

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-14450, Washington 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 BANKS
ATTN: JOLYNN BECKER
13680 NW MAIN ST
BANKS, OR 97106

Findings of Fact

1. On April 29, 2024, City of Banks ATTN: Jolynn Becker filed an application for additional points of appropriation under Certificate 95849. The Department assigned the application number T-14450.
2. Notice of the application for transfer was published on May 7, 2024, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 7, 2025, the Department determined that the proposed additional points of appropriation (APOAs) would not develop the same aquifer as the authorized points of appropriation (POAs):
 - a) Authorized POA, WASH 62373 or Well-2, is 665 feet deep, with an open interval between 300 and 665 ft bls within the local Columbia River Basalt Group (CRBG) aquifer system. According to the WASH 62373 well log and additional documents provided by the applicant's agent, there are two principal water-bearing interflow zones in this well: 378-468 ft bls (est. 350 gpm) and 615-660 ft bls (est. 300 gpm).

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

- b) Transfer application T-14450 submitted documentation that provides additional information intended to support “the development of all basalt water bearing zones (WBZs) encountered to a depth of 665 feet below ground surface (bgs) as one aquifer unit.”
- c) OWRD has reviewed this additional documentation and concludes that it does **not** support the applicant’s request to consider “all basalt WBZs encountered to a depth of 665 feet bgs as one aquifer unit.” Instead, OWRD finds the preponderance of the evidence supports a finding that the two WBZs in WASH 62373 are discretely different aquifer sources:
 - i) The spinner log instrumentation in WASH 62373 has a low-flow measurement threshold of <1.0 ft/minute. This threshold would equate to a potential vertical flow in the borehole of approximately 6 gallons per minute (gpm). This flow rate could exist within the borehole without being detectable by the spinner log instrumentation used for the survey of WASH 62373. The presence of any vertical flow in a borehole under otherwise static conditions indicates a head differential between successive WBZ, which, indicates that each WBZ behaves as a separate “aquifer.”

Because vertical flow might exist in WASH 62373 that is below the threshold detection limit of the spinner log device, the interpreted results of this survey do not prove conclusively that the two primary WBZ in this well (378-468 ft bls and 615-660 ft bls) behave as “one aquifer unit.”

- ii) The application attachment shows that well logs for WASH 62373, nearby WASH 50693, and other nearby basalt wells did not indicate changes in static water levels as the wells were being drilled through multiple water bearing zones. If present, such head changes would indicate a vertical gradient and resultant vertical flow between WBZs, which in turn would imply that each WBZ was a discretely different aquifer. Conversely, no head changes between WBZ would suggest a single aquifer unit.

However, while head changes observed during drilling can be an indication of different aquifers/discrete WBZs, particularly if the change is relatively large, the absence of such observed changes is not conclusive proof of a single “aquifer unit” comprised of multiple WBZs, for the following reasons:

- (1) in cases where head differences between WBZs are relatively small (e.g., 1-2 feet), the differences may not be discernible during disruptive drilling activities;
- (2) when drilling through multiple WBZs, the head in the well becomes a composite of various heads under dynamic conditions (with interflow occurring through the borehole); thus it can be impossible to quantify, or even discern, any head changes attributable to a single WBZ;
- (3) pumping of other nearby CRBG wells could affect water levels measured in the well borehole.

- iii) After recently completing an elevation survey of the wellheads of both WASH 7651 and WASH 62373, the application states that static water level elevations between the wells “differed by 0.62 – 1.12 feet.” This range is comprised of three rounds of contemporaneous measurements made in 2023. A similar range of head differences between WASH 7651 and WASH 62373 was measured more recently in February and March of 2024, at 0.7 ft and 1.0 ft, respectively.
 - iv) As reported to OWRD, these measurements were made when the WASH 62373 pump had been idle for at least 24 hours for the February reading, and at least 7 days for the March measurement. The range of reported static water level differences between WASH 7651 and WASH 62373 indicates the presence of a vertical gradient between the two major WBZ intersected by the wells. This vertical gradient in turn indicates that the two WBZ in WASH 62373 behave as discrete aquifers as defined by different head conditions.
 - d) Despite the authorization of WASH 62373 as a POA for certificate 95849 in its current configuration, obtaining groundwater from two discrete aquifers within the CRBG aquifer system, any APOA wells installed under this transfer application will be limited to only one of the two primary aquifers/WBZ present in WASH 62373.
- 4. On February 7, the Department determined that the comingling of aquifers can be avoided by implementing the changes to planned construction of the proposed APOA wells which will limit the wells to only a single WBZ.
 - 5. On March 28, 2025, the applicant provided a memorandum responding to OWRD’s February 27 Groundwater Review. The memorandum provided further evidence that the two WBZ’s identified constitute a single aquifer system.
 - 6. On June 13, 2025, the Department responded to the applicant, and the data analysis provided, and determined that the two water bearing zones developed by the applicant’s current authorized well constitute a single aquifer with two primary basalt WBZ’s between -125 and -430 msl.
 - 7. On July 24, 2025, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to approve Transfer Application T-14450. The draft Preliminary Determination cover letter provided a deadline of August 23, 2025, for the applicant to respond and submit the required information. 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.
 - 8. On August 8, 2025, the applicant’s agent requested an extended completion date of October 1, 2045, and provided a detailed plan of the city’s timeline to complete the changes, citing aquifer storage recovery testing, available funding, and completing intensive infrastructure work.

