



Oregon

Tina Kotek, Governor

Water Resources Department

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February 2, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

PORT OF MORROW
ATTN: MIFF DEVIN
2 MARINE DRIVE
BOARDMAN, OR 97818

SUBJECT: Water Right Transfer Application T-13552

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13552. 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.

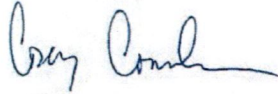
A public notice is being published in the Department's weekly publication and in the Heppner Gazette newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane".

Corey Courchane
Allocation of Conserved Water
Transfers and Conservation Section

cc: Transfer Application file T-13552
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Bruce Brody-heine, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13552, Morrow 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.

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Findings of Fact

1. On November 5, 2020, PORT OF MORROW filed an application for additional points of appropriation under Certificate 90019. The Department assigned the application number T-13552.
2. Notice of the application for transfer was published on November 24, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 27, 2022, the applicant provided a revised map and table, and provided an accurate description of the authorized point of appropriation.
4. On November 17, 2022, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13552 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 13, 2022, for the applicant(s) to respond. The applicant(s) 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 and requested additional time for completion of 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.

5. The right to be transferred is as follows:

Certificate: 90019 in the name of PORT OF MORROW (perfected under Permit G-5332)
Use: MUNICIPAL USES
Priority Date: MAY 31, 1974
Rate: 2.0 CUBIC FEET PER SECOND
Source: A WELL tributary to the COLUMBIA RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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

Authorized Place of Use:

MUNICIPAL USES
THE PORT OF MORROW SERVICE AREA NEAR BOARDMAN OREGON

6. Certificate 90019, describes the authorized point of appropriation (POA), however, the applicant supplied information that describes the point of appropriation as follows:

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

7. Transfer Application T-13552 proposes additional points of appropriation with approximate distances from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance in mile from the authorized POA
4 N	25 E	WM	2	SW SW	WELL B1 - 855 FEET NORTH AND 65 FEET EAST FROM THE SW CORNER OF SECTION 2	0.83
4 N	25 E	WM	3	SW SE	WELL D1 - 475 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 3	0.37
4 N	25 E	WM	9	NE NE	WELL C1 - 235 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 9	0.42
4 N	25 E	WM	10	NE NE	WELL A1 - 1230 FEET SOUTH AND 1170 FEET WEST FROM THE NE CORNER OF SECTION 10	0.51

Transfer Review Criteria (OAR 690-380-4010)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-13552 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. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. All other application requirements are met.

Determination and Proposed Action

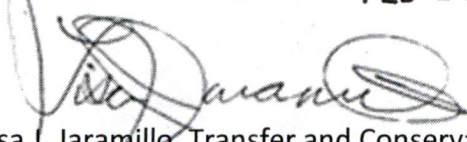
The additional points of appropriation proposed in Transfer Application T-13552 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13552 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-13552 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 90019 and any related decree.*
3. *Water right Certificate 90019 is cancelled.*
4. *The quantity of water diverted at the additional points of appropriation (WELLS A1, B1, C1, and D1), together with that diverted at the original point of appropriation (POA No. 2), 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 totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2030**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **FEB 22 2023**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or by email at Joan.M.Smith@water.oregon.gov

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.