

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-6872, Marion County                            )    PROPOSING DENIAL OF CHANGES  
  )    IN PLACE OF USE

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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**

D.E.W.W. Farms  
5357 St. Paul Highway  
St. Paul, Oregon 97137

**Findings of Fact**

**Background**

1. On January 6, 1993, D.E.W.W. Farms filed an application to change the place of use under Certificate 19469 and Permit 43135. The Department assigned the application number T-6872.

2. The portion of the first right proposed to be transferred is as follows:

**Certificate:** 19469 in the name of Burnell Olson  
**Use:** Irrigation of 25.0 acres  
**Priority Date:** October 28, 1947  
**Quantity:** 0.31 cubic foot per second  
**Rate/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Willamette River, tributary to the Columbia River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼	¼	DLC
4	S	3	W	W.M.	1	NW	SE	70

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 Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	3	W	W.M.	1	SW NE	70	7.0
4	S	3	W	W.M.	1	SE NE	70	2.4
4	S	3	W	W.M.	1	NE SE	70	3.0
4	S	3	W	W.M.	1	NW SE	70	12.6

3. Application T-6872 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	2	W	W.M.	6	NE SW	37	14.5
4	S	2	W	W.M.	6	NW SW	37	10.5

4. The second right proposed to be transferred is as follows:

**Permit:** S-43135 in the name of D.E.W.W. Inc. (no certificate issued)  
**Use:** Irrigation of 25.0 acres  
**Priority Date:** April 14, 1978  
**Quantity:** 0.32 cubic foot per second  
**Rate/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Willamette River, tributary to the Columbia River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	DLC	Survey Coordinates
4	S	3	W	W.M.	1	NW SE	70	350 feet South and 2000 feet West from the E¼ corner of Section 1

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	2	W	W.M.	6	NE SW	37	14.5
4	S	2	W	W.M.	6	NW SW	37	10.5

5. Application T-6872 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	3	W	W.M.	1	SW NE	70	7.0
4	S	3	W	W.M.	1	SE NE	70	2.4
4	S	3	W	W.M.	1	NE SE	70	3.0
4	S	3	W	W.M.	1	NW SE	70	12.6

6. Notice of the application for transfer was published on January 13, 1993, pursuant to OAR 690-380-4000. WaterWatch of Oregon filed comments in response to the notice, questioning the effect on instream flows and requesting the Department to condition the transfer to require fish screens and bypass devices, measurement devices and records, and compliance with state policies and local comprehensive plans. WaterWatch stated their understanding that only water right certificates, not permits, were subject to transfer.

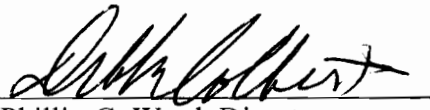
***Transfer Review Criteria [OAR 690-380-4010(2)]***

7. No evidence was provided, to document that water has been used within the last five years according to the terms and conditions of the rights, or to demonstrate that the rights are not subject to forfeiture under ORS 540.610.
8. No request for issuance of a water right certificate has been received or approved by the Commission for Permit S-43135. Thus the permit does not qualify as a water use subject to transfer under OAR 690-380-0100(11)(c).
9. No documentation was provided to show that a diversion structure and ditch, or pump, pipe and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. Without documentation of use of the water rights within the five years prior to filing the transfer application, and of the capacity of the system, the Department is unable to conclude that the proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.
12. The applicant was notified by letter dated October 7, 2004 of the deficiencies listed in Finding Nos. 7, 8 and 9, and given the opportunity to respond by November 8, 2004 to indicate intent to remedy the deficiencies and to set a mutually agreeable timeline for doing so. No response was received. A phone message was left with the applicant's residence December 9, 2004, for Mr. Bill Gooding to call the Department to discuss his intentions regarding T-6872.
13. On December 17, 2004, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-6872 to the applicant. The draft Preliminary Determination set forth a deadline of January 17, 2005, for the applicant to respond. The applicant did not respond by the deadline.
14. On April 7, 2005, at the request of Mr. Gooding, the Department sent a letter to Mr. Gooding outlining options for continuing with the transfer application. A response date of May 6, 2005 was given in the letter. No response to the letter has been received by the department as of October 11, 2007.

**Determination and Proposed Action**

The changes in place of use proposed in application T-6872 appear to be not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 because the water use under Permit S-43135 is not subject to transfer, and the application does not meet completeness standards. If protests are not filed pursuant to OAR 690-380-4030, the application will be denied.

Dated at Salem, Oregon this 17 day of October 2007.

  
for Phillip C. Ward, Director

This 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@ wrd.state.or.us

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