



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
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July 9, 2012

**Applicant**

L. VERNON COOK  
34801 OLD HWY 320  
ECHO, OR 97826

SUBJECT: Transfer Application T-11086

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11086. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or [Dorothy.I.Pedersen@wrđ.state.or.us](mailto:Dorothy.I.Pedersen@wrđ.state.or.us) if I may be of assistance.

Sincerely,

Dorothy I. Pedersen  
Transfer Program Advisor

cc: file T-11086  
Tony G. Justus, District 5 Watermaster (via e-mail)  
William Porfily, Agent for the applicant (via e-mail)  
Dale Van Schoiack, CWRE #333 (via e-mail)

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

In the Matter of Transfer Application ) PRELIMINARY DETERMINATION  
T-11086, Umatilla County ) PROPOSING APPROVAL OF A CHANGE IN  
 ) POINT OF APPROPRIATION AND PLACE OF  
 ) USE AND PARTIAL CANCELLATION OF  
 ) WATER RIGHT PERMIT S-54561

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

L. VERNON COOK  
34801 OLD HWY 320  
ECHO, OR 97826

**Agent**

BILL PORFILY  
PO BOX 643  
STANFIELD, OR 97875

**Findings of Fact**

**Background**

1. On June 7, 2010, Mr. Vernon Cook filed an application to change the place of use and add an additional point of appropriation under Certificate 80850. The Department assigned the application number T-11086.

2. On May 9, 2012, the agent for the applicant submitted an amended application and map identifying 4.4 acres for transfer.

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

**Certificate:** 80850 in the name of H-4 FARMS, INC. (perfected under Permit G-5215)

**Use:** IRRIGATION of 4.4 ACRES

**Priority Date:** FEBRUARY 16, 1973

**Rate:** 0.03 CUBIC FOOT PER SECOND

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.

**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 ONE-EIGHTIETH of one cubic foot per second per acre, or the equivalent for each acre irrigated, and is further limited to a total diversion not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** WELL #5 within the UMATILLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	29 E	WM	11	SE SE	WELL #5 - 60 FEET NORTH AND 590 FEET WEST FROM THE SE CORNER OF SECTION 11

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	29 E	WM	12	SE SW	4.4

4. Transfer Application T-11086 proposes to change the place of use of the above described 4.4 acres to:

**Proposed Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	29 E	WM	12	SW SW	3.6
3 N	29 E	WM	12	SE SW	0.8

5. Transfer Application T-11086 also proposes to add an additional point of appropriation for the above described 4.4 acres approximately 1260 feet east from Hale Well #5, to the Vernon Cook Well located:

**Proposed Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	29 E	WM	12	SW SW	V. COOK WELL - 75 FEET NORTH AND 800 FEET EAST FROM THE SW CORNER OF SECTION 12

6. Notice of the application for transfer was published on June 15, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On April 4, 2012, the Department mailed a copy of the Preliminary Determination proposing to deny Transfer Application T-11086 to the applicant. The Preliminary Determination identified deficiencies that needed to be resolved and indicated that the transfer application may be rejected unless by May 3, 2012, the applicant removed the deficiencies or requested to withdraw the application. On May 9, 2012, the applicant submitted a new amended map to correctly describe the place of use proposed for transfer. On May 31, 2012, the applicant submitted a voluntary cancellation affidavit requesting to cancel the supplemental water right appurtenant to the lands proposed for transfer. The cancellation is further described below in Findings of Fact #15. The applicant provided the necessary information to demonstrate the applicant is authorized to pursue the transfer.

8. On June 13, 2012, the Department mailed a draft copy of a Superseding Preliminary Determination proposing to approve Transfer Application T-11086 to the applicant. The applicant had submitted the needed items in response to the April 4, 2012 draft Preliminary Determination and cover letter which described deficiencies needing to be resolved. The Superseding draft of the Preliminary Determination set forth a deadline of July 12, 2012 to respond. On June 25, 2012, Bill Porfily, agent for the applicant provided a statement to go ahead with the transfer in response to the draft Superseding Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.

