

file copy



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Central Region  
116 SE Dorion Avenue  
Pendleton, OR 97801  
Phone (541) 278-5456  
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August 18, 2011

Port of Morrow  
Ronald McKinnis  
P.O. Box 200  
Boardman, Oregon 97818

SUBJECT: Water Right Transfer Application T-10269

Please find enclosed a superseding draft of our Preliminary Determination regarding your Transfer Application T-10269. The document reflects the Department's conclusion that, based on the information currently available, the transfer will be approved.

### Items needed before the next phase of processing...

Please review the draft carefully to familiarize yourself with any requirements and evaluate whether the document is consistent with your intent in seeking the transfer. Please respond in writing by the deadline provided below, whether you agree with the proposed actions below and whether there are any typographical errors that need to be corrected.

**The Department sent out a draft of the Preliminary Determination on March 23, 2007, proposing to approve the transfer application. The accompanying cover letter identified a conflict with a layered supplemental water right, consistent with OAR 690-380-2240 (3). The layered supplemental water right was not identified in your transfer. A portion of water use permit G-12729 overlays a portion of the lands included under certificate 51822. Any supplemental water rights layered with C-51822 must be transferred along with the primary rights, or will be cancelled upon issuance of a Final Order approving T-10269. Additionally, the Department pointed out that no subsequent permit amendment application for a change in character of use of a permit may be submitted.**

**To date, the Department has not received a response to what you intend to do with the layered supplemental water right. The Department has made repeated attempts at contacting you regarding the needed action(s) to remedy the conflict. Since you may not make a change in character of use to a permit, the portions of the supplemental permit that are layered with the transferred portion of Certificate 51822 shall be cancelled unless you amend the transfer to exclude the lands in conflict with the groundwater permit from your application.**

To that end, consistent with the Department's administrative rules, under OAR 690-380-2250 (2), if after 30 days upon receipt of this letter, the Department shall cancel any appurtenant supplemental water right or permit that is not included in the transfer. A notice consistent with OAR 690-380-2250 (4) shall be served on the applicant and the land owner the Department's intent to cancel that portion of the supplemental water right or permit.

### Conditions to your water right...

In the Department's review, the Watermaster has required a water measurement devices be installed at each new well. If this transfer is approved, the final order will include a condition requiring installation of a totalizing flow-meter at each new point of appropriation (well), prior to diversion of water. Please note the proposed date by which this condition must be met: October 1, 2012.



Please look at Condition #7 on page 8, which sets a date for completion of the changes. If the required completion date is insufficient to comply with any of the requirements listed in this document, you may extend the date at no cost to you during this stage of processing. Please let me know by the comment deadline so we can make the proper arrangements to get you the time you need.

**What happens next...**

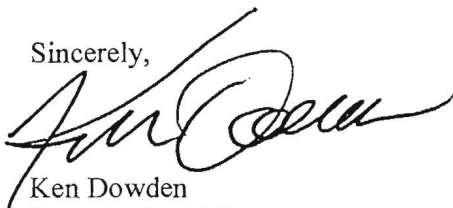
Once the preliminary determination is issued, a publication period is required. Because the application proposes a change in character of use, and proposed points of appropriation which are more than ¼ mile from at least one of the authorized points of appropriation, the applicant is responsible for publishing notice of the transfer in a local newspaper having a general circulation in the area of the water right. The notice must be published at least once a week for two consecutive weeks. We will provide a copy of the required notice to you upon issuance of the Preliminary Determination.

Once the preliminary determination is issued, the Department will also publish a notice in their weekly publication, which opens a 30-day period in which the transfer can be protested.

Issuance of the Preliminary Determination will occur shortly after we receive your written response to the conditions and proposed action in the draft Preliminary Determination (e-mail is acceptable). **If we do not receive your response and the report by September 19, 2011, a Preliminary Determination may be issued denying the application as incomplete.**

Please do not hesitate to contact me at 541-278-5456 or Ken.D.Dowden@ wrd.state.or.us if I may be of assistance.

