



Oregon
Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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September 15, 2017

Applicant

PORT OF MORROW
PO BOX 200 2 MARINE DRIVE
BOARDMAN OR 97818

Agent

RONALD V. MCKINNIS
PORT ENGINEER
PO BOX 200 2 MARINE DRIVE
BOARDMAN OR 97818

SUBJECT: Water Right Transfer Application T-12082

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12082. 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 file T-12082
Greg Silbernagel, District 5 Watermaster *(via e-mail)*

encs

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-12082, Morrow County) PROPOSING APPROVAL OF ADDITIONAL
) POINTS OF APPROPRIATION, A CHANGE IN
) CHARACTER OF USE, A CHANGE IN PLACE
) OF USE AND PARTIAL CANCELLATION OF
) A WATER RIGHT

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.

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.

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Findings of Fact

1. On June 11, 2015, Ronald McKinnis of the Port of Morrow filed an application for additional points of appropriation, a change in character of use and a change in place of use under Certificate 51824. The Department assigned the application number T-12082.
2. On August 14, 2017, Mr. McKinnis, Port Engineer submitted a revised application map to clarify the descriptions of the points of appropriation.
3. 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.

4. On August 14, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12082 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 13, 2017, for the applicant to respond. On August 30, 2017, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2019 to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2019. In addition, the agent, on behalf of 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.
5. The portion of the right to be transferred is as follows:

Certificate: 51824 in the name of PRUDENTIAL INSURANCE COMPANY OF AMERICA (perfected under Permit G-8504)
Use: IRRIGATION OF 129.6 ACRES
Priority Date: AUGUST 10, 1978
Rate: 1.62 CUBIC FEET PER SECOND (CFS)
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: WELLS A and E, within the COLUMBIA RIVER BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	GLot	Q-Q	Measured Distances
5 N	26 E	WM	32		NW NE	WELL A - 1050 FEET SOUTH AND 2570 FEET WEST FROM THE NE CORNER OF SECTION 32
4 N	26 E	WM	5	2	NW NE	WELL E - 490 FEET SOUTH AND 100 FEET EAST FROM THE N¼ CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION (IR)						
Twp	Rng	Mer	Sec	GLot	Q-Q	Acres
4 N	26 E	WM	6	1	NE NE	40.0
4 N	26 E	WM	6	2	NW NE	31.6
4 N	26 E	WM	6		SW NE	29.0
4 N	26 E	WM	6		SE NE	29.0
Total						129.6

6. Transfer Application T-12082 proposes to change the character of use of irrigation of 129.6 acres to municipal purposes.
7. Transfer Application T-12082 proposes to change the place of use to

MUNICIPAL
THE PORT OF MORROW SERVICE AREA NEAR BOARDMAN, OREGON

8. Transfer Application T-12082 also proposes additional points of appropriation. Proposed EB Well Nos. 1, 2, 3 and 4 are located approximately 3½ miles west from the Port's Wells A and E. EB Well No. 5 is located approximately 4 miles west/southwest from the Port's Wells A and E. The proposed wells are 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 2
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

9. The Department has determined that the proposed additional points of appropriation develop the same source of water as the authorized existing wells, Wells A and E.

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-12082.
12. The proposed changes, as conditioned, would not result in enlargement of the right. The use of water for municipal purposes within the Port's Service area boundary described in Finding No. 5 above shall be conditioned to be limited to the irrigation season from March 1 to October 31 of each year. The use shall also be conditioned to be limited to a total annual duty of 388.8 acre-feet per year.
13. The proposed change would not result in injury to other water rights.
14. 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.
15. All other application requirements are met.

Partial Cancellation of a Water Right

16. On August 14, 2017, the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of Water Right Certificate 80921. This portion is the layered supplemental water right appurtenant to the primary water right being transferred in this transfer. The applicant has abandoned any and all interest in this portion of the water right for supplemental irrigation and is described as follows:

Certificate: 80921, in the name of PRUDENTIAL INSURANCE COMPANY OF AMERICA (perfected under Permit S-35694)
Use: SUPPLEMENTAL IRRIGATION OF 129.6 ACRES
Priority Date: NOVEMBER 5, 1971
Rate: 2.50 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-FORTHIETH of one cfs, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4½ acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COLUMBIA RIVER, tributary to PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	GLot	Q-Q	Measured Distances
5 N	25 E	WM	35	3	SW SE	80 FEET NORTH AND 2480 FEET WEST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION (IS)						
Twp	Rng	Mer	Sec	GLot	Q-Q	Acres
4 N	26 E	WM	6	1	NE NE	40.0
4 N	26 E	WM	6	2	NW NE	31.6
4 N	26 E	WM	6		SW NE	29.0
4 N	26 E	WM	6		SE NE	29.0
Total						129.6

Determination and Proposed Action

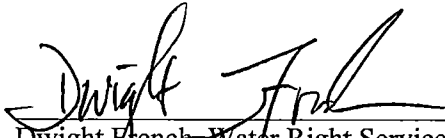
The additional points of appropriation, change in character of use and change in place of use proposed in Transfer Application T-12082 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If 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-12082 is approved, the final order will include the following:

- 1. The additional points of appropriation, change in character of use and change in place of use proposed in Transfer Application T-12082 are approved. The portion of water right Certificate 80921 that has been abandoned is cancelled.*
- 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 51824 and any related decree.*
- 3. Water Right Certificates 51824 and 80921 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
- 4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation. Proposed EB Well No. 4 and EB Well No. 5 shall be constructed similarly to appropriate water from the same alluvial aquifer system as the original points of appropriation.*
- 5. The quantity of water diverted at the proposed additional points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation, totaling 1.62 cfs to be used in any combination between the Port of Morrow's Well A and E and these new additional proposed wells.*
- 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 19 day of September, 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