

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12790, Morrow County	)	APPROVING AN ADDITIONAL POINT
	)	OF DIVERSION, A CHANGE IN
	)	PLACE OF USE, AND A CHANGE IN
	)	CHARACTER 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 diversion, 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: RONALD McKINNIS  
PO BOX 200  
BOARDMAN, OR 97818

**Findings of Fact**

1. On December 15, 2017, the PORT OF MORROW filed an application to change the place of use under Certificate 91597. The Department assigned the application number T-12790.
2. Notice of the application for transfer was published on December 26, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 7, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12790 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2018, 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.

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

**Certificate:** 91597 in the name of PORT OF MORROW, WESTLAND ENTERPRISES, LLC, WESTLAND ENTERPRISES, LLC C/O ROBERT LEVY (perfected under Permit S-35694)

**Use:** IRRIGATION of 1147.5 ACRES

**Priority Date:** NOVEMBER 5, 1971

**Rate:** 22.16 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, is limited to a diversion of ONE-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

**Authorized Point of Diversion:**

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

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	25 E	WM	1	NE NE	1	30.3
4 N	25 E	WM	1	NW NE	2	33.8
4 N	25 E	WM	1	SW NE		34.3
4 N	25 E	WM	1	SE NE		20.0
4 N	25 E	WM	1	NE NW		0.8
4 N	25 E	WM	1	NW NW		5.9
4 N	25 E	WM	1	SW NW		25.1
4 N	25 E	WM	1	SE NW		37.3
4 N	25 E	WM	1	NE SW		35.8
4 N	25 E	WM	1	NW SW		18.3
4 N	25 E	WM	1	NE SE		35.4
4 N	25 E	WM	1	NW SE		34.7
4 N	25 E	WM	1	SW SE		11.7
4 N	25 E	WM	1	SE SE		33.8
4 N	25 E	WM	2	NE NE	1	35.5
4 N	25 E	WM	2	NW NE	5	3.3
4 N	25 E	WM	2	SE NE		29.3
4 N	25 E	WM	12	NE NE		38.1
4 N	25 E	WM	12	NW NE		17.5
4 N	25 E	WM	12	SW NE		9.2
4 N	25 E	WM	12	SE NE		15.2
4 N	25 E	WM	12	SE NW		0.1
4 N	25 E	WM	6	SW NE		0.5
4 N	25 E	WM	6	SE NE		6.6
4 N	26 E	WM	6	NE NW	3	31.1
4 N	26 E	WM	6	NW NW	4	34.5

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	6	SW NW	5	12.0
4 N	26 E	WM	6	SE NW		8.5
4 N	26 E	WM	6	NE SW		32.4
4 N	26 E	WM	6	NW SW	6	30.9
4 N	26 E	WM	6	SW SW	7	39.7
4 N	26 E	WM	6	SE SW		40.1
4 N	26 E	WM	6	NE SE		34.3
4 N	26 E	WM	6	NW SE		31.0
4 N	26 E	WM	6	SW SE		33.7
4 N	26 E	WM	6	SE SE		18.0
4 N	26 E	WM	7	NE NE		36.3
4 N	26 E	WM	7	NW NE		32.9
4 N	26 E	WM	7	SW NE		29.6
4 N	26 E	WM	7	SE NE		24.6
4 N	26 E	WM	7	NE NW		30.6
4 N	26 E	WM	7	NW NW	1	29.3
4 N	26 E	WM	7	SW NW	2	30.5
4 N	26 E	WM	7	SE NW		40.9
4 N	26 E	WM	7	NE SW		11.2
4 N	26 E	WM	7	NW SW	3	0.4
4 N	26 E	WM	7	NW SE		0.9
4 N	26 E	WM	8	NW NW		19.9
4 N	26 E	WM	8	SW NW		1.7
Total						1147.5

- Transfer Application T-12790 proposes to change the character of use of the above described right to Municipal purposes.
- Transfer Application T-12790 also proposes to change the place of use of the right to:

MUNICIPAL
WITHIN THE PORT OF MORROW SERVICE AREA

- Transfer Application T-12790 also proposes an additional point of diversion downstream approximately 2000 feet for the above described right located:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	SE NW	7	TERMINAL 5 POD #2 - 1442 FEET SOUTH AND 3923 FEET WEST FROM THE NE CORNER OF SECTION 2

**Transfer Review Criteria (OAR 690-380-4010)**

- Water has been used within the last five years prior to the submittal of Transfer Application T-12790 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.

9. A pump station, pipeline, and sprinkler systems for irrigation and delivery system associated with municipal uses 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-12790.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.
12. All other application requirements are met.

### **Determination and Proposed Action**

The additional point of diversion and changes in place of use and character of use proposed in Transfer Application T-12790 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-12790 is approved, the final order will include the following:*

1. *The additional point of diversion and changes in place of use and character of use proposed in Transfer Application T-12790 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 91597 and any related decree.*
3. *Water right Certificate 91597 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The use of water for the proposed municipal use under the right described by Certificate 91597 shall be limited to a rate of diversion of 22.16 cfs and further limited to a total volume diverted of 5,163.75 acre feet during the season of use being March 1 through October 31 of each year.*
5. *The quantity of water diverted at the new additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
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 point of diversion (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 are located within a private structure, the Watermaster shall request access upon reasonable notice.*

7. *Water shall be acquired from the same water source as the original point of diversion.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this October 26, 2018.



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](mailto:Ken.D.Dowden@oregon.gov).

*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>



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

October 26, 2018

**VIA E-MAIL**

PORT OF MORROW  
ATTN: RONALD McKINNIS  
PO BOX 200  
BOARDMAN, OR 97818

SUBJECT: Water Right Transfer Application T-12790

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12790. 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](mailto: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-12790  
Greg Silbernagel, District 5 Watermaster *(via e-mail)*

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