

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11004, Morrow County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

DAN MCCARTY
27471 MCCARTY RANCH LANE
ECHO, OR 97826

Findings of Fact

Background

1. On January 11, 2010, DAN MCCARTY filed an application for an additional point of appropriation under Certificates 50853 and 52005. The Department assigned the application number T-11004.
2. The portion of the first right to be transferred is as follows:
 - Certificate:** 50853 in the name of ERIC ANDERSON (perfected under Permit G-5238)
 - Use:** IRRIGATION of 420.9 ACRES
 - Priority Date:** NOVEMBER 5, 1973
 - Rate:** 5.26 CUBIC FEET PER SECOND
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
 - Source:** A WELL in the WILLOW CREEK BASIN

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1: 1500 FEET NORTH AND 100 FEET EAST FROM THE S 1/4 CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	24 E	WM	36	NE NE	33.2
2 N	24 E	WM	36	NW NE	25.7
2 N	24 E	WM	36	SW NE	38.4
2 N	24 E	WM	36	SE NE	29.6
2 N	24 E	WM	36	NE NW	6.0
2 N	24 E	WM	36	NW NW	26.4
2 N	24 E	WM	36	SW NW	19.0
2 N	24 E	WM	36	SE NW	39.4
2 N	24 E	WM	36	NE SW	36.0
2 N	24 E	WM	36	NW SW	1.2
2 N	24 E	WM	36	SW SW	3.3
2 N	24 E	WM	36	SE SW	35.8
2 N	24 E	WM	36	NE SE	34.4
2 N	24 E	WM	36	NW SE	38.3
2 N	24 E	WM	36	SW SE	28.2
2 N	24 E	WM	36	SE SE	26.0
TOTAL:					420.9

3. Transfer Application T-11004 proposes to add an additional point of appropriation approximately 0.33 miles southwesterly from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	SW SW	1090 FEET NORTH AND 1060 FEET EAST FROM SW 1/4 CORNER OF SECTION 36

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

Certificate: 52005 in the name of ERIC ANDERSON (perfected under Permit G-5239)
Use: IRRIGATION of 208.6 ACRES
Priority Date: MARCH 29, 1974
Rate: 2.61 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year provided the appropriation of water from Well 1 is limited to total diversion of 7.3 cfs for all rights of record established at Well 1.
Source: WELL 1 in the WILLOW CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	NW SE	WELL 1: 1500 FEET NORTH AND 100 FEET EAST FROM THE S 1/4 CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	24 E	WM	1	NW NW	15.3
1 N	24 E	WM	1	SW NW	27.0
1 N	24 E	WM	1	SE NW	5.5
1 N	24 E	WM	1	NE SW	20.7
1 N	24 E	WM	1	NW SW	39.2
1 N	24 E	WM	1	SW SW	4.7
1 N	24 E	WM	1	SE SW	0.9
1 N	24 E	WM	2	NE NE	39.5
1 N	24 E	WM	2	NW NE	9.9
1 N	24 E	WM	2	SW NE	7.8
1 N	24 E	WM	2	SE NE	35.1
1 N	24 E	WM	2	NE SE	3.0

5. Transfer Application T-11004 proposes to add an additional point of appropriation approximately 0.33 miles southwesterly from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	24 E	WM	36	SW SW	1090 FEET NORTH AND 1060 FEET EAST FROM SW 1/4 CORNER, SECTION 36

6. Transfer Application T-11004 is in the Ella Butte Classified Area which experiences declining ground water levels. There have been difficulties obtaining water level data from wells in this area primarily because of the extraordinary well depths. The new well will need a special method of measuring the water level (see Condition #2 below).
7. Notice of the application for transfer was published on January 19, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On April 23, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11004 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 24, 2010 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.

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11004 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.
10. 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-11004.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11004 appears 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 application T-11004 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in application T-11004 is approved.*
2. *The additional point of appropriation proposed in application T-11004 shall be equipped with a separate water level measurement tube in addition to other methods of measuring the water level such as airlines or transducers.*
3. *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 50853 and 52005 and any related decree.*
4. *Water right certificates 50853 and 52005 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
5. *The quantity of water diverted at the 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 points of appropriation.*
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 the new point of appropriation.*
 - b. *The water user shall maintain and operate the existing measurement device on Well #1 and shall make such improvements as may be required by the Department.*
 - c. *The water user shall maintain the meters or measuring devices in good working order.*

d. 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 aquifer (water source) as the original point of appropriation.*
8. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.*
9. *When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 14 day of May 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

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