



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 7, 2015

STEVE AND PATRICIA MALCOM
70831 SCHROEDER ROAD
PENDLETON OR 97801

JAMES MALCOM
560 NW 21ST STREET
PENDLETON OR 97801

SUBJECT: Water Right Transfer Application T-11843

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11843. 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@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-11843
Greg M. Silbernagel, District 5 Watermaster (*via e-mail*)
Curtis Cooley, Assistant Watermaster (*via e-mail*)
Paul Wattenburger, CWRE #57194 (*via e-mail*)

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

In the Matter of Transfer Application)
T-11843, Umatilla County)
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Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

STEVE AND PATRICIA MALCOM
70831 SCHROEDER ROAD
PENDLETON OR 97801

Applicant

JAMES MALCOM
560 NW 21ST STREET
PENDLETON OR 97801

Findings of Fact

1. On June 16, 2014, Steve and Patricia Malcom, James Malcom, filed an application for additional points of appropriation under Certificate 46732. The Department assigned the application number T-11843.
2. Notice of the application for transfer was published on June 24, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 10, 2015, the applicants requested the completion date for the transfer be extended to October 1, 2018.
4. On April 20, 2015, the Certified Water Rights Examiner for the applicants submitted a new revised map to clarify the place of use.

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.

5. The first portion of the water right to be transferred is as follows:

Certificate: 46732 the name of BRUCE A. MALCOM (perfected under Permit G-5865)
Use: IRRIGATION OF 4.05 ACRES
Priority Date: JUNE 28, 1973
Rate: 0.049 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.
Source: A WELL within the MCKAY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	4	1100 FEET SOUTH AND 1010 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Acres
1 N	32 E	WM	3	NE NW	502	3	0.80
1 N	32 E	WM	3	NW NW	502	4	3.20
1 N	32 E	WM	3	NW NW	502	11	0.05
Total							4.05

6. Certificate 46732 describes a point of appropriation (well) location that serves the lands. However, the county assessor's map and current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicates that the original well location is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	4	980 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 3

7. Transfer Application T-11843 proposes to change the point of appropriation for the above described acres on Tax Lot 502 (James Malcom) to a new proposed well northwest approximately 330 feet of the original well to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	502	4	WELL 2 - 770 FEET SOUTH AND 730 FEET EAST FROM THE NW CORNER OF SECTION 3

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

Certificate: 46732 the name of BRUCE A. MALCOM (perfected under Permit G-5865)
Use: IRRIGATION OF 3.30 ACRES
Priority Date: JUNE 28, 1973
Rate: 0.04 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.

Source: A WELL within the McKAY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	4	1100 FEET SOUTH AND 1010 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Acres
1 N	32 E	WM	3	NE NW	501	3	0.80
1 N	32 E	WM	3	NW NW	501	4	0.15
1 N	32 E	WM	3	NW NW	501	11	0.05
1 N	32 E	WM	3	SW NW	501	-	0.80
1 N	32 E	WM	3	SW NW	501	5	0.10
1 N	32 E	WM	3	SE NW	501	5	1.40
Total							3.30

9. Certificate 46732 describes a point of appropriation (well) location that serves the lands. However, the county assessor's map and current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicates that the original well location is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	4	980 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF SECTION 3

10. Transfer Application T-11843 proposes to change the point of appropriation for the acres described in Finding No. 8 (Steve and Patricia Malcom) to a proposed (existing) well approximately 350 feet southeast from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Measured Distances
1 N	32 E	WM	3	NW NW	501	11	WELL 1 - 1240 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF SECTION 3

11. On April 21, 2015, the Department mailed a draft copy of the Preliminary Determination proposing to approve Transfer Application T-11843 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 20, 2015 for the applicants to respond. On April 30, 2015, Steve and Patricia Malcom requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer. On May 5, 2015, James Malcom requested the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that they are authorized to pursue the transfer.

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

12. Water has been used within the last five years prior to the submittal of Transfer Application T-11843 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.
13. 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-11843.
14. The Department has determined that the proposed change to two new points of appropriation would develop the same ground water aquifer as the authorized point of appropriation. Under OAR 690-380-2110, any request for a change in point of appropriation is restricted to the same aquifer.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

Partial Cancellation of a Water Right

18. The Department has determined that the use of water for irrigation under portions of Certificate 46732 have not been exercised for a great many years on parcels now occupied by homes, a lane and driveways, and asked the landowners to concur. These portions of the water right should likely be cancelled. To accomplish this, the Department has provided "Partial Cancellation of a Water Right" voluntary cancellation affidavits for their concurrence.
19. On April 20, 2015, the Department received voluntary cancellation affidavits from Steve and Patricia Malcom (Tax Lot 501), and Arlene M. Malcom (Tax Lot 500), requesting to cancel portions of Certificate 46732 appurtenant to Tax Lots 500 and 501, within Section 3, Township 1 North, Range 32 East, W.M.
20. The portions of the right proposed to be cancelled are described as follows:
 - Certificate:** 46732 the name of BRUCE A. MALCOM (perfected under Permit G-5865)
 - Use:** IRRIGATION OF 0.13 ACRES (TL 500) AND 0.30 ACRES (TL 501)
 - Priority Date:** JUNE 28, 1973
 - Rate:** 0.0016 CUBIC FEET PER SECOND (CFS) FOR TL 500 AND 0.0036 CFS FOR TL 501
 - 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.
 - Source:** A WELL within the MCKAY CREEK BASIN

Places of Use to be cancelled:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Acres
1 N	32 E	WM	3	NW NW	500	4	0.10
1 N	32 E	WM	3	NW NW	500	11	0.03
Total							0.13

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	GLot	Acres
1 N	32 E	WM	3	NW NW	501	4	0.05
1 N	32 E	WM	3	NW NW	501	11	0.15
1 N	32 E	WM	3	SW NW	501	--	0.10
Total							0.30

Determination and Proposed Action

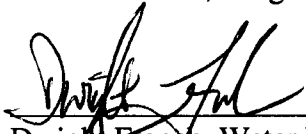
The change in points of appropriation proposed in Transfer Application T-11843 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portions of the water right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned water right portions will be cancelled.

If Transfer Application T-11843 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11843 is approved. The portions of the right that have been abandoned are cancelled.*
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 46732 and any related decree.*
3. *Water right Certificate 46732 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 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 shall be acquired from the same aquifer (water source) as the original point of appropriation. New proposed existing Well#1 (UMAT 53616/TL 501) shall not be deepened. Proposed Well #2 on Tax Lot 502 shall be constructed similarly to produce water from the same aquifer as the original well (UMAT 227) on Tax Lot 500 and UMAT 53616, Tax Lot 501.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 7 day of May, 2015.



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

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@wrp.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.