



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 13, 2016

TIM WARKENTIN
PO BOX 12
CHRISTMAS VALLEY, OR 97641
tim.warkentin@yahoo.com

SUBJECT: Water Right Transfer Application T-11989

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11989. 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 Lake County Examiner 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 503-986-0886 or Patrick.K.Starnes@wrd.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-11989
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Dennis R. Glender, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11989, Lake County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION, A CHANGE IN
)	POINT OF APPROPRIATION, A
)	CHANGE IN PLACE OF USE, AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

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

TIM WARKENTIN
PO BOX 12
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On February 24, 2015, TIM WARKENTIN filed an application for an additional point of appropriation, to change the point of appropriation, to change the place of use, and to cancel a portion of a water right under Certificates 53454, 64043, 75740, 86890, and 86891. The Department assigned the application number T-11989.
2. Notice of the application for transfer was published on March 3, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 24, 2015 an affidavit was received from Jamey and Amber Warkentin and Tim and Paulette Warkentin to cancel a portion of a water right to make up for the deficiency in rate.
4. On September 28, 2015 the applicant submitted a revised map clarifying the acres being transferred.

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. On October 26, 2015 the applicant submitted a revised map clarifying the acres being transferred.
6. On December 17, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11989 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 18, 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
7. The first right to be transferred is as follows:

Certificate: 53454 in the name of FRED G. CROUCH (perfected under Permit G-8876)

Use: IRRIGATION OF 104.5 ACRES

Priority Date: JUNE 16, 1980

Rate: 1.31 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, 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, provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right..

Source: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	NW SW	WELL 1 (LAKE 654) - 1380 FEET NORTH AND 1270 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
26 S	18 E	WM	8	NW NW	29.6	POA
26 S	18 E	WM	8	NW NW	2.8	POU/POA
26 S	18 E	WM	8	SW NW	29.6	POA
26 S	18 E	WM	8	SW NW	2.8	POU/POA
26 S	18 E	WM	8	NW SW	35.3	POU
26 S	18 E	WM	8	NW SW	4.4	POU
Total					104.5	

8. Transfer Application T-11989 proposes to move the authorized point of appropriation for a portion of the following lands approximately 1188 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	SE NW	WELL 3 (LAKE 52253) - 2686 FEET SOUTH AND 1344 FEET EAST FROM THE SW CORNER OF SECTION 8

9. Transfer Application T-11989 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change	POA
26 S	18 E	WM	8	NW NW	29.6	POA	3
26 S	18 E	WM	8	SW NW	29.6	POA	3
26 S	18 E	WM	8	SE NW	2.8	POA/POU	3
26 S	18 E	WM	8	SE NW	2.8	POA/POU	3
26 S	18 E	WM	8	NE SW	4.4	POU	1
26 S	18 E	WM	8	NW SW	35.3	POU	1
Total					104.5		

10. The second right to be transferred is as follows:

Certificate: 64043 in the name of FREDERICK J MARTI AND WILLIAM H PITTOCK (perfected under Permit G-10318)

Use: IRRIGATION OF 241.5 ACRES

Priority Date: JANUARY 11, 1984

Rate: 3.0 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, 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 FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	16	NW SW	WELL 4 - 2690 FEET SOUTH AND 1310 FEET EAST FROM THE NW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
26 S	18 E	WM	16	NE NW	27.2	APOA
26 S	18 E	WM	16	NE NW	2.8	POU/POA
26 S	18 E	WM	16	NW NW	29.4	APOA
26 S	18 E	WM	16	NW NW	1.0	POU/POA
26 S	18 E	WM	16	SW NW	31.6	APOA
26 S	18 E	WM	16	SW NW	1.0	POU/POA
26 S	18 E	WM	16	SE NW	19.5	APOA
26 S	18 E	WM	16	SE NW	7.7	POU/POA
26 S	18 E	WM	16	NE SW	29.7	APOA
26 S	18 E	WM	16	NW SW	30.7	APOA
26 S	18 E	WM	16	SW SW	30.7	APOA
26 S	18 E	WM	16	SE SW	30.2	APOA
Total					241.5	

11. Transfer Application T-11989 proposes to move the authorized point of appropriation for a portion of the lands approximately 20 feet from the existing point of appropriation and add an additional point of appropriation for a portion of the lands approximately 1 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	NW SE	WELL 2 (LAKE 50650) - 1347 FEET NORTH AND 2613 FEET WEST FROM THE SE CORNER OF SECTION 8
26 S	18 E	WM	16	NW SW	WELL 4A (LAKE 51276) - 2680 FEET SOUTH AND 1290 FEET EAST FROM THE NW CORNER OF SECTION 16

12. Transfer Application T-11989 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change	POA
26 S	18 E	WM	8	NE SW	1.8	POU/POA	2
26 S	18 E	WM	8	SE SW	3.5	POU/POA	2
26 S	18 E	WM	8	NW SE	3.5	POU/POA	2
26 S	18 E	WM	8	SW SE	3.7	POU/POA	2
26 S	18 E	WM	16	NE NW	27.2	APOA	4 & 4A
26 S	18 E	WM	16	NW NW	29.4	APOA	4 & 4A
26 S	18 E	WM	16	SW NW	31.6	APOA	4 & 4A
26 S	18 E	WM	16	SE NW	19.5	APOA	4 & 4A
26 S	18 E	WM	16	NE SW	29.7	APOA	4 & 4A
26 S	18 E	WM	16	NW SW	30.7	APOA	4 & 4A
26 S	18 E	WM	16	SW SW	30.7	APOA	4 & 4A
26 S	18 E	WM	16	SE SW	30.2	APOA	4 & 4A
Total					241.5		

