



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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August 15, 2013

PAUL L. ZEHR
52747 COUNTY RD.
MILTON FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-11046

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11046. 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 and in the Union Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a 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. The protest period will end 30 days after the Department's notice or 30 days after the last date of newspaper publication, whichever is later.

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@wrds.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: GR Modification T-11046
Tony G. Justus, District #5 Watermaster (*via e-mail*)
Jason and Charleen Derstine, 83902 Winesap Rd., Milton-Freewater, OR 97862, Receiving
Landowners

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

In the Matter of Ground Water)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING TO APPROVE
T-11046, Umatilla County)	RECOGNITION OF MODIFICATIONS
)	IN A POINT OF APPROPRIATION
)	AND PLACE OF USE

Authority

ORS 537.610, 537.705 and 540.505 to 540.580 establish the process in which the holder of a certificate of registration may submit a request for recognition of modifications to the place of use, character of use or point of appropriation under a ground water certificate of registration.

OAR Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating ground water registration modification applications.

Applicant

PAUL ZEHR
52747 COUNTY ROAD
MILTON-FREEWATER, OR 97862

Receiving Landowners

JASON & CHARLEEN DERSTINE
83902 WINESAP RD.
MILTON-FREEWATER, OR 97862

Findings of Fact

Background

1. On May 23, 2008, Registration Application GR-1137 (Certificate of Registration GR-1097) was assigned from Andrew Millar to Paul L. Zehr.
2. On March 29, 2010, Paul Zehr filed a ground water registration modification application to modify the point of appropriation and to modify the place of use under Registration Application GR-1137 (Certificate of Registration GR-1097). The Department assigned the application number T-11046.
3. Notice of the application for ground water registration modification was published on April 6, 2010, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On November 23, 2011, the Department mailed a copy of a draft Preliminary Determination proposing to deny Ground Water Registration Modification Application T-11046 to the applicant. The draft Preliminary Determination set forth a deadline of January 23, 2012, for the applicant to respond. On February 21, 2012, the Department received a request from the

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.
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applicant to place the transfer on “administrative” hold for additional time to resolve concerns over enlargement and layered water rights.

5. On February 13, 2013, the applicant submitted a revised application and map.
6. On June 18, 2013, the Department sent out a revised draft Preliminary Determination to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of July 18, 2013, 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.
7. The portion of the ground water registration to be modified is as follows:

Registration: Application GR-1137 (Certificate of Registration GR-1097) as modified by Special Order Vol. 79, page 86, in the name of Paul Zehr

Use: SUPPLEMENTAL IRRIGATION of 1.0 ACRE

Tentative Priority Date: 1911

Quantity: 25.0 Gallons Per Minute

Source: TWO WELLS within the LITTLE WALLA WALLA RIVER BASIN

Original Points of Appropriation: (per modification /T-10640)

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	35 E	WM	34	NW SW	875 FEET SOUTH AND 1310 FEET EAST FROM THE W¼ CORNER OF SECTION 34
6 N	35 E	WM	34	NW SW	925 FEET SOUTH AND 1205 FEET EAST FROM THE W¼ CORNER OF SECTION 34

Original Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	34	NW SW	1.0

8. Ground Water Registration Modification Application T-11046 proposes to modify the place of use to:

Proposed Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
6 N	35 E	WM	34	SE SE	1.0

9. Ground Water Registration Modification Application T-11046 also proposes to modify the point of appropriations approximately 4000 feet southeast to two existing wells located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 N	35 E	WM	34	SE SE	WELL #3 - 1090 FEET NORTH AND 145 FEET WEST FROM THE SE CORNER OF SECTION 34
6 N	35 E	WM	34	SE SE	WELL #4 - 840 FEET NORTH AND 95 FEET WEST FROM THE SE CORNER OF SECTION 34

10. This transfer is being processed simultaneously with T-11539, to transfer the primary water right on the "FROM" lands described above in Finding of Fact #7 and, to avoid a layered situation with an existing water right on the proposed "TO" lands.

Review Criteria for Ground Water Registration Modification Applications [OAR 690-382-0700(2)]

11. The Department has determined that the proposed wells will develop the same source of water as the authorized existing well (UMAT 5008).
12. The proposed modifications, as conditioned, would not result in enlargement of the ground water registration.
13. The proposed modifications, as conditioned, would not result in injury to other water rights.
14. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.

Determination and Proposed Action


The modification in point of appropriation and modification in place of use proposed in Ground Water Registration Modification T-11046 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-0200 and OAR 690-382-1000 and will be approved. If protests are not filed pursuant to OAR 690-382-0900, the application will be recognized.

If Ground Water Registration Modification Application T-11046 is recognized and T-11539 is concurrently approved, the final order will include the following:

1. *The modifications to Registration Application GR-1137 (Certificate of Registration GR-1097) proposed in Ground Water Registration Modification Application T-11046 are recognized. Recognition of the modifications shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.*
2. *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 Registration Application GR-1137 (Certificate of Registration GR-1097) and any related decree.*
3. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
4. *Water shall no longer be appropriated from the original points of appropriation for this portion of the ground water certificate of registration.*
5. *The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*

6. *The former place of use of the modified ground water registration shall no longer receive water as part of the ground water certificate of registration.*
7. *Prior to water use at the proposed place of use, the water user shall install and maintain a totalizing flow meter or other suitable device for measuring and recording the quantity of water diverted. The water user shall maintain the meter or measuring device in good working order. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
8. *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.*

Dated at Salem, Oregon this 14 day of August, 2013.



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@ wrd.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.