Sincerely,



Ken Dowden  
Transfer Specialist  
Field Services Division

cc: T-10269  
Tony G. Justus, District 5 Watermaster

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

In the Matter of Transfer Application )  
T-10269, Morrow County )

**D R A F T**

) SUPERSEDING PRELIMINARY  
) DETERMINATION PROPOSING APPROVAL  
) OF CHANGES IN PLACE OF USE,  
) CHARACTER OF USE, ADDITIONAL  
) POINTS OF APPROPRIATION AND  
) PARTIAL CANCELLATION OF A WATER  
) RIGHT PERMIT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

PORT OF MORROW  
RONALD V. MCKINNIS  
PO BOX 200, 2 MARINE DR  
BOARDMAN, OR 97818

**Findings of Fact**

***Background***

1. On November 20, 2006, Ronald McKinnis of the Port of Morrow initially filed an application to change the use, and place of use, and create an additional point of appropriation under Certificate 51822. The applicant first proposed the installation of one single Raney collector groundwater appropriation. On March 25, 2010, the applicant submitted a new revised Supplemental Form A and an updated map reflecting an amendment to change and correctly describe the proposed points of appropriation. The Department assigned the application number T-10269.
  
2. The right to be transferred is as follows:  
**Certificate:** 51822 in the name of PRUDENTIAL INSURANCE CO. OF AMERICA (perfected under Permit G-4942)

**Use:** IRRIGATION of 377.0 ACRES

**Priority Date:** DECEMBER 1, 1971

**Rate:** 4.46 CUBIC FEET PER SECOND (cfs), being 2.88 cfs from WELL 16 and 1.58 cfs from WELL 17

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 ACRE-FEET per acre per year during the irrigation season of each year

**Source:** WELLS #16 and #17 in the COLUMBIA RIVER ALLUVIAL AQUIFER

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	25 E	WM	12	NW NW	WELL 16 - 270 FEET SOUTH AND 700 FEET EAST FROM NW CORNER, SECTION 12
4 N	25 E	WM	2	NE SW	WELL 17 - 2400 FEET NORTH AND 2900 FEET WEST FROM SE CORNER, SECTION 2

**Authorized Place of Use:**

IRRIGATION (IR)							
Twp	Rng	Mer	Sec	Q-Q	GLot	Well#	Acres
4 N	25 E	WM	1	NE SW		16	3.6
4 N	25 E	WM	1	NW SW		16	15.7
4 N	25 E	WM	1	SW SW		16	35.0
4 N	25 E	WM	1	SE SW		16	39.6
4 N	25 E	WM	1	NW SE		16	0.8
4 N	25 E	WM	1	SW SE		16	24.4
4 N	25 E	WM	2	SW NE		17	18.6
4 N	25 E	WM	2	SW NW	9	17	1.1
4 N	25 E	WM	2	SE NW		17	25.7
4 N	25 E	WM	2	SE NW	8	17	2.0
4 N	25 E	WM	2	NE SW		17	38.9
4 N	25 E	WM	2	NW SW		17	3.6
4 N	25 E	WM	2	SE SW	11	17	4.4
4 N	25 E	WM	2	NE SE		16	27.8
4 N	25 E	WM	2	NW SE		17	30.1
4 N	25 E	WM	2	NW SE		16	1.6
4 N	25 E	WM	2	SW SE		16	4.4
4 N	25 E	WM	2	SW SE		17	2.2
4 N	25 E	WM	2	SE SE		16	39.5
4 N	25 E	WM	11	NE NE		16	5.1
4 N	25 E	WM	12	NW NE		16	16.8
4 N	25 E	WM	12	NE NW		16	30.4
4 N	25 E	WM	12	NW NW		16	5.7
						<b>TOTAL:</b>	<b>377.0</b>

