

acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the WALLA WALLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	2	NW NW	640 FEET SOUTH AND 750 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	2	NW NW	9.8

- Transfer Application T-10849 proposes to reconstruct the authorized point of appropriation (Well 1) so that it only accesses the alluvial aquifer and meets current well construction standards and to add an authorized point of appropriation that is cased completely through the surface, alluvial (gravel) aquifer that will only draw water from the basalt aquifer, located approximately 10 feet from the existing point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	2	NW NW	WELL 2: 640 FEET SOUTH AND 740 FEET EAST FROM THE NW CORNER OF SECTION 2

- Notice of the application for transfer was published on May 26, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On April 12, 2010, the Department contacted the applicant by written correspondence to notify the applicant of deficiencies in the application. The Department requested that the deficiencies be resolved by May 13, 2010.
- Responses to the Department’s request were submitted by the applicant’s agent in mail correspondence received by the Department on April 28, 2010. These submittals addressed the issues raised in the deficiency letter and included a revised transfer application map.
- The Department determined that the existing well commingles water from the alluvial and basalt aquifers, and most likely provides most, but not all, of the production from the basalt aquifer. The applicant originally proposed that the new well would develop only the basalt aquifer. Therefore, use of the full rate allowed by the right from the basalt aquifer would have the potential for causing injury to other groundwater rights which rely on the basalt aquifer as the sole source. Based on an examination of the original well log, and absent any additional information, the Department recommended that the transfer be conditioned to allow 66.6% of the authorized production (0.167 cfs) from the basalt aquifer and 33.4% (0.083 cfs) from the alluvial aquifer.

10. On May 14, 2010, the Department contacted the applicant by written correspondence to notify the applicant of the issue described in Finding of Fact #9 and to explain the options available for proceeding with the transfer application. The options included completion of one well to develop water from the basalt aquifer at a rate of 0.167 cfs (or other rate apportioned according to actual data provided by the applicant), or completion of two wells, one developing water from the alluvial aquifer and the other developing water from the basalt aquifer, with the full 0.25 cfs apportioned appropriately between the two wells. The Department requested that the applicant provide a response by June 14, 2010.
11. On June 9, 2010, an e-mail message was received from the applicant's CWRE, John Warinner, in response to the Department's request. The message stated that he and the applicant believed it unlikely the cemented gravel and sandstone alluvial layers yield one-third of the rate pumped from the well, but they were unable to provide physical evidence to support that assumption. The email response indicated that in the absence of other information, Mr. Funk chose to complete one well that would develop water from the basalt aquifer at a rate of 0.167 cfs.
12. On June 17, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10849 to the applicant based on reducing the rate to 0.167 cfs from a new well accessing the basalt aquifer only. The draft Preliminary Determination cover letter offered the option of alternatively reconstructing the original well to take only water from the alluvial aquifer and characterizing the new basalt well as an additional point of appropriation, retaining the right to 0.25 cfs total from the two wells. The letter set forth a deadline of July 19, 2010, for the applicant to respond.
13. On June 28, 2010, John Warinner, CWRE, asked for clarification of what Richard Funk would need to do to amend the transfer application to propose the new well as an additional point of appropriation and what physical changes would need to be made to the existing well to pursue the two-well option. In response to the Department's answers, on July 13, 2010, John Warinner submitted amendments to the application and map, proposing the new well as an additional POA accessing the basalt aquifer and reconstruction of the authorized well to access only the alluvial aquifer.
14. On July 15, 2010, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-10849 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of August 16, 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)

15. 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.
16. 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-10849.
17. The proposed change, if conditioned to limit the rate to a total of 0.25 cfs, being from Well 1 (accessing the alluvial aquifer), with any deficiency in supply to come from Well 2 (accessing the basalt aquifer), would not result in enlargement of the right.
18. The proposed change, if conditioned as below, would not result in injury to other water rights.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-10849 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-10849 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-10849 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 55017 and any related decree.*
3. *Water right certificate 55017 is cancelled.*
4. *The new well (Well 2) shall be cased and sealed in such a manner that it meets well construction standards and develops a single basalt aquifer.*
5. *The existing well (Well 1) shall be reconstructed to current well construction standards so that it accesses only the alluvial aquifer.*
6. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed 0.25 cfs, being from Well 1 (accessing the alluvial aquifer), with any deficiency in supply from Well 2 (accessing the basalt aquifer).*

7. *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 meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
8. *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.*
9. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4 day of August 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrdd.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.