



# Oregon

Kate Brown, Governor

## Water Resources Department

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September ~~30~~, 2015

VIA E-MAIL

NORMAN AND LINDA BRENDEN  
9962 SELAH SPRINGS DR NE  
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-11942

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11942. 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 Statesman Journal newspaper, 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 [Lanaya.F.Blakely@wrd.state.or.us](mailto:Lanaya.F.Blakely@wrd.state.or.us) or (503) 986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely  
Transfer Specialist  
Transfer and Conservation Section



cc: Transfer Application file T-11942  
Joel Plahn, District 16 Watermaster (*via e-mail*)  
Benjamin Johnston, Agent for the applicant (*via e-mail*)  
Corbey Boatwright, CWRE #208 (*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-11942, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION

**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.

**Applicant**

NORMAN AND LINDA BRENDEN  
9962 SELAH SPRINGS DR NE  
SILVERTON, OR 97381

**Findings of Fact**

1. On December 18, 2014, NORMAN AND LINDA BRENDEN filed an application to change the point of appropriation under Certificate 89107. The Department assigned the application number T-11942.
2. Notice of the application for transfer was published on December 30, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 29, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11942 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 29, 2015, for the applicants to respond. The applicants did not respond by the deadline. On August 11, 2015, the Department sent a reminder letter to the applicant, extending the deadline to reply to September 10, 2015. On August 13, 2015, 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.

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

**Certificate:** 89107 in the name of BLUE LINE FARMS INC. (perfected under Permit G-11259)  
**Use:** IRRIGATION of 24 ACRES  
**Priority Date:** DECEMBER 26, 1990  
**Rate:** 0.30 CUBIC FEET 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.  
**Source:** WELL 2 within the PUDDING RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	1 W	WM	7	NW SW	50	610 FEET SOUTH AND 270 FEET WEST FROM THE SW CORNER OF DLC 51

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	1 W	WM	7	SW NE	51	5.20
7 S	1 W	WM	7	SE NW	51	15.50
7 S	1 W	WM	7	NE SW	51	2.50
7 S	1 W	WM	7	NW SE	50	0.20
7 S	1 W	WM	7	NW SE	51	0.60

5. Transfer Application T-11942 proposes to move the authorized point of appropriation of Well 2, approximately 0.45 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	1 W	WM	7	SE NW	51	1362 FEET NORTH AND 1035 FEET EAST FROM THE SW CORNER OF DLC 51

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

6. 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.
7. A 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-11942.

8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

### **Determination and Proposed Action**

The change in point of appropriation proposed in Transfer Application T-11942 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-11942 is approved, the final order will include the following:*

1. *The change in point of appropriation proposed in Transfer Application T-11942 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 89107 and any related decree.*
3. *Water right Certificate 89107 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, 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.*
6. *The proposed well must be constructed to meet current well construction standards. It must be continuously cased and continuously sealed into competent basalt and produce only from the basalt aquifer.*
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, 2017**. 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 30 day of September, 2015.



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

This Preliminary Determination was prepared by Lanaya Blakely. If you have question about the information in this document, you may reach me at (503) 986-0888 or Lanaya.F.Blakely@wrđ.state.or.us.

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE. Suite A, Salem, OR 97301-1266*