

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-7989, Marion County) PROPOSING APPROVAL OF
) ADDITIONAL POINTS OF
) APPROPRIATION

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

ROBERT AND PAMELA ZIELINSKI
17243 RIVER ROAD NE
GERVAIS, OR 97026

Findings of Fact

Background

1. On April 23, 1998, ROBERT AND PAMELA ZIELINSKI filed an application for additional points of appropriation under Permit G-12169. The Department assigned the application number T-7989.
2. The authorized period for completion of construction and complete application of water to beneficial use under Permit G-12169 expired on October 1, 1998. On May 26, 1999, the applicants filed a Claim of Beneficial Use for Permit G-12169.
3. On September 24, 2010, the Department issued a Final Order proposing to deny Permit Amendment Application T-7989 and mailed a copy to the applicants. The Final Order cover letter set forth a deadline of October 25, 2010, for the applicant to correct the deficiencies in the Claim of Beneficial Use for Permit G-12169. On October 27, 2010, the applicant submitted the information needed to correct the outstanding deficiencies.
4. On April 1, 2011, Certificate 86846 was issued for the water use under Permit G-12169.
5. On May 13, 2011, the applicants submitted an amended application converting the application from a Permit Amendment under Permit G-12169 to a transfer under Certificate 86846.

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.

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

Certificate: 86846 in the name of ROBERT AND PAMELA ZIELINSKI (perfected under Permit G-12169)

Use: IRRIGATION OF 36.7 ACRES

Priority Date: JANUARY 31, 1994

Rate: 0.46 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, 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.

Period of Use: March 1 through October 31.

Source: A WELL (WELL NO. 4) within the PATTERSON CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	32	NE SW	WELL 4 - 2470 FEET SOUTH AND 530 FEET WEST FROM THE NE CORNER OF LADTROOTE DLC 52

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	2 W	WM	32	SW NW	52	30.3
5 S	2 W	WM	32	NW SW	52	6.4

7. Transfer Application T-7989 proposes two additional points of appropriation approximately 2200 feet southwest to Well 3, and 2800 feet northwest to Well 5 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	2 W	WM	31	SE NE	52	WELL 5 - 450 FEET NORTH AND 800 FEET WEST FROM THE E¼ CORNER OF SECTION 31
5 S	2 W	WM	31	NE SE	52	WELL 3 - 3000 FEET SOUTH AND 2640 FEET WEST FROM THE NE CORNER OF LADTROOTE DLC 52

8. Notice of the application for transfer was published on April 28, 1998, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

9. On August 25, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7989 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2011, for the applicants to respond. The applicants 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.

Transfer Review Criteria (OAR 690-380-4010)

10. 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. Water Right Certificate 86846 was issued on April 1, 2011.
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-7989.
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 additional points of appropriation proposed in Transfer Application T-7989 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-7989 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-7989 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 86846 and any related decree.*
3. *Water right certificate 86846 is cancelled.*
4. *The quantity of water diverted at the additional points 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. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The approved change 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 applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*

8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 18 day of October 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@wrđ.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.