |                    | PHONE NO.<br><b>503-662-3244</b> | ADDITIONAL CONTACT NO.                       |
| ADDRESS<br><b>9855 NW Pike Road</b>                                       |                    |                                  |  |
| CITY<br><b>Yamhill</b>  | STATE<br><b>OR</b> | ZIP<br><b>97148</b>              | E-MAIL<br><b>Jon.estes@baileynursery.com</b> |

If the current property owner is not the transfer holder of record, it is recommended that an assignment be filed with the Department. ***Each transfer holder of record must sign this form.***

3. Transfer holder of record (this may, or may not, be the current property owner)

|  |                    |                     |
|--|--------------------|---------------------|
| TRANSFER HOLDER OF RECORD<br><b>Bailey Nurseries, Inc.</b> |                    |                     |
| ADDRESS<br><b>9855 NW Pike Road</b>                        |                    |                     |
| CITY<br><b>Yamhill</b>                                     | STATE<br><b>OR</b> | ZIP<br><b>97148</b> |

4. Date of Site Inspection:

|                  |
|------------------|
| <b>9/14/2021</b> |
|------------------|

5. Person(s) interviewed and description of their association with the project:

| NAME             | DATE             | ASSOCIATION WITH THE PROJECT                    |
|------------------|------------------|---|
| <b>Jon Estes</b> | <b>9/14/2021</b> | <b>Bailey Nurseries Water Resources Manager</b> |

6. County:

|                |
|----------------|
| <b>Yamhill</b> |
|----------------|

7. If any property described in the place of use of the transfer final order is excluded from this report, identify the owner of record for that property (ORS 537.230(5)):

|                              |       |     |
|------------------------------|-------|-----|
| OWNER OF RECORD<br><b>NA</b> |       |     |
| ADDRESS                      |       |     |
| CITY                         | STATE | ZIP |

Add additional tables for owners of record as needed

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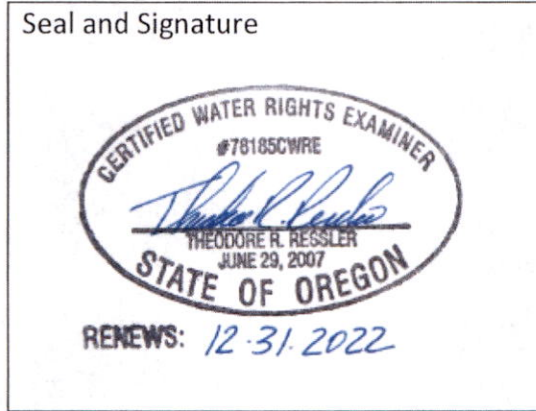
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**SECTION 2  
SIGNATURES**

CWRE Statement, Seal and Signature

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge.



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|  |                    |                                  |                                     |  |
|--|--------------------|----------------------------------|-------------------------------------|--|
| CWRE NAME<br><b>Theodore R. Ressler</b>                                  |                    | PHONE NO.<br><b>503-239-8799</b> | ADDITIONAL CONTACT NO.              |  |
| ADDRESS<br><b>GSI Water Solutions, Inc. 55 SW Yamhill St., Suite 300</b> |                    |                                  |                                     |  |
| CITY<br><b>Portland</b>  | STATE<br><b>OR</b> | ZIP<br><b>97204</b>              | E-MAIL<br><b>tressler@gsiws.com</b> |  |

Transfer Holder of Record Signature or Acknowledgement

***Each** transfer holder of record must sign this form in the space provided below.*

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate.

| SIGNATURE | PRINT OR TYPE NAME | TITLE   | DATE              |
|-----------|--------------------|---|-------------------|
|           | <b>Jon Estes</b>   | <b>Water Resources Manager<br/>Bailey Nurseries, Inc.</b> | <b>10/28/2021</b> |

**SECTION 3**  
**EXTENT OF CHANGE COMPLETED**

**1. Claim Summary:**

If Irrigation or Nursery Use:

| THE # OF ACRES ALLOWED | THE # OF ACRES DEVELOPED |
|------------------------|--------------------------|
| 7.7                    | 7.7                      |