***Transfer Review Criteria (OAR 690-380-4010)***

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11086, 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.
10. Certificate 80850 authorizes use of two wells: Well #5 and Well #8, however, the application is lacking information as to use of authorized Well #8. The proposed (V. Cook) point of appropriation is in Subarea D of the Stage Gulch CGWA and the original authorized point of appropriation Well #8 is within Subarea H of the Stage Gulch CGWA. Since the Subareas are managed separately, the Department cannot allow points of appropriation from more than one subarea in a water right.
11. The agent and applicant were made aware of the inability for the Department to approve the transfer of an additional point of appropriation in a different subarea. The applicant submitted information that the intent of the original application is to only add an additional well to the authorized Well #5, currently having a delivery system in place to the proposed "TO" lands. Thus, the additional well is within the same subarea and aquifer as Well#5.
12. Based on the information provided, the proposed point of appropriation (UMAT 2835) develops the same (source) aquifer as that of the original authorized Well#5 (UMAT 1282), and complies with the Department's administrative rule under OAR 690-380-4010 (2)(e). Both wells are basalt wells located within Subarea D of the Stage Gulch Critical Groundwater Area (CGWA).
13. A well, 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-11086.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. There is a supplemental water right permit (Permit S-54561) appurtenant to the lands proposed for transfer, that was not identified in the application. The applicant was notified to either transfer or cancel this portion of the supplemental water right. The Department provided a voluntary "Partial Cancellation of a Water Right" affidavit for use, provided the

water right permit holder wished to alleviate the conflict by cancellation rather than by including the permit in the transfer.

***Partial Cancellation of a Water Right***

17. On May 31, 2012, Bill Porfily, agent for the applicant, submitted a voluntary cancellation affidavit meeting the requirements of ORS 540.621, from Craig Reeder, Manager for the Echo Irrigation District, permittee, for the portion of the supplemental water right permit appurtenant to the lands of the transferred water right. This request is to cancel only the acreage, and not any amount of water associated with it. The permit was issued for less than 1/40<sup>th</sup> of one cfs per each acre, thereby the remaining acreage, when certificated, will still not exceed the maximum amount allowed.

18. The portion of the water right to be cancelled is described as follows:

**Permit:** S-54561, in the name of Echo Irrigation District  
**Use:** Supplemental Irrigation of 4.4 acres  
**Priority Date:** January 31, 2008  
**Source:** Columbia River, tributary to the Pacific Ocean

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8

<b>Place of Use to be cancelled:</b>					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	29 E	WM	12	SE SW	4.4

**Determination and Proposed Action**

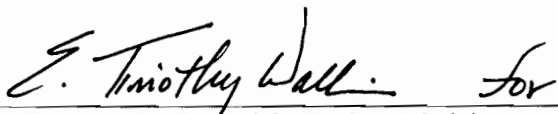
The change in place of use and additional point of appropriation proposed in Transfer Application T-11086 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved. The supplemental portion of Permit S-54561 appurtenant to the lands from which the primary right is proposed to be transferred will be cancelled.

*If Transfer Application T-11086 is approved, the final order will include the following:*

1. *The changes in place of use and additional point of appropriation proposed in application T-11086 are approved.*
2. *The portion of Permit S-54561 described in Finding of Fact #18 above is cancelled.*
3. *Certificate 80850 is modified. The Department will issue a superseding certificate describing the right when it is determined that it is necessary for record keeping.*
4. *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 80850 and any related decree.*

5. *The quantity of water diverted at the 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 (Hale Well#5).*
6. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of appropriation. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
7. *Water acquired from the new additional V. Cook Well (UMAT 2835) shall be from the same aquifer (water source) as the original point of appropriation Hale Well#5 (UMAT 1282).*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *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 applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

Dated at Salem, Oregon this 6<sup>th</sup> day of July, 2012.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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.