- Transfer Application T-10269 proposes to change the character of use under Certificate 51822 to municipal use. Municipal use shall continue to be limited to the irrigation season of March 1 through October 31 of every year.
- Transfer Application T-10269 also proposes to change the place of use of the right to:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
4 N	25 E	WM	1	ALL
4 N	25 E	WM	2	NE NE
4 N	25 E	WM	2	NW NE
4 N	25 E	WM	2	SW NE
4 N	25 E	WM	2	SE NE
4 N	25 E	WM	2	NE NW
4 N	25 E	WM	2	SW NW
4 N	25 E	WM	2	SE NW
4 N	25 E	WM	2	NE SW
4 N	25 E	WM	2	NW SW
4 N	25 E	WM	2	SW SW
4 N	25 E	WM	2	SE SW
4 N	25 E	WM	2	NE SE
4 N	25 E	WM	2	NW SE
4 N	25 E	WM	2	SW SE
4 N	25 E	WM	2	SE SE
4 N	25 E	WM	3	NE SW
4 N	25 E	WM	3	NW SW
4 N	25 E	WM	3	SW SW
4 N	25 E	WM	3	SE SW
4 N	25 E	WM	3	NE SE
4 N	25 E	WM	3	NW SE
4 N	25 E	WM	3	SW SE
4 N	25 E	WM	3	SE SE
4 N	25 E	WM	4	NE SW
4 N	25 E	WM	4	SE SW
4 N	25 E	WM	4	NE SE
4 N	25 E	WM	4	NW SE
4 N	25 E	WM	4	SW SE
4 N	25 E	WM	4	SE SE
4 N	25 E	WM	9	NE NE
4 N	25 E	WM	9	NW NE
4 N	25 E	WM	9	SW NE
4 N	25 E	WM	9	SE NE
4 N	25 E	WM	9	NE NW
4 N	25 E	WM	9	SE NW
4 N	25 E	WM	10	ALL
4 N	25 E	WM	11	ALL
4 N	25 E	WM	12	ALL
4 N	25 E	WM	13	ALL
4 N	25 E	WM	14	ALL
4 N	25 E	WM	15	ALL
4 N	25 E	WM	22	ALL
4 N	25 E	WM	23	ALL
4 N	25 E	WM	24	ALL
4 N	26 E	WM	3	NW NW
4 N	26 E	WM	4	ALL
4 N	26 E	WM	5	ALL
4 N	26 E	WM	6	ALL
4 N	26 E	WM	7	NE NE

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
4 N	26 E	WM	7	NW NE
4 N	26 E	WM	7	SW NE
4 N	26 E	WM	7	SE NE
4 N	26 E	WM	7	NE NW
4 N	26 E	WM	7	NW NW
4 N	26 E	WM	7	SW NW
4 N	26 E	WM	7	SE NW
4 N	26 E	WM	7	NE SW
4 N	26 E	WM	7	NW SW
4 N	26 E	WM	7	SW SW
4 N	26 E	WM	7	SE SW
4 N	26 E	WM	7	NE SE
4 N	26 E	WM	7	NW SE
4 N	26 E	WM	7	SE SE
4 N	26 E	WM	8	ALL
4 N	26 E	WM	9	ALL
4 N	26 E	WM	18	NE NW
4 N	26 E	WM	18	NW NW
4 N	26 E	WM	18	SW NW
4 N	26 E	WM	18	SE NW
5 N	26 E	WM	31	NE NE
5 N	26 E	WM	31	NW NE
5 N	26 E	WM	31	SW NE
5 N	26 E	WM	31	SE NE
5 N	26 E	WM	31	NE NW
5 N	26 E	WM	31	SW NW
5 N	26 E	WM	31	SE NW
5 N	26 E	WM	31	NE SW
5 N	26 E	WM	31	NW SW
5 N	26 E	WM	31	SW SW
5 N	26 E	WM	31	SE SW
5 N	26 E	WM	31	NE SE
5 N	26 E	WM	31	NW SE
5 N	26 E	WM	31	SW SE
5 N	26 E	WM	31	SE SE
5 N	26 E	WM	32	ALL
5 N	26 E	WM	33	ALL