If the use(s) was not irrigation or nursery:

|   |
|---|
| WAS THE NEW PLACE OF USE DEVELOPED TO THE FULL EXTENT<br>AUTHORIZED UNDER THE ORDER?<br>(INCLUDE THE LOCATION OF THE DEVELOPED PLACE USE ON THE<br>CLAIM MAP) |
| Yes, the new place of use was developed in<br>accordance with the conditions of the final order for<br>T-13269.   |

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**2. Variations:**

Was the use developed differently from what was authorized by the transfer final order? YES

If yes, describe below.

(e.g. "The order authorized a change in place of use for 40 acres. The water user only developed 38 acres.")

|  |
|--|
| <p>The final order for T-13269 lists three authorized points of diversion for Certificate 42579 (POD 1, 2, and 3). As described on Certificate 42579, these PODs are associated with the following water sources authorized for use:</p> <p><u>Unnamed Stream</u></p> <ul style="list-style-type: none"> <li>• POD 1 – located 50 feet North and 1420 feet West from SE corner of DLC 55</li> </ul> <p><u>Salt Creek</u></p> <ul style="list-style-type: none"> <li>• POD 2 – located 220 feet North and 1380 feet West from SE corner of DLC 55</li> <li>• POD 3 – located 1960 feet South and 2260 feet West from SE corner of DLC 55</li> </ul> <p>HOWEVER, Certificate 42579 also lists the reservoir constructed under application R-45354 (Fidel Reservoir) as an authorized source but does not describe the location of the POD for this source. The map submitted as part of the transfer application (T-13269) identified the location of the point of diversion for the authorized reservoir source as POD 4 (located 420 feet North and 1780 feet West from SE Corner of DLC 55), but this clarification was not incorporated into the transfer final order.</p> <p>The map provided with this COBU includes the location of the missing point of diversion (POD 4) for the authorized reservoir source (Fidel Reservoir).</p> |
|--|

SECTION 4  
CONDITIONS

All conditions contained in the transfer, or any extension final order shall be addressed. Reports that do not address all performance related conditions will be returned.

1. Time Limits:

Describe how the water user has complied with each of the development timelines established in the transfer final order and any extensions of time issued for the transfer:

|                                  | DATE FROM TRANSFER | DATE THE AUTHORIZED CHANGE WAS COMPLETED<br>*THIS DATE MUST FALL BETWEEN THE "ISSUANCE DATE" AND THE "COMPLETENESS DATE" |
|----------------------------------|--------------------|--|
| ISSUANCE DATE                    | 4/23/2020          |  |
| COMPLETENESS DATE FROM ORDER (C) | 10/1/2021          | 9/14/2021<br>Date of site visit/documentation of full beneficial use   |

\* MUST BE WITHIN PERIOD BETWEEN TRANSFER FINAL ORDER, OR ANY EXTENSION FINAL ORDER ISSUANCE AND THE DATE TO COMPLETE THE CHANGE

2. Is there an extension final order(s)?

NO

If "NO", you may delete the following table.

3. Measurement Conditions:

a. Does the transfer final order require the installation of a meter or approved measuring device?

NO

4. Other conditions required by the transfer final order:

a. Other conditions?

NO

If "YES" to any of the above, identify the condition and describe the water user's actions to comply with the condition(s):

NA

**SECTION 5  
ATTACHMENTS**

Provide a list of any additional documents you are attaching to this report:

| ATTACHMENT NAME     | DESCRIPTION                    |
|---------------------|--------------------------------|
| <b>Attachment 1</b> | <b>Map</b>                     |
| <b>Attachment 2</b> | <b>Water Right Information</b> |

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## SECTION 6

### CLAIM OF BENEFICIAL USE MAP

A Claim of Beneficial Use Map must be submitted with this claim. Claims submitted without the Claim of Beneficial Use map will be returned. The map shall be submitted on polyester film at a scale of 1" = 1320 feet, 1" = 400 feet, or the original full-size scale of the county assessor map for the location.

