



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 18, 2012

Applicant

PORT OF MORROW

RONALD V. MCKINNIS

PO BOX 200

BOARDMAN, OR 97818

SUBJECT: Water Right Transfer Application T-10269

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-10269. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Heppner Gazette newspaper. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice, or 30 days after the last date of newspaper publication, whichever is later.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen

Transfer Program Advisor

cc: T-10269

Tony G. Justus, District 5 Watermaster (*via e-mail*)

Ronald V. McKinnis, Agent (*via e-mail*)

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10269, Morrow County) 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 V. 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. The Department assigned the application number T-10269.
2. 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 (POAs). On September 19, 2011 and February 12, 2012, the applicant submitted another revised Supplemental Form A and an updated map reflecting an amendment to add an additional point of appropriation.

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.
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3. 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 BASIN (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 THE NW CORNER OF SECTION 12
4 N	25 E	WM	2	NE SW	WELL 17 - 2400 FEET NORTH AND 2900 FEET WEST FROM THE SE CORNER OF 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*
TOTAL							377.0

*Note: the above described lands have an existing layered water right Permit G-12729 for supplemental irrigation which shall be cancelled as described below in Finding of Fact #24.

4. 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.

5. Transfer Application T-10269 also proposes to change the place of use of the right to:

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

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
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
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

6. Transfer Application T-10269 proposes to add five additional points of appropriation. The proposed EB Wells are located approximately 1¼ miles northwest from existing point of appropriation (POA) Well #16, and approximately 1,600 feet northwest from existing POA Well #17. The PDX1 and DLB1 wells are located approximately ½ mile east from existing POA #16, and approximately 1½ miles east from existing POA Well #17. The wells are located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	25 E	WM	2	SE NW	EB WELL #1 - 1377 FEET SOUTH AND 3659 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 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 FROM THE S¼ CORNER OF SECTION 1
4 N	25 E	WM	1	SE SE	DLB1 WELL - 918 FEET NORTH AND 928 FEET WEST FROM THE SE CORNER OF SECTION 1

7. 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.
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 cover letter 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.
9. 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.
10. On August 18, 2011, the Department mailed to the applicant a copy of a superseding draft Preliminary Determination, proposing to approve Transfer Application T-10269, including the additional points of appropriation. The superseding draft Preliminary Determination cover letter set forth a deadline of September 19, 2011, for the applicant to respond. The applicant submitted an additional request for more time, because some of the project had changed and additional points of appropriation were proposed.
11. On April 17, 2012, the Department sent a copy of a draft of another superseding Preliminary Determination proposing to approve Transfer Application T-10269 to the applicant. The second draft superseding Preliminary Determination cover letter set forth a deadline of May 17, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

12. 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.

Transfer Review Criteria (OAR 690-380-4010)

13. Water has been used within the last five years 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.
14. Two wells, pumps, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing right is present.
15. 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.
16. 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 and DLB1 Wells (all are proposed construction) will all develop the same source of water as the authorized existing Well 16 (MORR 772) and Well 17 (MORR 684), that being the shallow alluvial aquifer overlying the basalts.
17. 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 points 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.
18. The proposed changes would not result in enlargement of the right, provided the total rate of diversion for municipal use from the eight wells does not exceed 4.46 cubic feet per second, 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.
19. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right Permit

20. As described in Finding of Fact #3 above, supplemental irrigation under Permit G-12729 is appurtenant to a portion of the place of use proposed for transfer, and the two rights are therefore layered as per OAR 690-380-0100(4).
21. The supplemental right under Permit G-12729 was not included in transfer application T-10269. ORS 540.510(1) and OAR 690-380-2250(5) provide that 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, however, 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.
22. Consistent with OAR 690-380-2250, on August 18, 2011, the Department notified the applicant, by issuance of the superseding draft Preliminary Determination, of the Department's intent to cancel the portion of the supplemental permit described below unless within 30 days the applicant modified the application exclude these lands, or withdrew the application.
23. On April 16, 2012, the Port of Morrow submitted a request for Voluntary Partial Cancellation of a Water Right Permit for 235.9 acres of irrigation use that is appurtenant to Tax Lots 100 and 103 in portions of Sections 1, 2, 11 and 12, within Township 4 North, Range 25 East, W.M. This request is to cancel only the acres, and not any amount of water associated with them. The permit was issued for less than 1/80th of one cfs per acre, so the remaining acres will not be left with a rate per acre in excess of the maximum rate per acre allowed under the right.

24. The portion of the following permit is proposed to be cancelled:

Permit: G-12729 in the name of PORT OF MORROW
Use: SUPPLEMENTAL IRRIGATION of 235.9 ACRES
Priority Date: JANUARY 22, 1993
Season of Use: March 1 through April 15 and October 1 through October 31
Source: WELL 4A, WELL 5A, and PORT WELL #6 and PORT WELL #7, within the UMATILLA RIVER BASIN

Authorized Points 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 THE NW CORNER OF SECTION 1
4 N	25 E	WM	1	NE NW	WELL 5A—60 FEET SOUTH AND 1380 FEET EAST FROM THE NW CORNER OF SECTION 1
4 N	25 E	WM	10	SW NE	PORT WELL #6—120 FEET NORTH AND 2400 FEET WEST FROM THE E1/4 CORNER OF SECTION 10
4 N	25 E	WM	10	SW NE	PORT WELL #7—50 FEET NORTH AND 2060 FEET WEST FROM THE E1/4 CORNER OF 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	NW NE	16.8
4 N	25 E	WM	12	NE NW	30.4
4 N	25 E	WM	12	NW NW	5.7
TOTAL:					235.9

Determination and Proposed Action

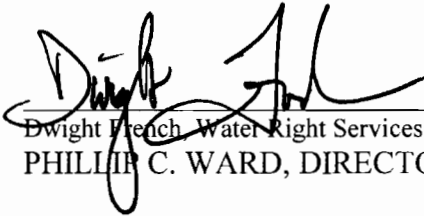
The changes in place of use, character of use and additional points of appropriation proposed in Transfer Application T-10269 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the supplemental portion of Permit G-12729 appurtenant to the lands from which the primary right is transferred will be cancelled.

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

1. *The changes in place of use, character of use and additional points of appropriation proposed in Transfer Application T-10269 are approved.*
2. *The portion of Permit G-12729 described in Findings of Fact #24 is cancelled.*
3. *Certificate 51822 is cancelled.*
4. *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.*
5. *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).*
6. *The quantity of water diverted at the new points of appropriation, together with that diverted at the original Well 16 point of appropriation, 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 and 17, EB Wells 1, 2, 3, 4, PDX1 Well and DLB1 Well.*

7. *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.*
8. *Prior to diverting water at the new points of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated on each new proposed point of appropriation (well). The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the Port of Morrow to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
10. *After satisfactory proof of beneficial use is received, confirming that the conditions have been satisfied, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 17 day of May, 2012.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach Ken at 541-278-5456 or Ken.I.Dowden@wrд.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.