

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

In the Matter of Transfer Application)
T-12732, Crook County)
)
) REVISIED PRELIMINARY
) DETERMINATION PROPOSING
) APPROVAL OF 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.

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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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. 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

7. 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

8. 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

9. 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)

10. 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.
11. 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.
12. 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.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

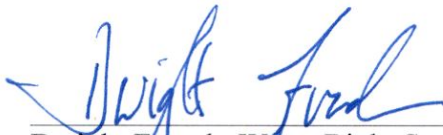
The additional points of appropriation proposed in Transfer Application T-12732 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12732 is approved, the final order will include the following:

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 JUN 05 2018 .



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

This revised Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@oregon.gov

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>