

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

In the Matter of Transfer Application)
T-8928, Crook County)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A CHANGE
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

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.

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.

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.

Determination and Proposed Action


The change in point of appropriation and change in place of use proposed in Transfer Application T-8928 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-8928 is approved, the final order will include the following:

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 31 day of August 2011.



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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrdd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.