



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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725 Summer Street NE, Suite A  
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February 23, 2015

VIA E-MAIL

**Applicant**

DAN MCNELEY  
PO BOX 152  
BURNS, OR 97720

**Agent**

SCOTT D. MONTGOMERY  
PO BOX 767  
TERREBONNE, OR 97760

**SUBJECT:** Water Right Transfer Application T-11878

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11878. 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 Burns Times Herald, 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 last date of newspaper publication.

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@wr.d.state.or.us](mailto:Patrick.K.Starnes@wr.d.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11878  
JR Johnson, District 10 Watermaster (*via e-mail*)  
Scott Montgomery, All Points Engineering, CWRE #2001 (*via e-mail*)

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

In the Matter of Transfer Application            )  
T-11878, Harney County                            )  
  )  
  )    **PRELIMINARY DETERMINATION  
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**

1. On August 19, 2014, DAN MCNELEY filed an application to change the point of appropriation under Certificate 85778. The Department assigned the application number T-11878.
2. Notice of the application for transfer was published on September 2, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 23, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11878 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 23, 2015, for the applicant to respond. The applicant 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.

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

**Certificate:** 85778 in the names of JOHN PIERRE WATTS, ERNA ETHEL WATTS,  
AND LINDA KAY WATTS (perfected under Permit G-11830)  
**Use:** IRRIGATION OF 76.1 ACRES  
**Priority Date:** NOVEMBER 30, 1992  
**Rate:** 0.95 CUBIC FEET 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, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1<sup>ST</sup> THROUGH OCTOBER 31<sup>ST</sup>

**Source:** A WELL, within the SILVIES RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	NW NE	WELL #1 - 1313 FEET SOUTH AND 1377 FEET WEST FROM THE NE CORNER OF SECTION 30.

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	32 E	WM	30	NE SE	40.0
23 S	32 E	WM	30	NW SE	16.7
23 S	32 E	WM	30	SE SE	19.4
Total					76.1

- Transfer Application T-11878 proposes to move the authorized point of appropriation for a portion of the lands described in Certificate 85778 approximately 1600 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	32 E	WM	30	NE SE	WELL #2 - 2780 FEET SOUTH AND 500 FEET WEST FROM THE NE CORNER OF SECTION 30.

**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-11878.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

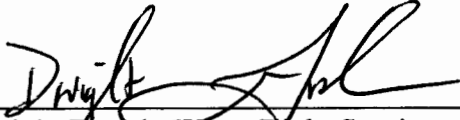
The change in point of appropriation proposed in Transfer Application T-11878 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-11878 is approved, the final order will include the following:*

- 1. The change in point of appropriation proposed in Transfer Application T-11878 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 85778 and any related decree.*
- 3. Water right certificate 85778 is cancelled. A new certificate will be issued describing those portions 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 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 the new point of appropriation.*
  - b. The water user shall maintain the meter or measuring device in good working order.*
  - c. The water user shall allow the Watermaster access to the meter or measuring device(s); provided however, where the meter or measuring device is 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. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 23 day of February, 2015.



Dwight French, Water Right Services Administrator, for  
Tom Blyler, 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 at 541-523-8224 x 223 or [Carrie.R.Matthews@wrд.state.or.us](mailto:Carrie.R.Matthews@wrд.state.or.us)