



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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August 23, 2012

Applicant

HEATH R. AND ALYSSA D. WELLS
85621 BORK LANE
MILTON FREEWATER, OR 97862

SUBJECT: Water Right Transfer Application T-10786

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-10786. 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, 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@wr.d.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-10786
Tony G. Justus, District 5 Watermaster (*via e-mail*)
encs



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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10786, Umatilla County) PROPOSING APPROVAL OF A CHANGE
) IN 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.

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Findings of Fact

Background

1. On February 13, 2009, Heath and Alyssa Wells filed an application to change the point of appropriation under a portion of Certificate 84238. The Department assigned the application number T-10786.

2. The portion of the right to be transferred is as follows:

Certificate: 84238 in the name of Zane Harris (perfected under Permit G-1360/ T-7696)
Use: IRRIGATION OF 1.9 ACRES
Priority Date: May 28, 1959
Quantity: 0.024 CUBIC FOOT PER SECOND
Rate/Duty: 1/80 of one cubic foot per second (cfs) per acre, further limited to a diversion of not to exceed 3.0 acre-feet per acre per year
Source: Bork Well, within the Grandview Spring Basin (Walla Walla River)

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.

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q - Q | Survey Coordinates |
|-----|------|-----|-----|-------|---|
| 6 N | 35 E | WM | 13 | NW SW | 36.4 CHAINS NORTH AND 4.0 CHAINS EAST FROM THE SW CORNER OF SECTION 13. |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|---------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Tax Lot | Acres |
| 6 N | 35 E | WM | 13 | NW SW | 504 | 1.90 |

3. Transfer Application T-10786 proposes to change the point of appropriation (well) for the above described lands approximately 200 feet east to a well located as follows:

| Twp | Rng | Mer | Sec | Q - Q | Well I.D.# | Measured Distances |
|-----|------|-----|-----|-------|------------|---|
| 6 N | 35 E | WM | 13 | NW SW | UMAT 51744 | 305 FEET SOUTH AND 420 FEET EAST FROM THE W¼ CORNER OF SECTION 13 |

4. Notice of the application for transfer was published on April 7, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On June 1, 2011, the Department discussed with the applicants that a Department staff hydrogeologist determined the proposed new point of appropriation (well) does not tap into the same aquifer (source) as the original point of appropriation. The Department identified a couple of options available to accomplish the same source issue, mainly to drill and case the well deeper, similar in depth to the original Bork Well (UMAT 4212).
6. On December 15, 2011, the Department mailed the applicants a draft of the Preliminary Determination proposing to deny Transfer Application T-10786. The Department offered alternatives for the applicant to overcome and set forth a deadline of January 16, 2012, for the applicants to respond. The applicants did not respond to the Department by the deadline and did not provide the necessary information or evidence of a deepening to alter the same source scenario.
7. On June 6, 2011, Heath Wells submitted a request that the Department place his transfer application on “administrative hold” for six months, until December 1, 2011, in order to examine his options in whether to proceed further with the transfer application. At the expiration of the “administrative hold” deadline, the applicants again did not supply any information or evidence in response to the Department’s letter.
8. On June 3, 2009, the Department’s groundwater staff initially considered that the proposed point of appropriation (UMAT 51744) did not develop the same (source) aquifer as that of the original authorized well (UMAT 4212). In February of 2012, the Department, on its own initiative, initiated additional research into the local aquifers and geologic make-up of the Milton-Freewater area. Additional information such as a Top of Basalt Structure Contour Map (Plate7) from the Walla Walla Basin Watershed Council – Aquifer Stratigraphy, and the geologic data from Water Well Reports indicates that basalt is probably 500’ below land surface in this area. Therefore, UMAT 4212 probably develops water from the overlying

alluvial aquifer. Reports for many nearby deeper wells also describe water levels within the water bearing zones of the alluvial aquifer. This is consistent with the alluvial fan type deposit that occurs in this area.

9. Based on the additional research, the Department reversed the finding of the original 2009 review, concluding that the proposed well is likely producing water from the same source (aquifer) as the original Bork Well and complies with the requirements of OAR 690-380-2110 (2) for "same source."
10. On July 6, 2012, the Department mailed a copy of a REVISED draft of the Preliminary Determination to the applicants, proposing to approve Transfer Application T-10786. The revised draft Preliminary Determination cover letter set forth a deadline of August 6, 2012 for the applicants to respond. On July 30, 2012, the applicants hand delivered a written response requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the five years prior to the submittal of Transfer Application T-10786 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.
12. A well, 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-10786.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-10786 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-10786 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in application T-10786 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 84238 and any related decree.*
3. *Water right Certificate 84238 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

4. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2013**. 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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 21 day of August, 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 me at 541-278-5456 or Ken.D.Dowden@wrds.state.or.us.