



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 19, 2014

MIKE & ANNE WAGNER
25383 N MIDDLETON RD
MIDDLETON, ID 83644

SUBJECT: Water Right Transfer Application T-11588

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11588. 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 Sarah.A.Henderson@wr.d.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11588
Ronald K. Jacobs, District 9 Watermaster (*via e-mail*)
Leland L. Myers, CWRE #094
John Short, Agent (*via-email*)

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11588, Malheur County) PROPOSING APPROVAL OF A
) CHANGE IN PLACE OF USE

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

MIKE AND ANNE WAGNER
25383 N MIDDLETON RD
MIDDLETON, ID 83644

Findings of Fact

1. On May 3, 2013, MIKE AND ANNE WAGNER filed an application to change the place of use under Certificates 26522 and 47837. The Department assigned the application number T-11588.
2. Notice of the application for transfer was published on May 7, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 27, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11588 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 27, 2014, 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 applicant is authorized to pursue the transfer and clarified the intended 1/4 1/4's of the authorized and proposed lands.
4. The portion of the first right to be transferred is as follows:

Certificate: 26522 in the name of ALTHA ANDERSON (perfected under Permit U-629)
Use: IRRIGATION of 33.5 ACRES
Priority Date: MARCH 30, 1954
Rate: 0.42 CUBIC FOOT PER SECOND

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.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. This permit is issued subject to the terms and conditions of a stipulation and agreement recorded on Pages 830-832, Volume 3, Miscellaneous Records of the State Engineer, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: LOCEY WELL in the WILLOW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	40 E	WM	1	NE NW	LOCEY WELL: 1220 FEET SOUTH AND 2360 FEET EAST FROM THE NW CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	40 E	WM	1	SW NE	0.6
15 S	40 E	WM	1	NE NW	0.9
15 S	40 E	WM	1	NW NW	6.2
15 S	40 E	WM	1	SW NW	1.6
15 S	40 E	WM	1	SE NW	5.0
15 S	40 E	WM	1	NE SW	6.0
15 S	40 E	WM	1	NW SW	1.3
15 S	40 E	WM	1	NE SE	0.7
15 S	40 E	WM	1	NW SE	9.8
15 S	40 E	WM	2	NE NE	0.6
15 S	40 E	WM	2	SE NE	0.8
Total					33.5

5. Transfer Application T-11588 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	40 E	WM	1	NW NE	100	1.4
15 S	40 E	WM	1	SW NE	100	9.3
15 S	40 E	WM	1	NE NW	100	0.5
15 S	40 E	WM	1	SE NW	100	1.6
15 S	40 E	WM	2	NE NE	401	8.0
15 S	40 E	WM	2	SE NE	401	12.7
Total						33.5

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

Certificate: 47837 in the name of NORMAN CHRISTENSEN (perfected under Permit U-414)

Use: IRRIGATION of 29.1 ACRES

Priority Date: NOVEMBER 5, 1951

Rate: 0.36 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Source: TWO WELLS within the MALHEUR RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	40 E	WM	2	NE SE	WELL H1: 2730 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 2
15 S	40 E	WM	2	NW SW	WELL H2: 3060 FEET SOUTH AND 4380 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	40 E	WM	2	SW NE	1.5
15 S	40 E	WM	2	SE NE	0.6
15 S	40 E	WM	2	SW NW	7.6
15 S	40 E	WM	2	SE NW	5.9
15 S	40 E	WM	2	NE SW	3.8
15 S	40 E	WM	2	NW SW	1.9
15 S	40 E	WM	2	NE SE	2.3
15 S	40 E	WM	2	NW SE	5.5
Total					29.1

7. Transfer Application T-11588 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	40 E	WM	2	NE NE	401	4.4
15 S	40 E	WM	2	NW NE	401	3.7
15 S	40 E	WM	2	SW NE	401	8.9
15 S	40 E	WM	2	SE NE	401	12.1
Total						29.1

Transfer Review Criteria (OAR 690-380-4010)

- Water has been used within the last five years prior to the submittal of Transfer Application T-11588 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-11588.

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

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11588 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-11588 is approved, the final order will include the following:

12. *The change in place of use proposed in Transfer Application T-11588 is approved.*
13. *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 Certificates 26522 and 47837 and any related decree.*
14. *Water right certificates 26522 and 47837 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
15. *The former place of use of the transferred rights shall no longer receive water under the rights.*
16. *The water user shall maintain the meters or measuring devices in good working order.*
17. *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.*
18. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 20 day of March 2014.



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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or Sarah.A.Henderson@wrds.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.