

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-8928, Crook County) IN POINT OF APPROPRIATION AND
) PLACE OF USE

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

TY FEHRENBACHER
19310 BUTLER ROAD
TERREBONE, OR 97760

Receiving Landowner

O’NEIL VALLEY, LLC
95 SW SCALEHOUSE LOOP #100
BEND, OR 97702

Findings of Fact

Background

1. On November 29, 2001, TY FEHRENBACHER filed an application to change the point of appropriation and to change the place of use under Permit G-12923. The Department assigned the application number T-8928.
2. On September 7, 2000, a claim of beneficial use was submitted for Permit G-12923. On April 1, 2011, Certificate 86860 was issued.
3. On June 6, 2002, the applicant amended the transfer application clarifying the proposed points of appropriation.
4. The right to be transferred is as follows:

Certificate: 86860 in the name of TY FEHRENBACHER (perfected under Permit G-12923)
Use: INDUSTRIAL USE
Priority Date: FEBRUARY 16, 1995
Rate: 1.98 CUBIC FEET PER SECOND
Source: WELL 4 within the CROOKED RIVER BASIN

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	17	SE NE	2170 FEET SOUTH AND 290 FEET WEST FROM NE CORNER OF SECTION 17

Authorized Place of Use:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Q-Q	
14 S	14 E	WM	17	SW SE	

5. Transfer Application T-8928 proposes to move the authorized point of appropriation to two points of appropriation approximately 1¼ miles from the existing point of appropriation located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	30	SE NE	900 FEET NORTH AND 1250 FEET WEST FROM THE SE CORNER OF SECTION 30
14 S	14 E	WM	30	SE NE	30 FEET NORTH AND 1250 FEET WEST FROM THE SE CORNER OF SECTION 30

6. Transfer Application T-8928 also proposes to change the place of use of the right to:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Q-Q	
14 S	14 E	WM	30	NE NE	
14 S	14 E	WM	30	NW NE	
14 S	14 E	WM	30	SW NE	
14 S	14 E	WM	30	SE NE	

7. Notice of the application for transfer was published on December 10, 2001, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On July 27, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8928 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 29, 2011, 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.
9. On August 26, 2011, the applicant submitted a Consent by Deeded Landowner form signed by the current landowners, Walter R. and Sally N. Miller.

On September 1, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8928 and mailed a copy to the applicant and receiving landowner. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 6, 2011, and in The Bulletin newspaper on September 11, 18, and 25, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

Transfer Review Criteria (OAR 690-380-4010)

10. Water Right Certificate 86860 was issued on April 1, 2011. 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.
11. 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-8928.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of appropriation and change in place of use proposed in Transfer Application T-8928 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and change in place of use proposed in Transfer Application T-8928 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 86860 and any related decree.
3. Water right certificate 86860 is cancelled.
4. The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. 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.
 - 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.
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. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the receiving landowner to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 28 day of October 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: ~~NOV 01 2011~~