

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-11013, Klamath County)	CHANGES IN CHARACTER OF USE
)	AND PLACE OF USE

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

Oregon Institute of Technology
c/o Tonya Boyd, Senior Engineer
3201 Campus Drive
Klamath Falls, OR 97601

Findings of Fact

Background

1. On February 1, 2010, Oregon Institute of Technology filed an application for changes in character of use change under Certificate 65355. The Department assigned the application number T-11013.
2. Notice of the application for transfer was published on February 10, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 20, 2010, the Department notified the applicant of the deficiencies found during the initial review of the transfer.
4. On January 3, 2011, the applicant notified the Department that they wanted to amend the application and map.
5. On November 9, 2011, the Department notified the applicant of the deficiencies and set a deadline of December 6, 2012 to have the deficiencies addressed.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

6. On November 15, 2011, the applicant sent a revised map resolving a portion of the deficiencies.
7. On January 4, 2012, the Department identified the remaining deficiencies that needed to be addressed.
8. On January 4, 2012, and March 5, 2012, the Department made additional attempts to contact the applicant by written correspondence to notify the applicant of the deficiencies and to follow up on the status of the revision to the application. No response was received to the attempts made to contact the applicant.
9. On August 29, 2012, the Department mailed a copy of the Draft Preliminary Determination proposing to deny Transfer Application T-11013 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of September 28, 2012, for the applicant to respond. The applicant amended the application and application map.
10. On September 12, 2012, and November 14, 2012 and December 12, 2012, the applicant sent an amended application map addressing the deficiencies identified in the August 29, 2012, Draft Preliminary Determination.
11. On December 4, 2012, the Department mailed a copy of a revised Draft Preliminary Determination proposing to approve Transfer Application T-11013 to the applicant. 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.
12. On December 10, 2012, the applicant modified the application to include Certificate 41246 and to change in type of use to Municipal Use and Geothermal Power Generation.
13. On December 11, 2012, the applicant requested to extend the completion date to 2023.
14. On May 2, 2013 the applicant requested to modify T-11013 to include a change in place of use to reflect the Municipal Use change that was requested on December 10, 2012, and to include the location of the power plant in the place of use.
15. On May 21, 2013, additional revisions to the application and map were submitted.
16. On May 31, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11013 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 11, 2013, and in the Herald and News newspaper on June 12, 19 and 26, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
17. The first right to be transferred is as follows:

Certificate: 41246 in the name of OREGON INSTITUTE OF TECHNOLOGY
(perfected under Permit G-2387)

Use: IRRIGATION OF 20.5 ACRES, SCHOOL USE AND HEATING
Priority Date: MAY 17, 1963
Rate: 1.87 CUBIC FEET PER SECOND; BEING 0.50 CFS FROM WELL NO. 1 FOR SCHOOL USE, 0.26 CFS FROM WELLS 1 & 4 FOR IRRIGATION AND 1.11 CFS FROM WELLS 2, 5, AND 6 FOR HEATING
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: FIVE WELLS NOS 1, 2, 4, 5, AND 6 within the UPPER KLAMATH BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	9 E	WM	20	NE NE	WELL 1 (KLAM 11825): 2680 FEET SOUTH AND 620 FEET WEST FROM THE E1/4 CORNER OF SECTION 17
38 S	9 E	WM	20	NE NE	WELL 2 (KLAM 11826): 3940 FEET SOUTH AND 1140 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	NE NE	WELL 4 (KLAM 11828): 3200 FEET SOUTH AND 970 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	SE NE	WELL 5 (KLAM 11830): 4400 FEET SOUTH AND 860 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	SE NE	WELL 6 (KLAM 11829): 4460 FEET SOUTH AND 1280 FEET WEST FROM THE E1/4 CORNER SECTION 17

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	USE
38 S	9 E	WM	17	SE SW	0.7	SCHOOL USE, HEATING, IRRIGATION
38 S	9 E	WM	17	SW SE	4.7	IRRIGATION
38 S	9 E	WM	20	NW NE	14.0	SCHOOL USE, HEATING, IRRIGATION
38 S	9 E	WM	20	NE NW	1.1	SCHOOL USE, HEATING, IRRIGATION

