



Oregon
Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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August 10, 2017

PORT OF MORROW
Attn RON McKINNIS PORT ENGINEER
PO BOX 200
BOARDMAN OR 97818

SUBJECT: Water Right Transfer Application T-12081

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12081. 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 Heppner Gazette 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@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12081
Greg Silbernagel, Watermaster District 5 *(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-12081, Morrow County) PROPOSING APPROVAL OF A CHANGE
) IN 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

PORT OF MORROW
Attn.: RON McKINNIS, PORT ENGINEER
PO BOX 200, #2 MARINE DRIVE
BOARDMAN, OR 97818

Agent

RON McKINNIS, CWRE
PO BOX 200, #2 MARINE DRIVE
BOARDMAN, OR 97818

Findings of Fact

1. On June 11, 2015, Ronald McKinnis, Port Engineer for the Port of Morrow filed an application an additional point of appropriation under Certificate 90018. The Department assigned the application number T-12081.
2. On October 14, 2015, Ronald McKinnis filed an amendment to the application to withdraw proposed changes to Certificate 90019. On April 26, 2017, Mr. McKinnis amended the application to remove the request for an additional point of appropriation to a change in point of appropriation only.
3. On May 5, 2017, Ronald McKinnis submitted a revised map and application to clarify the proposed points of appropriation.
4. Notice of the application for transfer was published on June 23, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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 right to be transferred is as follows:

Certificate: 90018 in the name of PORT OF MORROW (perfected under Permit G-8263)
Use: MUNICIPAL USES
Priority Date: JUNE 19, 1978
Rate: 1.11 CUBIC FEET PER SECOND, provided that the use of water for municipal use shall not exceed in any one year the peak amount of water actually used by the industry in any one of the five years prior to January 5, 1994.
Source: PORT WELL No. 2, within the COLUMBIA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	25 E	WM	10	NE NW	PORT WELL No. 2 - 1069 FEET SOUTH AND 1378 FEET EAST FROM THE NW CORNER OF SECTION 10

Authorized Place of Use:

THE PORT OF MORROW SERVICE AREA NEAR BOARDMAN, OREGON

6. Transfer Application T-12081 proposes to change the point of appropriation to: EB Well Nos. 1, 2, 3 and 4, located approximately 1½ miles northeast; EB Well No. 5, located approximately ¾ mile northeast; Port Well No. 3, located thirty feet west, all from the existing Port Well 2. The proposed points of appropriation are further located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	25 E	WM	2	SE NW	EB WELL No. 1 - 1377 FEET SOUTH AND 3659 FEET WEST FROM THE NE CORNER OF SECTION 10
4 N	25 E	WM	2	SE NW	EB WELL No. 2 - 1448 FEET SOUTH AND 3724 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	EB WELL No. 3 - 1590 FEET SOUTH AND 3845 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	EB WELL No. 4 - 1665 FEET SOUTH AND 3910 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	3	SE SE	EB WELL No. 5 - 1005 FEET NORTH AND 70 FEET WEST FROM THE SE CORNER OF SECTION 3
4 N	25 E	WM	10	NE NW	PORT WELL No. 3 - 1073 FEET SOUTH AND 1348 FEET EAST FROM THE NW CORNER OF SECTION 10

7. The Department has determined that the proposed points of appropriation all develop the same source of water as the authorized existing Port Well 2 for Certificate 90018.

8. On May 8, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12081 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 7, 2017, for the applicant to respond. On June 5, 2017, the agent and Port Engineer for 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. The agent for the applicant also requested an additional year to make complete beneficial use under the transfer. The Department approved an additional year extended to October 1, 2019, as a completion date.

9. The Port of Morrow is a municipality as defined in ORS Chapter 540.510(3)(b), Chapter 261 and a water supplier defined in ORS 448.115. Therefore, pursuant to OAR 690-380-3000(13)(b), the applicant is not required to provide a report of ownership information.

Transfer Review Criteria (OAR 690-380-4010)

10. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A well, pumps, pipeline, and municipal delivery 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-12081.
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 change in point of appropriation proposed in Transfer Application T-12081 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.

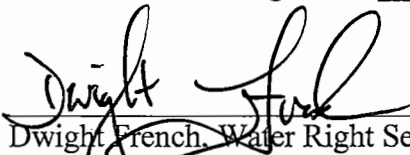
If Transfer Application T-12081 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-12081 is approved.*
2. *The right to use of the water is restricted to beneficial use at the place of use described, and will continue to be subject to all other conditions and limitations contained in Certificate 90018 and any related decree.*
3. *Water right Certificate 90018 is cancelled.*
4. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation, Port Well 2.*
5. *The quantity of water diverted at the points of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation, totaling 1.11 cfs to be used in any combination between Port Well No. 3, EB Well Nos. 1, 2, 3, 4, and 5.*
6. *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 (new and existing) points 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.

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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*
8. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 day of August, 2017



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@oregon.gov

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.

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>