

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-11180, Clackamas County                    )     CHANGE IN CHARACTER OF USE

**Authority**

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**

U.S. FOREST SERVICE  
MT HOOD NATIONAL FOREST  
16400 CHAMPION WAY  
SANDY, OR 97055

**Findings of Fact**

**Background**

1. On December 30, 2010, US FOREST SERVICE, MT. HOOD NATIONAL FOREST filed an application to change the character of use under Certificate 29948. The Department assigned the application number T-11180.
  
2. The portion of the first right to be transferred is as follows:
  - Certificate:** 29948 in the name of U.S. FOREST SERVICE (perfected under Permit S-26057)
  - Use:** DOMESTIC USE IN TIMBERLINE LODGE
  - Priority Date:** APRIL 7, 1959
  - Rate:** 0.50 CUBIC FOOT PER SECOND (CFS), BEING 0.25 CFS FROM EACH SPRING
  - Source:** TWO UNNAMED SPRINGS, tributary to the SANDY RIVER

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.

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	7	SE SW

**Authorized Place of Use:**

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	6	SE SE

3. Certificate 29948 does not describe the location of the points of diversion; however, information is available from the Certified Water Right Examiner and transfer map indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 E	WM	7	SE SW	500 FEET NORTH AND 2840 FEET WEST FROM THE SE CORNER OF SECTION 7

4. Transfer Application T-11180 proposes to change the character of use to commercial use.
5. Notice of the application for transfer was published on January 4, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On February 11, 2011, the Department issued a draft Preliminary Determination and mailed a copy to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 18, 2011, for the applicant to respond.
7. On February 17, 2011, the applicant's agent contacted the Department by e-mail, requesting reconsideration of the proposed measuring devices required by the Watermaster. The applicant's agent proposed language that the water user shall measure and record water diverted from the source for all uses allowed in this transfer.
8. On February 18, 2011, the Watermaster submitted an amended Watermaster Review Form indicating that measurement devices may be required in the future.
9. On February 24, 2011, the Department mailed a revised draft Preliminary Determination proposing to approve Transfer Application T-11180 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 18, 2011, for the applicant to respond.
10. On March 7, 2011, the applicant requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On March 9, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11180 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 15, 2011, and in the Sandy Post Newspaper on

April 6, 13, and 20, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

12. 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.
13. A pump, pipeline, and finished water reservoir sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11180.
14. The proposed change in character of use would not result in enlargement of the right, provided the rate of diversion for commercial use is limited to 0.5 cubic foot per second as set forth in the certificate. Certificate 29948 indicates the use is for domestic use at Timberline Lodge. The proposed change in character of use to commercial use more accurately describes the use of water for the accommodations at Timberline Lodge. The applicant submitted documentation to support the conclusion that the full 0.5 cfs has been beneficially used.
15. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in character of use proposed in Transfer Application T-11180 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in character of use proposed in Transfer Application T-11180 is 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 29948 and any related decree.
3. Water right certificate 29948 is cancelled.
4. The water user shall measure and record water diverted from the source for all uses allowed under this Order.
5. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 24 day of May 2011.

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

Mailing Date: MAY 25 2011