



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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May 18, 2012

### Applicants

JOHN and JANNA VANDEN BRINK  
PO BOX 165  
IONE, OR 97843

SUBJECT: Water Right Transfer Application T-9689

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-9689. 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, simultaneously with issuance of the Preliminary Determination. 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.

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](mailto:Dorothy.I.Pedersen@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Dorothy Pedersen  
Transfer Program Advisor

cc: T-9689  
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)  
Ronald V. McKinnis, agent (*via e-mail: RonM@portofmorrow.com*)

encs



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

In the Matter of Transfer Application            )     PRELIMINARY DETERMINATION  
T-9689, Morrow County                        )     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**

JOHN and JANNA VANDEN BRINK  
PO BOX 165  
IONE, OR 97843

**Agent**

RONALD V. MCKINNIS  
79980 PRINDLE LOOP ROAD  
HERMISTION, OR 97838

**Findings of Fact**

**Background**

1. On April 15, 2004, JOHN VANDEN BRINK filed an application add a point of appropriation under Certificate 85546. The Department assigned the application number T-9689.
2. The on April 5, 2012, the agent submitted a revised transfer application and application map clarifying the place of use and points of appropriation.
3. On May 8, 2012, the Watermaster submitted a revised review that verified a measuring device that is present on the proposed point of appropriation.
4. On May 10, 2012, the department received consent to the transfer from the additional individual identified on the ownership report provided by the title company and Janna Vanden Brink was added as a transfer applicant.
5. The right to be transferred is as follows:  
**Certificate:** 85546 in the name of JOHN VANDEN BRINK (perfected under Permit G-4592, as modified by T-8573)  
**Use:** AGRICULTURE WATER USE ASSOCIATED WITH A DAIRY  
**Priority Date:** SEPTEMBER 19, 1969

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.

**Rate:** 0.722 CUBIC FOOT PER SECOND if available at the original point of appropriation located in the NE¼ NE¼, Section 35, T 1 S, R 24 E, W.M.; 1050 FEET SOUTH AND 210 FEET West from the NE Corner, Section 35, or equivalent in case of rotation, measured at the well.

**Limit/Duty:** The total volume of water appropriated may not exceed 357.6 acre feet of water in a calendar year, being January 1 through December 31.

**Period of Use:** Year Round

**Source:** WELL 2, tributary to RHEA CREEK

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	24 E	WM	28	SW SE	WELL 2: 208 FEET NORTH AND 2652 FEET EAST FROM THE SW CORNER OF SECTION 28

**Authorized Place of Use:**

AGRICULTURE USES					
Twp	Rng	Mer	Sec	Q-Q	
1 S	24 E	WM	28	SW SW	

- Transfer Application T-9689 proposes an additional point of appropriation approximately 200 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	24 E	WM	28	SE SW	WELL 3: 258 FEET NORTH AND 2400 FEET EAST FROM THE SW CORNER OF SECTION 28

- Notice of the application for transfer was published on May 11, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On May 1, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9689 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 1, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer, and requested that the completion date be changed to October 1, 2015, to allow adequate time for development of the point of appropriation.

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

- 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.
- 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-9689.

11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

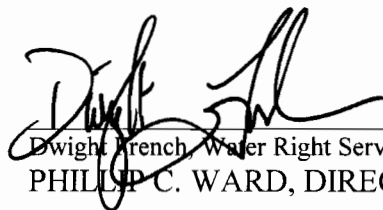
### **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-9689 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-9689 is approved, the final order will include the following:*

1. *The additional point of appropriation proposed in application T-9689 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 85546 and any related decree.*
3. *Water right certificate 85546 is cancelled.*
4. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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 17 day of May, 2012.



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

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or [Carrie.R.Matthews@wrд.state.or.us](mailto:Carrie.R.Matthews@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.