For the purpose of this Claim, the map must identify the developed new place of use. The existing point(s) of diversion or point(s) of appropriation are required to be included on the Claim map, based on the locations described in the transfer final order.

Provide a general description of the survey method used to prepare the map. Examples of possible methods include, but are not limited to, a traverse survey, GPS, or the use of aerial photos. If the basis of the survey is an aerial photo, provide the source, date, series and the aerial photo identification number.

The points of diversion and other visible components were visited during the site inspection. The location of the new place of use is based on a field survey completed during the site inspection using recent aerial imagery (dated April 15, 2021). The Claim of Beneficial Use map was developed using Geographic Information System (GIS) software and spatial datasets obtained from the Oregon Water Resources Department (OWRD), the Bureau of Land Management (BLM), and Yamhill County. Additional data and information specific to the water right holder's use of water under the water right described in this Claim of Beneficial Use report were obtained from the water right holder.

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## Map Checklist

Please be sure that the map you submit includes ALL the items listed below.  
**(Reminder: Incomplete maps and/or claims may be returned.)**

- Map on polyester film.
- Appropriate scale (1" = 400 feet, 1" = 1320 feet, or the original full-size scale of the county assessor map)
- Township, Range, Section, Donation Land Claims, and Government Lots
- NA** Locations of fish screens and/or fish by-pass devices in relationship to point of diversion
- NA** Locations of meters and/or measuring devices in relationship to point of diversion
- NA** Conveyance structures illustrated (pumps, reservoirs, pipelines, ditches, etc.) **\*Not required for this type of Claim of Beneficial Use**
- Point(s) of diversion or appropriation (illustrated and coordinates)
- Tax lot boundaries and numbers
- Source illustrated if surface water
- Disclaimer ("This map is not intended to provide legal dimensions or locations of property ownership lines")
- Transfer application number
- North arrow
- Legend
- CWRE stamp and signature

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Attachment 1

Map

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**Attachment 2**

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**Water Right Information**

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BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Transfer Application ) FINAL ORDER APPROVING OF  
T-13269, Yamhill County ) CHANGE OF 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 October 15, 2019, BAILEY NURSERIES, INC. filed an application to change the place of use under Certificates 42579 and 44240. The Department assigned the application number T-13269.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 29, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13269 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 27, 2020 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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On March 12, 2020, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13269 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on March 17, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
5. The portion of the first right to be transferred is as follows:

**Certificate:** 42579 in the name of FIDEL BROTHERS (perfected under Permit S-33951)

**Use:** IRRIGATION of 7.7 ACRES

**Priority Date:** SEPTEMBER 5, 1968

**Rate:** 0.09 CUBIC FOOT PER SECOND (CFS), being 0.07 CFS from UNNAMED STREAM and 0.02 from SALT CREEK

**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 from direct flow 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 from direct flow and storage from reservoir constructed under permit No. R-5378 provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** UNNAMED STREAM, SALT CREEK AND RESERVOIR CONSTRUCTED under Application No. R-45354, Permit No. R-5378, a tributary of YAMHILL RIVER

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**Authorized Points of Diversion:**

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances  |
|-----|-----|-----|-----|-------|---|
| 2 S | 4 W | WM  | 31  | SE NE | POD 1 - 50 FEET NORTH AND 1420 FEET WEST FROM THE SE CORNER OF DLC 55   |
| 2 S | 4 W | WM  | 31  | SE NE | POD 2 - 220 FEET NORTH AND 1380 FEET WEST FROM THE SE CORNER OF DLC 55  |
| 2 S | 4 W | WM  | 31  | SE SE | POD 3 - 1960 FEET SOUTH AND 2260 FEET WEST FROM THE SE CORNER OF DLC 55 |