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

Certificate: 65355 in the name of Oregon Institute of Technology (perfected under Permit G-10472)
Use: HEATING, COOLING, DOMESTIC USE IN BUILDINGS, AND IRRIGATING 26.1 ACRES
Priority Date: AUGUST 3, 1981
Rate: 1.33 CUBIC FEET PER SECOND FROM WELLS 2, 5, AND 6 FOR HEATING AND COOLING IN COLLEGE BUILDINGS; 0.33 CFS FOR IRRIGATION AND 0.17 CFS FOR DOMESTIC USE IN COLLEGE BUILDINGS FROM WELLS 1 AND 4.
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0

acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELLS 1, 2, 4, 5, AND 6, within the UPPER KLAMATH LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	9 E	WM	20	NE NE	WELL 1 (KLAM 11825): 2680 FEET SOUTH AND 620 FEET WEST FROM THE E1/4 CORNER OF SECTION 17
38 S	9 E	WM	20	NE NE	WELL 2 (KLAM 11826): 3940 FEET SOUTH AND 1140 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	NE NE	WELL 4 (KLAM 11828): 3200 FEET SOUTH AND 970 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	SE NE	WELL 5 (KLAM 11830): 4400 FEET SOUTH AND 860 FEET WEST FROM THE E1/4 CORNER SECTION 17
38 S	9 E	WM	20	SE NE	WELL 6 (KLAM 11829): 4460 FEET SOUTH AND 1280 FEET WEST FROM THE E1/4 CORNER SECTION 17

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	USE
38 S	9 E	WM	17	SE SW	0.0	HEATING, COOLING AND DOMESTIC
38 S	9 E	WM	17	SW SE	7.7	HEATING, COOLING, DOMESTIC AND IRRIGATION
38 S	9 E	WM	20	NW NE	8.8	HEATING, COOLING, DOMESTIC AND IRRIGATION
38 S	9 E	WM	20	NE NW	9.6	HEATING, COOLING, DOMESTIC AND IRRIGATION

19. Transfer Application T-11013 proposes to change the use to MUNICIPAL USE AND GEOTHERMAL POWER GENERATION.
20. Transfer Application T-11013 also proposes to change the place of use, served by all the above wells, to within the deeded ownership limits of the Oregon Institute of Technology, (State of Oregon by and through the State Board of Higher Education):

MUNICIPAL USE AND GEOTHERMAL POWER GENERATION					
Twp	Rng	Mer	Sec	Q-Q	Tax Lot Info
38 S	9 E	WM	17	NE SW	3809-17C-101
38 S	9 E	WM	17	SE SW	3809-17C-101, 3809-4900
38 S	9 E	WM	17	NE SE	3809-4900, 3809-17-900
38 S	9 E	WM	17	NW SE	3809-17-900
38 S	9 E	WM	17	SW SE	3809-17-901, 3809-4900
38 S	9 E	WM	17	SE SE	3809-4900
38 S	9 E	WM	20	NE NE	3809-4900
38 S	9 E	WM	20	NW NE	3809-4900
38 S	9 E	WM	20	SE NE	3809-4900
38 S	9 E	WM	20	NE NW	3809-4900

21. An order approving a Limited License Application LL-1272 was issued March 1, 2010. The license expires on February 1, 2015, or upon approval of T-11013, whichever occurs first.

Transfer Review Criteria (OAR 690-380-4010)

22. 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.
23. 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-11013.
24. The component of Certificate 41246 transferred from irrigation will retain its limitation of 0.26 cfs and 61.5 acre feet per year during the irrigation season which runs from March 1st through October 31st of each year. Therefore, the changes proposed in T-11013 would not result in enlargement.
25. The component of Certificate 65355 transferred from irrigation will retain its limitation of 0.33 cfs and 78.3 acre feet per year during the irrigation season which runs from March 1st through October 31st of each year. Therefore, the changes proposed in T-11013 would not result in enlargement.
26. The proposed changes would not result in injury to other water rights.
27. The Department determined that the applicant is a municipality as defined in ORS 540.510(3)(b) as well as a water supplier as defined in ORS 448.115.

Conclusions of Law

The changes in the character of use and place of use proposed in application T-11013 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

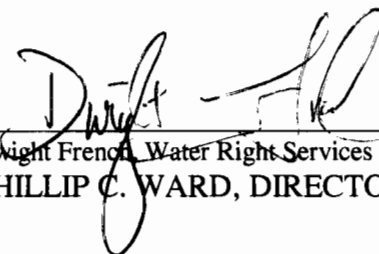
1. The changes in the character of use and place of use proposed in application T-11013 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 41246, 65355 and any related decree.
3. Water right Certificates 41246 and 65355 are cancelled.
4. Limited license LL-1272 is terminated, concurrent with issuance of this order.
5. The use of water for municipal uses and geothermal power generation is limited as follows:

Certificate 41246: A total of 1.87 cfs, being 1.61 cfs year-round from Wells 1, 2, 5 and 6; and 0.26 cfs from Wells 1 and 4, further limited to 61.5 AF during the period March 1 through October 31.

Certificate 65355: A total of 1.83 cfs, being 1.50 cfs year-round from Wells 1, 2, 5 and 6; and 0.33 cfs from Wells 1 and 4, further limited to 78.3 AF during the period March 1 through October 31.

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 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.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2023**. 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 (**October 1, 2024**) for completion of the change and full beneficial use of the water.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 29th day of July, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: AUG 02 2013