

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12977, Baker County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS 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

CITY OF BAKER CITY
PO BOX 650
BAKER CITY, OR 97814
mowen@bakercity.com

Findings of Fact

1. On July 19, 2018, CITY OF BAKER CITY filed an application for additional points of appropriation under Certificates 23384 and 68683. The Department assigned the application number T-12977.
2. Notice of the application for transfer was published on July 31, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 28, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12977 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 28, 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.
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4. On January 31, 2019, the Department contacted the applicant's agent regarding an apparent scrivener's error in the quarter-quarter location of two proposed wells, Golf Course 2 and Bridge 2. Transfer Application T-12977 and the draft Preliminary Determination (mailed November 28, 2018), erroneously describe the locations of the wells as being:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	20	NE SW	GOLF COURSE 2 - 64 FEET SOUTH AND 21 FEET EAST FROM THE CENTER OF SECTION 20
9 S	40 E	WM	21	SW NE	BRIDGE 2 - 20 FEET SOUTH AND 100 FEET EAST FROM THE CENTER OF SECTION 21

5. On February 1, 2019, the agent requested the Department update the quarter-quarter description to be (in bold):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	20	NW SE	GOLF COURSE 2 - 64 FEET SOUTH AND 21 FEET EAST FROM THE CENTER OF SECTION 20
9 S	40 E	WM	21	NW SE	BRIDGE 2 - 20 FEET SOUTH AND 100 FEET EAST FROM THE CENTER OF SECTION 21

6. The first right to be transferred is as follows:

Certificate: 23384 in the name of CITY OF BAKER (perfected under Permit U-584)
Use: MUNICIPAL USES
Priority Date: NOVEMBER 16, 1953
Rate: 2.25 CUBIC FEET PER SECOND
Source: CALIFORNIA-PACIFIC STREAM PLANT WELL within the POWDER RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Name
9 S	40 E	WM	28	NW NW	CALIFORNIA PACIFIC WELL

Authorized Place of Use:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
9 S	40 E	WM	7	E½ SE¼
9 S	40 E	WM	8	S½
9 S	40 E	WM	9	S½
9 S	40 E	WM	16	ALL
9 S	40 E	WM	17	ALL
9 S	40 E	WM	18	E½ E½
9 S	40 E	WM	19	E½ E½
9 S	40 E	WM	20	ALL
9 S	40 E	WM	21	ALL
9 S	40 E	WM	28	N½
9 S	40 E	WM	29	N½
9 S	40 E	WM	30	E½ NE¼

7. Certificate 23384 does not describe the location of the point of appropriation, however information is available from the CWRE's survey indicating the point of appropriation is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	28	NW NW	1000 FEET SOUTH AND 100 FEET EAST FROM THE NW CORNER OF SECTION 28

8. Transfer Application T-12977 proposes additional points of appropriation. The table below correctly describes the location of the proposed points of appropriation with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the original well location measured in miles (mi)
9 S	40 E	WM	19	NW SE	RESERVOIR WELL - 200 FEET SOUTH AND 700 FEET WEST FROM THE SE CORNER OF THE SW $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 19	1.5 mi.
9 S	40 E	WM	20	NE SW	GOLF COURSE 1 - 51 FEET SOUTH AND 464 FEET WEST FROM THE CENTER OF SECTION 20	0.9 mi.
9 S	40 E	WM	20	NW SE	GOLF COURSE 2 - 64 FEET SOUTH AND 21 FEET EAST FROM THE CENTER OF SECTION 20	0.17 mi.
9 S	40 E	WM	20	NW SE	GOLF COURSE 3 - 67 FEET SOUTH AND 150 FEET EAST FROM THE CENTER OF SECTION 20	0.8 mi.
9 S	40 E	WM	21	SE NW	BRIDGE 1 - 125 FEET NORTH AND 22 FEET WEST FROM THE CENTER OF SECTION 21	0.87 mi.
9 S	40 E	WM	21	NW SE	BRIDGE 2 - 20 FEET SOUTH AND 100 FEET EAST FROM THE CENTER OF SECTION 21	1.20 mi.
9 S	40 E	WM	21	NW SE	BRIDGE 3 - 1300 FEET SOUTH AND 270 FEET EAST FROM THE CENTER OF SECTION 21	0.7 mi.

9. The second right to be transferred is as follows:

Certificate: 68683 in the name of CITY OF BAKER CITY (perfected under Permit G-10922)

Use: MUNICIPAL USES

Priority Date: DECEMBER 14, 1987

Rate: 0.566 CUBIC FOOT PER SECOND

Source: ONE WELL within the POWDER RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	40 E	WM	20	NE SW	GOLF COURSE WELL - 112.87 FEET SOUTH AND 99.9 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 20

Authorized Place of Use:

WITHIN THE SERVICE AREA OF BAKER CITY

10. Transfer Application T-12977 proposes additional points of appropriation. The table below describes the location of the proposed points of appropriation with the measured distances from the original (authorized) point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from the original well location measured in miles (mi)
9 S	40 E	WM	19	NW SE	RESERVOIR WELL - 200 FEET SOUTH AND 700 FEET WEST FROM THE SE CORNER OF THE SW¼ NE¼ OF SECTION 19	0.86 mi.
9 S	40 E	WM	20	NE SW	GOLF COURSE 1 - 51 FEET SOUTH AND 464 FEET WEST FROM THE CENTER OF SECTION 20	0.07 mi.
9 S	40 E	WM	20	NW SE	GOLF COURSE 2 - 64 FEET SOUTH AND 21 FEET EAST FROM THE CENTER OF SECTION 20	0.03 mi.
9 S	40 E	WM	20	NW SE	GOLF COURSE 3 - 67 FEET SOUTH AND 150 FEET EAST FROM THE CENTER OF SECTION 20	0.05 mi.
9 S	40 E	WM	21	SE NW	BRIDGE 1 - 125 FEET NORTH AND 22 FEET WEST FROM THE CENTER OF SECTION 21	1.0 mi.
9 S	40 E	WM	21	NW SE	BRIDGE 2 - 20 FEET SOUTH AND 100 FEET EAST FROM THE CENTER OF SECTION 21	1.04 mi.
9 S	40 E	WM	21	NW SE	BRIDGE 3 - 1300 FEET SOUTH AND 270 FEET EAST FROM THE CENTER OF SECTION 21	1.08 mi.

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12977.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

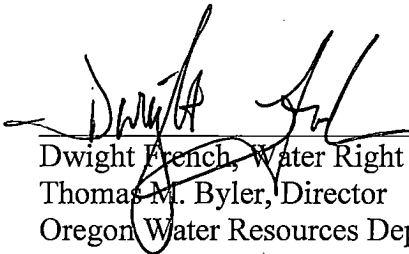
The additional points of appropriation proposed in Transfer Application T-12977 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12977 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12977 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 Certificates 23384 and 68683 and any related decree.*
3. *Water right Certificates 23384 and 68683 are cancelled.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *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 appropriation (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. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2040**. 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.*

7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this FEB 11 2019,


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@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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

February 5, 2019

CITY OF BAKER CITY
PO BOX 650
BAKER CITY, OR 97814
mowen@bakercity.com

SUBJECT: Water Right Transfer Application T-12977

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12977. 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 Baker City Herald 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-12977
Rick M. Lusk, District 8 Watermaster (*via e-mail*)
Jason Melady, Agent for the applicant (*via e-mail*)

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