**Authorized Place of Use:**

| IRRIGATION - STREAM, CREEK AND RESERVOIR |     |     |     |       |     |       |
|--|-----|-----|-----|-------|-----|-------|
| 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  | 1.2   |
| 2 S                                      | 4 W | WM  | 31  | SW SE | 54  | 0.4   |
| 2 S                                      | 4 W | WM  | 31  | SE SE | 54  | 0.3   |
| Total                                    |     |     |     |       |     | 7.7   |

6. Transfer Application T-13269 proposes to change the place of use of the right to:

| IRRIGATION - STREAM, CREEK AND RESERVOIR |     |     |     |       |     |       |
|--|-----|-----|-----|-------|-----|-------|
| Twp                                      | Rng | Mer | Sec | Q-Q   | DLC | Acres |
| 2 S                                      | 4 W | WM  | 31  | NE SE | 54  | 2.8   |
| 2 S                                      | 4 W | WM  | 31  | SE SE | 54  | 1.5   |
| 2 S                                      | 4 W | WM  | 32  | SW NW | 54  | 2.3   |
| 2 S                                      | 4 W | WM  | 32  | NW SW | 54  | 1.1   |
| Total                                    |     |     |     |       |     | 7.7   |

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

**Certificate:** 44240 in the name of FIDEL BROTHERS, by FRED FIDEL (perfected under Permit S-39919) -

**Use:** SUPPLEMENTAL IRRIGATION of 7.7 ACRES

**Priority Date:** MARCH 26, 1975

**Rate:** 0.10 CUBIC FOOT 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, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** NORTH YAMHILL RIVER, a tributary of YAMHILL RIVER

**Authorized Point of Diversion:**

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distances  |
|-----|-----|-----|-----|-------|---|
| 2 S | 4 W | WM  | 31  | SE SW | POD 5 - 2180 FEET SOUTH AND 4280 FEET WEST FROM THE SE CORNER OF DLC 55 |

**Authorized Place of Use:**

| SUPPLEMENTAL IRRIGATION |     |     |     |       |     |       |
|-------------------------|-----|-----|-----|-------|-----|-------|
| 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  | 1.2   |
| 2 S                     | 4 W | WM  | 31  | SW SE | 54  | 0.4   |
| 2 S                     | 4 W | WM  | 31  | SE SE | 54  | 0.3   |
| Total                   |     |     |     |       |     | 7.7   |

8. Transfer Application T-13269 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION |     |     |     |       |     |       |
|-------------------------|-----|-----|-----|-------|-----|-------|
| Twp                     | Rng | Mer | Sec | Q-Q   | DLC | Acres |
| 2 S                     | 4 W | WM  | 31  | NE SE | 54  | 2.8   |
| 2 S                     | 4 W | WM  | 31  | SE SE | 54  | 1.5   |
| 2 S                     | 4 W | WM  | 32  | SW NW | 54  | 2.3   |
| 2 S                     | 4 W | WM  | 32  | NW SW | 54  | 1.1   |
| Total                   |     |     |     |       |     | 7.7   |

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

9. Water has been used within the last five years. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. 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-13269.
11. The proposed change would not result in enlargement of the rights.
12. The proposed changes would not result in injury to other water rights.

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-13269 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in place of use proposed in Transfer Application T-13269 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 Certificates 42579 and 44240 and any related decree.
3. Water right Certificates 42579 and 44240 are cancelled. New certificates will be issued describing the portion of the rights not affected by this transfer.
4. The former place of use of the transferred rights shall no longer receive water under the rights.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.

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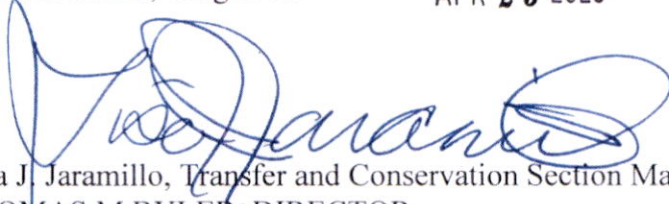
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6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

APR 23 2020



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

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APR 24 2020

Mailing date: \_\_\_\_\_