

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

In the Matter of Transfer Application)
T-10008, Union County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF AN
) ADDITIONAL POINT OF
) APPROPRIATION

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.

Applicant

Fred Wallender
65228 Airport Lane
LaGrande, Oregon 97850

Agent

Greg Blackman
2006 Adams Avenue
LaGrande, Oregon 97850

Findings of Fact

Background

1. On October 14, 2005, Fred Wallender filed an application to change the point of appropriation under Certificate 85815. The Department assigned the application number T-10008.
2. On May 26, 2010, the Department received a modified transfer application map correcting the lands with primary irrigation that were missing and removing lands proposed in Transfer Application T-11020.
3. The portion of the right to be transferred is as follows:

Certificate: 85815 in the name of Fred D. Wallender and Stuart H. Sholund (perfected under Permit G-12978)
Use: IRRIGATION OF 71.9 ACRES AND SUPPLEMENTAL IRRIGATION OF 245.9 ACRES
Priority Date: JANUARY 17, 1996
Rate: 3.97 CUBIC FEET PER SECOND
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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each

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.

acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: March 1st through October 31 for primary irrigation and that period when necessary for supplemental irrigation

Source: A WELL within the GRANDE RONDE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	39 E	WM	29	NE NW	WELL #3 (WALLENDER); 807 FEET SOUTH AND 1937 FEET EAST FROM NW CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	39 E	WM	29	NE NE	4.0
3 S	39 E	WM	29	NW NE	20.2
3 S	39 E	WM	29	SW NE	3.8
3 S	39 E	WM	29	SE NE	18.0
3 S	39 E	WM	29	NE NW	19.2
3 S	39 E	WM	29	NW NW	6.7

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	39 E	WM	29	NE NE	36.0
3 S	39 E	WM	29	NW NE	19.8
3 S	39 E	WM	29	SW NE	36.2
3 S	39 E	WM	29	SE NE	19.8
3 S	39 E	WM	29	NE NW	20.8
3 S	39 E	WM	29	NW NW	33.3
3 S	39 E	WM	29	SW NW	40.0
3 S	39 E	WM	29	SE NW	40.0

4. Transfer Application T-11020 proposes to add a point of appropriation approximately 1850 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	39 E	WM	29	NW NE	WALLENDER #2; 1235 FEET SOUTH AND 3786 FEET EAST FROM NW CORNER OF SECTION 29

5. Notice of the application for transfer was published on October 25, 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On **April 13, 2010**, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10008 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 13, 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)

7. Water has been used within the last five years 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.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-10008.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change to add a point of appropriation proposed in Transfer Application T-10008 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.

If Transfer Application T-10008 is approved, the final order will include the following:

1. *The request for an additional point of appropriation 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 85815 and any related decree.*
3. *Transfer application T-11020, which modified the portion of Certificate 85815 not modified by T-10008, was approved on May 21, 2010. Water right Certificate 85815 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation, together with 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 the new point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device 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. *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.*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of July 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrд.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.