



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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October 7, 2016

VIA E-MAIL

CITY OF MALIN
PO BOX 61
MALIN, OR 97632

SUBJECT: Water Right Transfer Application T-8537

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-8537. 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 Klamath Falls, Herald and News 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 503-986-0890 or Sarah.A.Henderson@wr.d.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-8537
Tyler Martin, District 17 Watermaster (via e-mail)
Darryl Anderson, CWRE (via e-mail)

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

In the Matter of Transfer Application)
T-8537, Klamath County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
ADDITIONAL POINTS OF
APPROPRIATION AND CHANGE IN
PLACE OF USE

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

CITY OF MALIN
PO BOX 61
MALIN, OR 97632

Findings of Fact

1. On May 31, 2000, the CITY OF MALIN filed a Permit Amendment Application for additional points of appropriation and to change the place of use under Permit G-10945. The Department assigned the application number T-8537.
2. Notice of the application for transfer (Permit Amendment) was published on June 13, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 4, 2015, the Department issued a new confirming Certificate 90916.
4. On June 21, 2016, the applicant consented to the Permit Amendment being converted to a Regular Transfer Application.
5. Notice of the application for transfer (Regular Transfer) was published on June 21, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On July 22, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-8537 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 21, 2016, 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.

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.

7. The right to be transferred is as follows:

Certificate: 90916 in the name of CITY OF MALIN (perfected under Permit G-10945)
Use: MUNICIPAL USES
Priority Date: FEBRUARY 10, 1989
Rate: 0.89 CUBIC FEET PER SECOND
Source: A WELL within the LOST RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
41 S	12 E	WM	16	NE SE	4	420.81 FEET SOUTH AND 846.51 FEET EAST FROM THE E1/4 CORNER OF SECTION 16

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot
41 S	12 E	WM	15	NW NW	
41 S	12 E	WM	15	SW NW	
41 S	12 E	WM	15	SE NW	
41 S	12 E	WM	15	NE SW	2
41 S	12 E	WM	15	NW SW	1
41 S	12 E	WM	15	SW SW	9
41 S	12 E	WM	15	SW SW	10
41 S	12 E	WM	15	SW SE	3
41 S	12 E	WM	15	SW SE	6
41 S	12 E	WM	16	NE NE	
41 S	12 E	WM	16	SW NE	3
41 S	12 E	WM	16	SE NE	
41 S	12 E	WM	16	SE SW	14
41 S	12 E	WM	16	NE SE	4
41 S	12 E	WM	16	NE SE	5
41 S	12 E	WM	16	NW SE	3
41 S	12 E	WM	16	NW SE	6
41 S	12 E	WM	16	SW SE	6
41 S	12 E	WM	16	SW SE	15
41 S	12 E	WM	16	SE SE	10
41 S	12 E	WM	16	SE SE	16
41 S	12 E	WM	21	NE NE	
41 S	12 E	WM	21	NW NE	
41 S	12 E	WM	21	SW NE	
41 S	12 E	WM	21	NW SE	2

8. Transfer Application T-8537 proposes additional points of appropriation approximately 454 and 1490 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	12 E	WM	15	NW SW	WELL 2 - SOUTH 72 DEGREES 44 MINUTES EAST 503 FEET FROM THE E1/4 CORNER OF SECTION 16
41 S	12 E	WM	16	NE SE	WELL 3 - SOUTH 63 DEGREES 38 MINUTES WEST 945 FEET FROM THE E1/4 CORNER OF SECTION 16

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	12 E	WM	16	NE NE	WELL 4 - NORTH 32 DEGREES 23 MINUTES 18 SECONDS WEST 1254 FEET FROM THE NE CORNER OF SECTION 16

9. Transfer Application T-8537 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q
41 S	12 E	WM	9	SE SE
41 S	12 E	WM	10	SW SW
41 S	12 E	WM	15	NW NW
41 S	12 E	WM	15	SW NW
41 S	12 E	WM	15	SE NW
41 S	12 E	WM	15	NE SW
41 S	12 E	WM	15	NW SW
41 S	12 E	WM	15	SW SW
41 S	12 E	WM	15	SW SE
41 S	12 E	WM	16	NE NE
41 S	12 E	WM	16	SW NE
41 S	12 E	WM	16	SE NE
41 S	12 E	WM	16	NE SW
41 S	12 E	WM	16	SE SW
41 S	12 E	WM	16	NE SE
41 S	12 E	WM	16	NW SE
41 S	12 E	WM	16	SW SE
41 S	12 E	WM	16	SE SE
41 S	12 E	WM	21	NE NE
41 S	12 E	WM	21	NW NE
41 S	12 E	WM	21	SW NE
41 S	12 E	WM	21	NW SE
41 S	12 E	WM	21	NE NW

Transfer Review Criteria (OAR 690-380-4010)

10. Water has been used within the last five years prior to the submittal of Transfer Application T-8537 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.
11. 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-8537.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-8537 appear 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-8537 is approved, the final order will include the following:

- 1. The additional points of appropriation and change in place of use proposed in Transfer Application T-8537 are 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 90916 and any related decree.*
- 3. Water right Certificate 90916 is cancelled.*
- 4. The quantity of water diverted at the additional 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 use measurement conditions:*
 - a. Before water use may begin under this order, the water user shall install a meter, or, with prior approval of the Director, another suitable measuring device at each new point of appropriation.*
 - 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 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 point of appropriation.*
- 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 changes 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 6 day of October, 2016.



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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrp.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.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>