



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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July 5, 2016

VIA E-MAIL

TIM AND JAN KERNS
45917 QUAIL RD
HAINES, OR 97833
jkerns@rconnects.com

SUBJECT: Water Right Transfer Application T-11993

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11993. 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 Record Courier 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@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-11993
Rick M. Lusk, District 8 Watermaster (*via e-mail*)
Tom Kerns, Fawn Kerns, Agent for the applicant (*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-11993, Baker County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (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 Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

TIM AND JAN KERNS
45917 QUAIL RD
HAINES, OR 97833
jkerns@rconnects.com

Findings of Fact

1. On February 27, 2015, TIM AND JAN KERNS filed an application for an additional point of appropriation under Certificate 52844. The Department assigned the application number T-11993.
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 March 9, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11993 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 11, 2016, for the applicants to respond. The applicants requested that the completion date be extended to October 1, 2021 and for 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 right to be transferred is as follows:

Certificate: 52844 in the name of FIRST INTERSTATE BANK OF OREGON
 AGRIBUSINESS DEPARTMENT (perfected under Permit G-7263)
Use: IRRIGATION OF 14.3 ACRES AND SUPPLEMENTAL IRRIGATION
 OF 103.3 ACRES
Priority Date: MARCH 11, 1977
Rate: 1.03 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 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: POND WELL 1 within the WILLIAMS CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	39 E	WM	19	NE NW	75 FEET WEST FROM THE N¼ CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	19	NE NW	14.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	39 E	WM	18	SW SW	40.0
8 S	39 E	WM	18	SE SW	37.5
8 S	39 E	WM	19	NW NW	25.8
Total					103.3

5. Transfer Application T-11993 proposes an additional point of appropriation approximately 1690 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	39 E	WM	19	SE NW	POND WELL #2 - 1394 FEET SOUTH AND 1064 FEET WEST FROM THE N¼ CORNER OF SECTION 19

Transfer Review Criteria (OAR 690-380-4010)

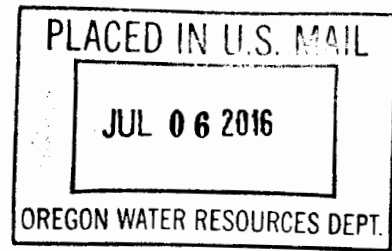
- Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11993.

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 5 day of July, 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@wrд.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.

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 additional point of appropriation proposed in Transfer Application T-11993 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-11993 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-11993 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 52844 and any related decree.*
3. *Water right Certificate 52844 is cancelled.*
4. *The quantity of water diverted at the additional 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. *Well should be constructed to meet minimum well construction standards and water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *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.*