



Oregon

Tina Kotek, Governor

Water Resources Department

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May 16, 2023

VIA CERTIFIED MAIL AND E-MAIL

Applicant

PORT OF MORROW
MIFF DEVIN
PO BOX 200
BOARDMAN, OR 97818

SUBJECT: Water Right Transfer Application T-13928

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13928. 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-Times 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 don't hesitate to contact me at 503-979-3129 or Arla.L.Davis@water.oregon.gov, if I may be of assistance

Sincerely,

Arla Davis

Arla Davis
Transfer Specialist
Transfer and Conservation Section

cc: T-13928
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Bruce Brody-heine, Agent for the applicant (*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-13928, Morrow County)	PROPOSING APPROVAL OF CHANGES OF
)	ADDITIONAL POINTS OF APPROPRIATION
)	AND A CHANGE IN PLACE 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 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 February 28, 2022, PORT OF MORROW filed an application for additional points of appropriation and a change in place of under Certificate 68545. The Department assigned the application number T-13928.
2. Notice of the application for transfer was published on March 8, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 30, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13928 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 2, 2023, 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 right to be transferred is as follows:

Certificate: 68545 in the name of PORT OF MORROW (perfected under Permit G-7158)
Use: INDUSTRIAL USE
Priority Date: FEBRUARY 4, 1977
Rate: 3.0 CUBIC FEET PER SECOND
Source: A WELL, in the COLUMBIA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	25 E	WM	10	SW NE	130 FEET NORTH AND 2650 FEET EAST FROM THE W1/4 CORNER OF SECTION 10

Authorized Place of Use:

INDUSTRIAL USE				
Twp	Rng	Mer	Sec	Q-Q
4 N	25 E	WM	2	NE SW
4 N	25 E	WM	2	NW SW
4 N	25 E	WM	2	SW SW
4 N	25 E	WM	2	SE SW
4 N	25 E	WM	3	NE SW
4 N	25 E	WM	3	SW SW
4 N	25 E	WM	3	SE SW
4 N	25 E	WM	3	NE SE
4 N	25 E	WM	3	SW SE
4 N	25 E	WM	3	SE SE
4 N	25 E	WM	4	SE SW
4 N	25 E	WM	4	SW SE
4 N	25 E	WM	4	SE SE
4 N	25 E	WM	9	NE NE
4 N	25 E	WM	9	NW NE
4 N	25 E	WM	9	NE NW
4 N	25 E	WM	10	NE NE
4 N	25 E	WM	10	NW NE
4 N	25 E	WM	10	SW NE
4 N	25 E	WM	10	SE NE
4 N	25 E	WM	10	NE NW
4 N	25 E	WM	10	NW NW
4 N	25 E	WM	10	SW NW
4 N	25 E	WM	10	SE NW
4 N	25 E	WM	10	NE SW
4 N	25 E	WM	10	NW SW
4 N	25 E	WM	10	NE SE
4 N	25 E	WM	10	NW SE
4 N	25 E	WM	11	NE NW
4 N	25 E	WM	11	NW NW
4 N	25 E	WM	11	SW NW
4 N	25 E	WM	11	SE NW

5. Transfer Application T-13928 proposes additional points of appropriation all between approximately 1.49 and 2.43 miles NE from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	25 E	WM	2	SW SW	WELL B1 - 855 FEET NORTH AND 65 FEET EAST FROM THE SW CORNER OF SECTION 2
4 N	25 E	WM	2	SW SW	WELL B2 - 835 FEET NORTH AND 95 FEET EAST FROM THE SW CORNER OF SECTION 2
4 N	25 E	WM	3	SW SE	WELL D1 - 475 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 3
4 N	25 E	WM	3	SW SE	WELL D2 - 425 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 3
4 N	25 E	WM	9	NE NE	WELL C1 - 235 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 9
4 N	25 E	WM	9	NE NE	WELL C2 - 285 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF SECTION 9
4 N	25 E	WM	10	NE NE	WELL A1 - 1230 FEET SOUTH AND 1170 FEET WEST FROM THE NE CORNER OF SECTION 10
4 N	25 E	WM	10	NE NE	WELL A2 - 1230 FEET SOUTH AND 1210 FEET WEST FROM THE NE CORNER OF SECTION 10

6. Transfer Application T-13928 also proposes to change the place of use of the right to:

WITHIN PORT OF MORROW SERVICE AREA AUTHORIZED FOR INDUSTRIAL USE

Transfer Review Criteria (OAR 690-380-4010)

7. Water has been used within the last five years prior to submittal of Transfer Application T-13928 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.
8. The proposed changes as conditioned would not result in enlargement of the right.
9. The proposed changes as conditioned would not result in injury to other water rights.
10. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation and change in place of use proposed in Transfer Application T-13928 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-13928 is approved, the final order will include the following:

1. *The additional points of appropriation and change in place of use proposed in Transfer Application T-13928 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 68545 and any related decree.*
3. *Water right Certificate 68545 is cancelled.*
4. *The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **MAY 12 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 Arla L Davis. If you have questions about the information in this document, you may reach me at 503-979-3129 or arla.l.davis@water.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 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.