



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

- Certificate:** 83664 in the name of J. FRANK SCHMIDT & SON CO. (perfected under Permit G-11100)
- Use:** NURSERY OPERATIONS on 3.9 ACRES
- Priority Date:** APRIL 12, 1990
- Rate:** 0.03 CUBIC FOOT PER SECOND
- Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of in ground nursery plants the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime of the year that the use is beneficial. For the irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land.
- Source:** A WELL, in the NORTH FORK DEEP CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	4	SE NW	2720 FEET NORTH AND 2610 FEET EAST FROM THE SW CORNER OF SECTION 4

**Authorized Place of Use:**

NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	4	SW NE	0.2
2 S	4 E	WM	4	SW NW	2.7
2 S	4 E	WM	4	SE NW	1.0

4. Transfer Application T-9940 proposes to change the place of use of the right to:

NURSERY USES					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	4	SW NW	3.9

5. Transfer Application T-9940 is being processed concurrently with Transfer Application T-10988, which proposes to move a portion of Ground Water Registration Application GR-1490 (Certificate of Registration GR-1440) that is layered on the same lands.

6. Notice of the application for transfer was published on June 28, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. On April 28, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9940 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 28, 2010, 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.

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

8. Water has been used within the last five years prior to the submittal of Transfer Application T-9940 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.
9. 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-9940.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-9940 appears 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, provided Transfer Application T-19088 is approved.

*If Transfer Application T-9940 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-9940 is 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 83664 and any related decree.*
3. *Water right certificate 83664 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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 the point of appropriation.*
  - b. The water user shall maintain the meter or measuring devices in good working order.*
  - c. The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within*

5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.*
7. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of June 2010.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you have questions about the information in this document, you may reach me at 503-986-0898 or Kara.B.Morris@ wrd.state.or.us.

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