5. Transfer Application T-10269 was amended proposing to add five additional points of appropriation approximately 1 mile northwest from the existing point of appropriation Well# 16 to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	25 E	WM	2	SE NW	EB WELL #1 - 1337 FEET SOUTH AND 36590 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	EB WELL #2 - 1448 FEET SOUTH AND 3724 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	EB WELL #3 - 1590 FEET SOUTH AND 3845 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	EB WELL #4 - 1665 FEET SOUTH AND 3910 FEET

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
					WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	1	SW SE	PDX1 WELL - 533 FEET NORTH AND 523 FEET EAST OF THE S¼ CORNER OF SECTION 1

6. Notice of the application for transfer was published November 28, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
7. The Department has determined that the proposed points of appropriation EB Well #1 (MORR 51515), EB Well #2 (MORR 51427), EB Well #3 (MORR 51545), EB Well #4 and PDX1 Wells (are proposed construction) will all develop the same source of water as the authorized existing Well 16 (MORR 772) and Well 17 (MORR 684).
8. On March 23, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10269 to the applicant. The draft Preliminary Determination set forth a deadline of May 1, 2007, for the applicant to respond. The applicant requested the Department to extend the deadline date to work out details of their proposed well structure and explore another groundwater source providing an opportunity for better compatibility for their municipal system. The Department authorized an additional amount of time for the applicant to ascertain another groundwater source. On March 25, 2010, the applicant submitted a new revised Supplemental Form A and an updated map reflecting an amendment to add additional proposed points of appropriation.

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

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. Two wells, pumps, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing right is present.
11. Transfer Application T-10269 proposes to increase the size of the place of use of the right evidenced by Certificate 51822 by including the current place of use within the proposed place of use. As defined by OAR 690-380-0100(2) the proposed change could result in enlargement if not conditioned so as to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that beneficial use of water for irrigation of crops in the area would not likely exceed the annual duty of 3.0 acre-feet per acre on 377.0 acres, for a total volume of 1,131 acre-feet per year. If conditioned to limit the annual use of water for municipal use under this right to a maximum total rate of 4.46 cfs between the seven wells, diverted during the irrigation season, further limited to a maximum annual volume 1,131 acre-feet, the proposed change would not result in enlargement of the right.
12. The proposed additional points of appropriation are approximately 1,600 feet closer to the river than the closest existing point of appropriation. Pumping from the additional points of appropriation will have much greater short-term impact on flows in the Columbia River

than pumping from the existing points of appropriation. However, at steady state following a sufficiently long period of pumping, the impact on the river from use of the proposed additional point of appropriation in conjunction with the authorized points of appropriation is expected to be similar to the impact from use of the current authorized points of appropriation.

13. The proposed changes would not result in enlargement of the right, provided the rate of diversion for municipal use does not exceed 4.46 cubic feet per second and be further limited to a total quantity diverted of 1,131 acre-feet during the irrigation season of March 1 to October 31 of each year.
14. The proposed change would not result in injury to other water rights.
15. The Port of Morrow is a municipality as defined in ORS Chapter 540.510(3)(b), Chapter 261 and a water supplier defined in ORS 448.115. Therefore, pursuant to ORS 540.510(3), the District may request a change in character of use from irrigation to municipal uses and may exercise the right on these lands formerly irrigated and within the Port Service boundary. Therefore, pursuant to OAR 690-380-3000(13)(b), the applicant is not required to provide a report of ownership information.

