

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

In the Matter of Transfer Application)
T-8527, Benton County)
)
) **FINAL ORDER**
) **APPROVING A CHANGE IN**
) **CHARACTER OF USE AND PLACE OF**
) **USE**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

City of Philomath
Department of Public Works
P.O. Box 400
Philomath, Oregon 97370

Findings of Fact

1. City of Philomath filed an application to add a point of diversion and to change the character of use and place of use under Certificates 33572 and 48112. The Department assigned the application number T-8527.
2. On February 1, 2005, the Department notified the applicant of its conclusion that the proposed additional point of diversion would cause injury to an instream water right.
3. On September 8, 2005, the applicant amended the transfer application by removing the request for an additional point of diversion.
4. The portions of the rights to be transferred are as follows:

Certificate: 33572 in the name of Gilbert Faxon
Use: Irrigation
Priority Date: November 5, 1964
Quantity: 0.19 cubic foot per second
Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre
Acres: 15.4 acres
Source: Marys River, tributary to the Willamette River

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either 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.

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	6	W	W.M.	13	SE	NE	51	1730 feet South and 330 feet West from the NW Corner of Liggetts DLC 52.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
12	S	6	W	W.M.	13	NE	SE	51	10.9
12	S	6	W	W.M.	13	SE	SE	51	4.5

Certificate: 48112 in the name of William Leiner

Use: Irrigation

Priority Date: December 8, 1952

Quantity: 1.0 cubic foot per second, if available at the original point of diversion

Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre

Acres: 80.8 acres

Source: Marys River, tributary to the Willamette River

Original Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	5	W	W.M.	18	SW	NW	52	South 30°28' East 26.2 chains from the NW Corner of E. Liggetts DLC 52.

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	5	W	W.M.	18	SW	NW	52	1840 feet South and 630 feet East from the NW Corner of E. Liggetts DLC 52.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
12	S	5	W	W.M.	18	SW	NW	52	1.8
12	S	5	W	W.M.	18	NW	SW	52	32.8
12	S	5	W	W.M.	18	SW	SW	52	33.6
12	S	5	W	W.M.	19	NW	NW	52	6.0
12	S	6	W	W.M.	13	NE	SE	52	4.0
12	S	6	W	W.M.	13	SE	SE	52	2.6

5. Application T-8527 proposes to change the place of use of both rights to:

Township		Range		Meridian	Sec	¼ ¼	
12	S	5	W	W.M.	6	NE	NE
12	S	5	W	W.M.	6	NW	NE
12	S	5	W	W.M.	6	SW	NE
12	S	5	W	W.M.	6	SE	NE
12	S	5	W	W.M.	6	NE	NW
12	S	5	W	W.M.	6	NW	NW
12	S	5	W	W.M.	6	SW	NW
12	S	5	W	W.M.	6	SE	NW
12	S	5	W	W.M.	6	NE	SW
12	S	5	W	W.M.	6	NW	SW
12	S	5	W	W.M.	6	SW	SW
12	S	5	W	W.M.	6	SE	SW
12	S	5	W	W.M.	6	NE	SE
12	S	5	W	W.M.	6	NW	SE
12	S	5	W	W.M.	6	SW	SE
12	S	5	W	W.M.	6	SE	SE
12	S	5	W	W.M.	7	NE	NE
12	S	5	W	W.M.	7	NW	NE
12	S	5	W	W.M.	7	SW	NE
12	S	5	W	W.M.	7	SE	NE
12	S	5	W	W.M.	7	NE	NW
12	S	5	W	W.M.	7	NW	NW
12	S	5	W	W.M.	7	SW	NW
12	S	5	W	W.M.	7	SE	NW
12	S	5	W	W.M.	7	NE	SW
12	S	5	W	W.M.	7	NW	SW
12	S	5	W	W.M.	7	SW	SW
12	S	5	W	W.M.	7	SE	SW
12	S	5	W	W.M.	7	NE	SE
12	S	5	W	W.M.	7	NW	SE
12	S	5	W	W.M.	7	SW	SE
12	S	5	W	W.M.	7	SE	SE
12	S	5	W	W.M.	18	NE	NE
12	S	5	W	W.M.	18	NW	NE
12	S	5	W	W.M.	18	SW	NE
12	S	5	W	W.M.	18	SE	NE
12	S	5	W	W.M.	18	NE	NW

