



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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November 14, 2014

GERALD L. BAKER
2175 BENCH RD
VALE, OR 97918

SUBJECT: Water Right Transfer Application T-11772

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11772. 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 503-986-0886 or Patrick.K.Starnes@wrp.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11772
Ron Jacobs, District 9 Watermaster (*via e-mail*)
Nancy Rorick, CWRE/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-11772, Malheur County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION AND 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

GERALD L. BAKER
2175 BENCH RD
VALE, OR 97918

Agent

NANCY L. RORICK
DBA NANCY RORICK CONSULTING
645 L LOOP
BAKER CITY, OR 97814

Findings of Fact

1. On March 26, 2014, Gerald L. Baker filed for additional points of appropriation and a change in place of use under Certificate 26989. The Department assigned the application number T-11772.
2. Notice of the application for transfer was published on April 8, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 4, 2014 the department notified the agent of discrepancies on the transfer application and map.
4. On September 4, 2014 the agent submitted a revised transfer and application and map correcting the deficiencies.
5. On October 17, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11772 to the applicant. The Preliminary Determination cover letter set forth a deadline of November 17, 2014, for the applicant to respond. The applicant's agent 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.

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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6. The right to be transferred is as follows:

Certificate: 26989 in the name of THOMAS J DAVIS (perfected under Permit G-320)
Use: IRRIGATION of 31.4 ACRES
Priority Date: AUGUST 30, 1956
Rate: 0.39 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL 1 within the SNAKE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	43 E	WM	10	SE NE	14.5 CHAINS NORTH AND 12 CHAINS WEST FROM THE E ¹ / ₄ CORNER OF SECTION 10

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Type of change	Acres
19 S	43 E	WM	10	NE NE	APOA	5.4
19 S	43 E	WM	10	NW NE	POU & APOA	0.3
19 S	43 E	WM	10	NW NE	APOA	0.5
19 S	43 E	WM	10	SW NE	POU & APOA	1.7
19 S	43 E	WM	10	SW NE	APOA	3.9
19 S	43 E	WM	10	SE NE	POU & APOA	1.2
19 S	43 E	WM	10	SE NE	APOA	18.4

7. Certificate 26989 described the authorized point of appropriation (Well) in measurement units that are not commonly used today. The CWRE converted the location into feet rather than chains and used a common survey corner for both the authorized and additional points of appropriation. The converted location is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	43 E	WM	10	SE NE	WELL #1- 1667 FEET SOUTH AND 803 FEET WEST FROM THE NE CORNER OF SECTION 10.

8. Transfer Application T-11772 proposes additional points of appropriation to the entire 31.4 acres described under Certificate 26989. Well #2 is approximately 9 feet and Well #3 is approximately 390 feet from the Authorized Well #1. The location of the additional wells are as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	43 E	WM	10	SE NE	WELL# 2 - 1668 FEET SOUTH AND 812 FEET NORTH OF THE NE CORNER OF SECTION 10
19 S	43 E	WM	10	SE NE	WELL #3 - 1615 FEET SOUTH AND 415 FEET WEST FROM THE NE CORNER OF SECTION 10

9. Transfer Application T-11772 also proposes to change a portion of the place of use under Certificate 26989 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	43 E	WM	10	NE NE	2.3
19 S	43 E	WM	11	SW NW	0.9
TOTAL:					3.2

Transfer Review Criteria (OAR 690-380-4010)

10. Water has been used 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.
11. 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-11772.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-11772 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.

If Transfer Application T-11772 is approved, the final order will include the following:

1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-11772 are 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 26989 and any related decree.*
3. *Water right certificate 26989 is cancelled.*
4. *The quantity of water diverted at the additional points 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. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 day of November, 2014.



Dwight French, Water Right Services Administrator, for
Tom M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me 541-523-8224 x 223 or Carrie.R.Matthews@wrdd.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.