9. The right to be transferred is as follows:

Certificate: 95849 in the name of CITY OF BANKS (perfected under Permit G-16312)
Use: MUNICIPAL USE
Priority Date: DECEMBER 5, 2002
Rate: 1.0 CUBIC FOOT PER SECOND
Period of Use: YEAR ROUND
Source: WELL 2 (WASH 62373) in WEST FORK DAIRY CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	3 W	WM	31	NE NW	WELL 2 (WASH 62373) - 120 FEET SOUTH AND 2070 FEET EAST FROM THE NW CORNER OF SECTION 31

Authorized Place of Use:

MUNICIPAL USE
WITHIN THE SERVICE BOUNDARY OF THE CITY OF BANKS

10. Transfer Application T-14450 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the Authorized Point of Appropriation
2 N	3 W	WM	31	NE NE	AN - 275 FEET SOUTH AND 475 FEET WEST FROM NE CORNER, SECTION 31	2800 FEET EAST
2 N	3 W	WM	31	NE SE	AS - 2500 FEET NORTH AND 565 FEET WEST FROM THE SE CORNER OF SECTION 31	3745 FEET SOUTHEAST
2 N	3 W	WM	31	NE SW	PARK-A - 2120 FEET NORTH AND 2970 FEET WEST FROM THE SE CORNER OF SECTION 31	3160 FEET SOUTH
2 N	3 W	WM	31	NW SE	PARK-B - 2460 FEET NORTH AND 2520 FEET WEST FROM THE SE CORNER OF SECTION 31	2920 SOUTHEAST
2 N	3 W	WM	31	NW SE	PARK-C - 2630 FEET NORTH AND 2540 FEET WEST FROM THE SE CORNER OF SECTION 31	22750 FEET SOUTHEAST
2 N	4 W	WM	36	NE NE	WTP - 175 FEET SOUTH AND 335 FEET WEST FROM THE NW CORNER OF SECTION 31	2220 FEET WEST

Transfer Review Criteria [OAR 690-380-0100(14), OAR 690-380-4010(2), OAR and OAR 690-380-2110(2)]

11. Water has been used within the last five years 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.

12. A water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-14450.
13. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed points of appropriation develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
15. The proposed change, as conditioned, would not result in enlargement of the right.
16. The proposed change, as conditioned, would not result in injury to other existing water rights.
17. All other application requirements are met.

Determination and Proposed Action

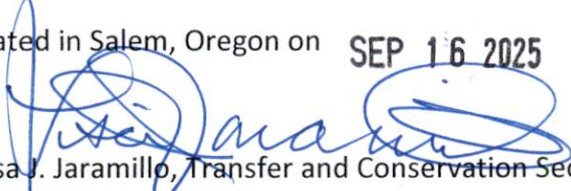
The additional points of appropriation proposed in Transfer Application T-14450 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-14450 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-14450 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 95849 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new points of appropriation.*
4. *Water right Certificate 95849 is cancelled.*
5. *The quantity of water diverted at the new additional points of appropriation (AN, AS, PARK-A, PARK-B, PARK-C, and WTP), together with that diverted at the original point of appropriation (WELL 2 (WASH 62373)), shall not exceed the quantity of water lawfully available at the original point of appropriation (WELL 2 (WASH 62373)).*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation. This aquifer is located -125 to -430 msl within the CRBG.*
7. *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.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2031**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **SEP 16 2025**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Dante Luongo. If you have questions about the information in this document, you may reach me at 971-304-5006 or dante.j.luongo@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$720 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$1425 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and

- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

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www.oregon.gov/owrd

September 16, 2025

VIA CERTIFIED MAIL AND E-MAIL

CITY OF BANKS
ATTN: JOLYNN BECKER
13680 NW MAIN ST
BANKS, OR 97106

SUBJECT: Water Right Transfer Application T-14550

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14550. 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 Hillsboro News-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 971 304-5006 or Dante.J.Luongo@water.oregon.gov, if I may be of assistance.

Sincerely,

Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-14550
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Bob Long, Agent for the applicant (*via e-mail*)