

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

In the Matter of Transfer Application)	FINAL ORDER
T-12732, Crook County)	APPROVING ADDITIONAL 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

AVION WATER CO. INC.
60813 PARRELL RD.
BEND, OR 97702

Findings of Fact

1. On August 21, 2017, Avion Water Co. Inc. filed an application for an additional point of appropriation under Certificates 86874 and 87594. The Department assigned the application number T-12732.
2. Notice of the application for transfer was published on August 29, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 19, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12732 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 18, 2018, 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.
4. On May 25, 2018, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12732 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 May 29, 2018 pursuant to ORS 540.520 and OAR 690-380-4020.

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.

5. On June 1, 2018, the applicant’s agent, Bruce Brody-Heine of GSI Water Solutions, Inc., notified the Department that there were three errors in the Preliminary Determination. Finding of Fact #6 incorrectly describes the source of water under Certificate 87594 as being “A WELL within in the DRY RIVER BASIN”. The correct description is “A WELL within in the DESCHUTES BASIN”. Condition #6 incorrectly lists the completion date as being October 1, 2019. The correct completion date is October 1, 2013. Measurement conditions were omitted in both the draft Preliminary Determination and Preliminary Determination. Measurement conditions are included in the revised Preliminary Determination as Condition #5.

6. On June 5, 2018, the Department issued a Revised Preliminary Determination proposing to approve Transfer Application T-12732 **Error! Reference source not found.** and sent a copy to the applicant. Additionally, notice of the Revised Preliminary Determination for the transfer application was published in the Department’s weekly notice on June 12, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The first right to be transferred is as follows:

Certificate: 86874 in the name of AVION WATER CO. INC. (perfected under Permit G-9398)
Use: QUASI-MUNICIPAL USES
Priority Date: APRIL 28, 1981
Rate: 0.59 CUBIC FOOT PER SECOND
Source: A WELL (NIXON WELL) within the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	14 E	WM	28	SW SE	88.95 FEET SOUTH AND 38.27 FEET EAST FROM THE NW CORNER OF THE SW¼ SE¼ OF SECTION 28

Authorized Place of Use:

QUASI-MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	GLot
15 S	14 E	WM	36	NE NE	
15 S	14 E	WM	36	NW NE	
15 S	14 E	WM	36	SW NE	
15 S	14 E	WM	36	SE NE	
15 S	14 E	WM	36	NE NW	
15 S	14 E	WM	36	NW NW	
15 S	14 E	WM	36	SW NW	
15 S	14 E	WM	36	SE NW	
15 S	14 E	WM	36	NE SW	
15 S	14 E	WM	36	SE SW	
15 S	14 E	WM	36	NE SE	
15 S	14 E	WM	36	NW SE	
15 S	14 E	WM	36	SW SE	
15 S	14 E	WM	36	SE SE	
15 S	15 E	WM	31	NE NW	
15 S	15 E	WM	31	NW NW	1
15 S	15 E	WM	31	SW NW	2
15 S	15 E	WM	31	SE NW	
15 S	15 E	WM	31	NE SW	
15 S	15 E	WM	31	NW SW	3

8. Transfer Application T-12732 proposes an additional point of appropriation approximately 50 feet north located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	14 E	WM	28	SW SE	POWELL BUTTE WELL 2 – 23.33 FEET SOUTH AND 62.6 FEET EAST FROM THE NW CORNER OF THE SW¼ SE¼ OF SECTION 28

9. The second right to be transferred is as follows:

Certificate: 87594 in the name of AVION WATER CO. INC. (perfected under Permit G-12936)

Use: QUASI-MUNICIPAL USES

Priority Date: FEBRUARY 8, 1994

Rate: 0.53 CUBIC FOOT PER SECOND

Source: A WELL within the DESCHUTES BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	14 E	WM	28	SW SE	88.95 FEET SOUTH AND 38.27 FEET EAST FROM THE NW CORNER OF THE SW¼ SE¼ OF SECTION 28

Authorized Place of Use:

QUASI-MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	GLot
15 S	14 E	WM	36	NE NE	
15 S	14 E	WM	36	NW NE	
15 S	14 E	WM	36	SW NE	
15 S	14 E	WM	36	SE NE	
15 S	14 E	WM	36	NE NW	
15 S	14 E	WM	36	NW NW	
15 S	14 E	WM	36	SW NW	
15 S	14 E	WM	36	SE NW	
15 S	14 E	WM	36	NE SW	
15 S	14 E	WM	36	SE SW	
15 S	14 E	WM	36	NE SE	
15 S	14 E	WM	36	NW SE	
15 S	14 E	WM	36	SW SE	
15 S	14 E	WM	36	SE SE	
15 S	15 E	WM	30	SE NW	
15 S	14 E	WM	30	NE SW	
15 S	14 E	WM	30	SE SW	
15 S	14 E	WM	30	SW SE	
15 S	15 E	WM	31	NE NW	
15 S	15 E	WM	31	NW NW	1
15 S	15 E	WM	31	SW NW	2
15 S	15 E	WM	31	SE NW	
15 S	15 E	WM	31	NE SW	
15 S	15 E	WM	31	NW SW	3

10. Transfer Application T-12732 proposes an additional point of appropriation approximately 50 feet north located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	14 E	WM	28	SW SE	POWELL BUTTE WELL 2 – 23.33 FEET SOUTH AND 62.6 FEET EAST FROM THE NW CORNER OF THE SW¼ SE¼ OF SECTION 28

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years prior to the submittal of Transfer Application T-12732 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.
12. A well, pump, pipeline, and municipal delivery 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-12732.
13. The Department has determined that the proposed additional point of appropriation (Powell Butte Well No. 2 (CROO 54458)) would develop the same ground water aquifer as the authorized point of appropriation (Powell Butte Well No. 1 (CROO 51975/ CROO 53534)).

Under OAR 690-380-2110, a change in (or additional) point of appropriation is restricted to the same aquifer.

14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

Conclusions of Law

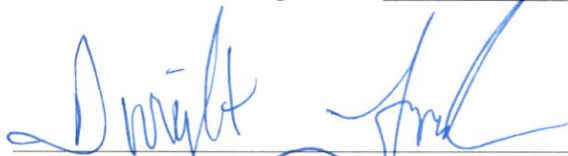
The additional points of appropriation proposed in Transfer Application T-12732 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of appropriation proposed in Transfer Application T-12732 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 86874 and 87594 and any related decree.
3. Water right Certificates 86874 and 87594 are cancelled.
4. The quantity of water diverted at the new additional point of appropriation, together with that diverted at the original point 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. 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 changes and full beneficial use of the water.

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

Dated at Salem, Oregon this JUL 19 2018.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: JUL 20 2018