13. The third right to be transferred is as follows:

Certificate: 75740 in the name of GEORGE SCHMIDT (perfected under Permit G-9233)
Use: IRRIGATION OF 64.8 ACRES
Priority Date: FEBRUARY 23, 1981
Rate: 0.67 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	NW SW	1380 FEET NORTH AND 1270 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	8	NE NW	32.4
26 S	18 E	WM	8	SE NW	32.4
Total					64.8

14. Transfer Application T-11989 proposes to move the authorized point of appropriation approximately 1188 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	SE NW	WELL 3 (LAKE 52253) - 2686 FEET SOUTH AND 1344 FEET EAST FROM THE SW CORNER OF SECTION 8

15. Transfer Application T-11989 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	8	NE NW	29.6
26 S	18 E	WM	8	SE NW	24.0
Total					53.6

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

Certificate: 86890 in the name of HAROLD A. BROWN (perfected under Permit G-10326)
Use: IRRIGATION OF 8.2 ACRES
Priority Date: FEBRUARY 15, 1984
Rate: 0.10 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL within the PETERS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	SE SW	WELL 1A (LAKE 72) - 1250 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	35	NW SW	8.2

17. Transfer Application T-11989 proposes to move the authorized point of appropriation approximately 9 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	SE SW	WELL 2 (LAKE 50650) - 1347 FEET NORTH AND 2613 FEET WEST FROM THE SE CORNER OF SECTION 8

18. Transfer Application T-11989 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	8	SE SW	2.1
26 S	18 E	WM	8	NE SW	2.0
26 S	18 E	WM	8	NW SE	2.0
26 S	18 E	WM	8	SW SE	2.1
Total					8.2

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

Certificate: 86891 in the name of HAROLD A. BROWN (perfected under Permit G-9974)

Use: IRRIGATION OF 106.4 ACRES

Priority Date: JUNE 9, 1981

Rate: 1.33 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the PETERS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	18 E	WM	35	NW NW	WELL 2A (LAKE 1689) - 1200 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	18 E	WM	26	NE SW	10.0
24 S	18 E	WM	26	NW SW	10.0
24 S	18 E	WM	26	SW SW	40.0
24 S	18 E	WM	26	SE SW	40.0
24 S	18 E	WM	35	SW NW	6.4
Total					106.4

20. Transfer Application T-11989 proposes to move the authorized point of appropriation approximately 9.5 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	NW SE	WELL 2 (LAKE 50650) - 1347 FEET NORTH AND 2613 FEET WEST FROM THE SE CORNER OF SECTION 8

21. Transfer Application T-11989 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	8	NE SW	27.4
26 S	18 E	WM	8	SE SW	27.0
26 S	18 E	WM	8	NW SE	26.2
26 S	18 E	WM	8	SW SE	25.8
Total					106.4

Transfer Review Criteria (OAR 690-380-4010)

- 22. Water has been used within the last five years 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.
- 23. 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-11989.
- 24. The proposed changes would not result in enlargement of the rights
- 25. The proposed changes would not result in injury to other water rights.
- 26. All other application requirements are met.

Partial Cancellation of a Water Right

- 27. On February 24, 2015 an affidavit was received cancelling a portion of acres from Certificate 75740 to make up for a deficiency of rate. The affidavit was received from Jamey and Amber Warkentin and Tim and Paulette Warkentin. The result of this cancellation will bring the water right up to one-eightieth of one cubic foot per second, not to exceed 0.67 cubic foot per second for 53.6 acres. The acres to be cancelled are as follows:

Certificate: 75740 in the name of GEORGE SCHMIDT (perfected under Permit G-9233)

Use: IRRIGATION OF 11.2 ACRES

Priority Date: FEBRUARY 23, 1981

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	8	NW SW	1380 FEET NORTH AND 1270 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	8	NE NW	2.8
26 S	18 E	WM	8	SE NW	8.4
Total					11.2

Determination and Proposed Action

The additional point of appropriation, change in point of appropriation and change in place of use proposed in Transfer Application T-11989 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the requested right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11989 is approved, the final order will include the following:

- 1. The additional point of appropriation, change in point of appropriation, and change in place of use proposed in Transfer Application T-11989 are approved. The portion of the right requested to be cancelled is 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 Certificates 53454, 64043, 75740, 86890 and 86891, and any related decree.*
- 3. Water right Certificates 53454, 64043, 75740, 86890, and 86891 are cancelled. New certificates will be issued describing those portions Certificates 86890 and 86891 not affected by this order.*
- 4. The quantity of water diverted at the new or additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points 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 (new and existing).*
 - 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 is/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 points of appropriation.*
- 7. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 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 changes and full beneficial use of the water.*

9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 13 day of January, 2016.



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@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.