***Partial Cancellation of a Water Right Permit***

16. An existing water use under Permit G-12729 for supplemental irrigation is appurtenant to a portion of the place of use proposed for transfer, and is considered therefore layered with Certificate 51822 as per OAR 690-380-0100(4). Under ORS 540.510(1) and OAR 690-380-2250(5), the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer.
17. The supplemental right under Permit G-12729 is not included in transfer application T-10269, and ORS 537.211(4)(c) does not provide for change to the character of beneficial use allowed under a permit. Therefore, the portion of the Permit G-12729 appurtenant to the lands proposed for transfer may not be included in T-10269, and will therefore be cancelled upon issuance of a final order approving the transfer, unless within 30 days of notification, the applicant modifies the application to exclude the lands which have layered rights as listed below, or withdraws the application.
18. Consistent with OAR 690-380-2250, the Department is hereby notifying the applicant of, by issuance of the preliminary determination, the Department's intent to cancel the portion of the supplemental permit described below unless within 30 days the applicant modifies the application exclude these lands, or withdraws the application. The portion of the following right is proposed to be cancelled:

**Permit:** G-12729 in the name of PORT OF MORROW  
**Use:** SUPPLEMENTAL IRRIGATION of 219.1 ACRES  
**Priority Date:** JANUARY 22, 1993



**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 acre-feet per acre per year

**Season of Use:** March 1 through April 15 and October 1 through October 31

**Source:** WELL 4A, WELL 5A, PORT WELL #6 and PORT WELL #7 within the UMATILLA RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
4 N	25 E	WM	1	NE NW	WELL 4A—150 FEET SOUTH and 2550 FEET EAST FROM NW CORNER, SECTION 1
4 N	25 E	WM	1	NE NW	WELL 5A—60 FEET SOUTH and 1380 FEET EAST FROM NW CORNER, SECTION 1
4 N	25 E	WM	10	SW NE	PORT WELL #6—120 FEET NORTH and 2400 FEET WEST FROM E1/4 CORNER, SECTION 10
4 N	25 E	WM	10	SW NE	PORT WELL #7—50 FEET NORTH and 2060 FEET WEST FROM E1/4 CORNER, SECTION 10

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 N	25 E	WM	1	NE SW	3.6
4 N	25 E	WM	1	NW SW	1.2
4 N	25 E	WM	1	SW SW	35.0
4 N	25 E	WM	1	SE SW	39.6
4 N	25 E	WM	1	NW SE	0.8
4 N	25 E	WM	1	SW SE	24.4
4 N	25 E	WM	2	NE SE	27.8
4 N	25 E	WM	2	NW SE	1.6
4 N	25 E	WM	2	SW SE	4.4
4 N	25 E	WM	2	SE SE	39.5
4 N	25 E	WM	11	NE NE	5.1
4 N	25 E	WM	12	NE NW	30.4
4 N	25 E	WM	12	NW NW	5.7
<b>TOTAL:</b>					<b>219.1</b>

**Determination and Proposed Action**

The changes in place of use, character of use and additional points of appropriation proposed in Transfer Application T-10269 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. The supplemental portion of Permit G-102729 appurtenant to the lands from which the primary right is proposed to be transferred will be cancelled, unless the application is modified to exclude those lands, or is withdrawn.

*If application T-10269 is approved, the final order will include the following:*

1. *Certificate 51822 is cancelled. The portion of Permit G-12729 described in Findings of Fact #18 is cancelled. [unless the application has been modified to exclude those lands.]*

2. *The right to use of the water is restricted to beneficial use at the place of use described, and will continue to be subject to all other conditions and limitations contained in previous Certificate 51822 and any related decree.*
3. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation Well 16 (MORR 772) and Well 17 (MORR 684).*
4. *The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original point of appropriation (Wells 16 and 17), shall not exceed the quantity of water lawfully available at the original points of appropriation, totaling 4.46 cfs to be used in any combination between all the Port's Wells Nos. 16, EB Wells 1, 2, 3, 4 and PDX1 Well.*
5. *The total annual quantity of water diverted under this water right for municipal use, shall not exceed 1,131 acre-feet diverted during the irrigation season of March 1 through October 31 of any year.*
6. *Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line, totalizing flow meter or other suitable device for measuring and recording the quantity of water appropriated on each new (well) proposed point of appropriation. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
7. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this \_\_\_\_ day of \_\_\_\_\_ 2011.

***D R A F T***

\_\_\_\_\_  
Dwight French for  
PHILLIP C. WARD, DIRECTOR

*This superseding draft Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrds.state.or.us.*