Township		Range		Meridian	Sec	¼ ¼	
12	S	5	W	W.M.	18	NW	NW
12	S	5	W	W.M.	18	SW	NW
12	S	5	W	W.M.	18	SE	NW
12	S	5	W	W.M.	18	NE	SW
12	S	5	W	W.M.	18	NW	SW
12	S	5	W	W.M.	18	SW	SW
12	S	5	W	W.M.	18	SE	SW
12	S	5	W	W.M.	18	NE	SE
12	S	5	W	W.M.	18	NW	SE
12	S	5	W	W.M.	18	SW	SE
12	S	5	W	W.M.	18	SE	SE
12	S	6	W	W.M.	1	NE	NE
12	S	6	W	W.M.	1	NW	NE
12	S	6	W	W.M.	1	SW	NE
12	S	6	W	W.M.	1	SE	NE
12	S	6	W	W.M.	1	NE	NW
12	S	6	W	W.M.	1	NW	NW
12	S	6	W	W.M.	1	SW	NW
12	S	6	W	W.M.	1	SE	NW
12	S	6	W	W.M.	1	NE	SW
12	S	6	W	W.M.	1	NW	SW
12	S	6	W	W.M.	1	SW	SW
12	S	6	W	W.M.	1	SE	SW
12	S	6	W	W.M.	1	NE	SE
12	S	6	W	W.M.	1	NW	SE
12	S	6	W	W.M.	1	SW	SE
12	S	6	W	W.M.	1	SE	SE
12	S	6	W	W.M.	2	NE	NE
12	S	6	W	W.M.	2	NW	NE
12	S	6	W	W.M.	2	SW	NE
12	S	6	W	W.M.	2	SE	NE
12	S	6	W	W.M.	2	NE	NW
12	S	6	W	W.M.	2	NW	NW
12	S	6	W	W.M.	2	SW	NW
12	S	6	W	W.M.	2	SE	NW
12	S	6	W	W.M.	2	NE	SW
12	S	6	W	W.M.	2	NW	SW
12	S	6	W	W.M.	2	SW	SW

Township		Range		Meridian	Sec	¼ ¼	
12	S	6	W	W.M.	2	SE	SW
12	S	6	W	W.M.	2	NE	SE
12	S	6	W	W.M.	2	NW	SE
12	S	6	W	W.M.	2	SW	SE
12	S	6	W	W.M.	2	SE	SE
12	S	6	W	W.M.	11	NE	NE
12	S	6	W	W.M.	11	NW	NE
12	S	6	W	W.M.	11	SW	NE
12	S	6	W	W.M.	11	SE	NE
12	S	6	W	W.M.	11	NE	NW
12	S	6	W	W.M.	11	NW	NW
12	S	6	W	W.M.	11	SW	NW
12	S	6	W	W.M.	11	SE	NW
12	S	6	W	W.M.	11	NE	SW
12	S	6	W	W.M.	11	NW	SW
12	S	6	W	W.M.	11	SW	SW
12	S	6	W	W.M.	11	SE	SW
12	S	6	W	W.M.	11	NE	SE
12	S	6	W	W.M.	11	NW	SE
12	S	6	W	W.M.	11	SW	SE
12	S	6	W	W.M.	11	SE	SE
12	S	6	W	W.M.	12	NE	NE
12	S	6	W	W.M.	12	NW	NE
12	S	6	W	W.M.	12	SW	NE
12	S	6	W	W.M.	12	SE	NE
12	S	6	W	W.M.	12	NE	NW
12	S	6	W	W.M.	12	NW	NW
12	S	6	W	W.M.	12	SW	NW
12	S	6	W	W.M.	12	SE	NW
12	S	6	W	W.M.	12	NE	SW
12	S	6	W	W.M.	12	NW	SW
12	S	6	W	W.M.	12	SW	SW
12	S	6	W	W.M.	12	SE	SW
12	S	6	W	W.M.	12	NE	SE
12	S	6	W	W.M.	12	NW	SE
12	S	6	W	W.M.	12	SW	SE
12	S	6	W	W.M.	12	SE	SE
12	S	6	W	W.M.	13	NE	NE

Township		Range		Meridian	Sec	¼ ¼	
12	S	6	W	W.M.	13	NW	NE
12	S	6	W	W.M.	13	SW	NE
12	S	6	W	W.M.	13	SE	NE
12	S	6	W	W.M.	13	NE	NW
12	S	6	W	W.M.	13	NW	NW
12	S	6	W	W.M.	13	SW	NW
12	S	6	W	W.M.	13	SE	NW
12	S	6	W	W.M.	13	NE	SW
12	S	6	W	W.M.	13	NW	SW
12	S	6	W	W.M.	13	SW	SW
12	S	6	W	W.M.	13	SE	SW
12	S	6	W	W.M.	13	NE	SE
12	S	6	W	W.M.	13	NW	SE
12	S	6	W	W.M.	13	SW	SE
12	S	6	W	W.M.	13	SE	SE

6. Application T-8527 proposes to change the character of use of both rights to municipal use.
7. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. Water has been used within the last five years according to the terms and conditions of the rights and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. Pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.

Conclusions of Law

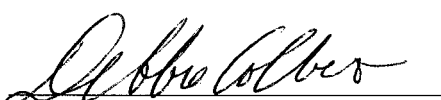
The proposed changes in character of use and place of use in application T-8527 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use proposed in application T-8527 are approved.

2. Water right certificates 33572 and 48112 are cancelled. A new certificate will be issued describing that portion of the right described by 33572 not involved in this transfer.
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 33572 and 48112 and any related decree.
4. The approved changes 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 Rights 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.
5. The quantity of water allowed for municipal use under the right described by Certificate 33572 shall not exceed a rate of diversion of 0.19 cubic foot per second and a maximum total quantity of 38.5 acre feet of water diverted during the time period April 1 to September 30 of each year.
6. The quantity of water allowed for municipal use under the right described by Certificate 48112 shall not exceed a rate of diversion of 1.00 cubic foot per second and a maximum total quantity of 202.0 acre feet of water diverted during the time period April 1 to September 30 of each year.
7. The former places of use shall no longer be irrigated as part of these water rights.
8. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 31ST day of March, 2006.

For 
Phillip C. Ward
Director

Mailing Date APR 07 2006