

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

In the Matter of Transfer Application)
T-10687, Clackamas County)
)
) FINAL ORDER APPROVING
) ADDITIONAL POINTS OF
) APPROPRIATION AND A CHANGE IN
) CHARACTER 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

NORTH CLACKAMAS SCHOOL DISTRICT No.12
REX PUTNAM HIGH SCHOOL
4950 SE ROETHE ROAD
MILWAUKIE OR 97267

Findings of Fact

Background

1. On August 5, 2008, North Clackamas School District No. 12 / Rex Putnam High School filed an application to change the character of use, the original point of appropriation, and add additional points of appropriation under Certificate 35291. The Department assigned the application number T-10687.
2. Initially there was confusion about whether a change in place of use was being proposed for irrigation of different ball fields, whether a change in character of use to commercial was applicable and desired, and whether the differences between the transfer map and the Final Proof map for the water right indicated the need for a re-description of the place of use.
3. Communications on April 20, May 7, June 17, June 26, July 31 and August 4, 2009 between the Department, the applicant’s agent and the CWRE resulted in understanding the proposed changes to be additional points of appropriation and a change in the character of use for the air conditioning portion of the right, as presented in this document.

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.

4. The right to be transferred is as follows:

Certificate: 35291 in the name of MILWAUKIE HIGH SCHOOL DIST. UH #5 (perfected under Permit G-2245)

Use: AIR CONDITIONING, AND IRRIGATION OF 12 ACRES

Priority Date: SEPTEMBER 10, 1962

Rate: 0.67 CUBIC FOOT PER SECOND; BEING 0.15 CFS FOR IRRIGATION AND 0.67 CFS FOR AIR CONDITIONING

Limit/Duty: ONE-EIGHTIETH cfs per acre FOR IRRIGATION, not to exceed 2.5 acre-feet per acre per year.

Source: A WELL in the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	2 E	WM	18	SW NE	38	WELL 1: 400 FEET SOUTH AND 1230 FEET EAST FROM THE MOST WESTERLY NW CORNER OF DLC 38

Authorized Place of Use-Air conditioning:

Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	2 E	WM	18	NW NE	38
2 S	2 E	WM	18	SW NE	38
2 S	2 E	WM	18	NE NW	38
2 S	2 E	WM	18	SE NW	38

Authorized Place of Use-Irrigation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	2 E	WM	18	SW NE	38	11.0
2 S	2 E	WM	18	SE NW	38	1.0

5. Application T-10687 proposes to add three authorized points of appropriation within approximately 1/8 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
2 S	2 E	WM	18	SW NE	38	WELL 2: 1040 FEET SOUTH AND 1170 FEET EAST FROM THE WESTERLY NW CORNER OF DLC 38 (N 45 DEGREES 24.0 MINUTES, W 122 DEGREES, 36.6 MINUTES)
2 S	2 E	WM	18	SW NE	38	WELL 3: 890 FEET SOUTH AND 1880 FEET EAST FROM THE WESTERLY NW CORNER OF DLC 38 (N 45 DEGREES, 23.9 MINUTES, W 122 DEGREES 36.5 MINUTES)
2 S	2 E	WM	18	SW NE	38	WELL 4: 409 FEET SOUTH AND 1630 FEET EAST FROM THE WESTERLY NW CORNER OF DLC 38 (N 45 DEGREES 24.0 MINUTES W 122 DEGREES 36.5 MINUTES)

6. Transfer Application T-10687 proposes to change the character of use for the air conditioning portion of the right to commercial use, so as to allow water to be used in various ways to support the delivery of educational services. Such uses might include, but not be limited to, bus washing, restrooms, fire sprinklers, etc., in addition to air conditioning.
7. Based on the Department's Final Proof Survey visit on July 6, 1967, the original use, though termed "air conditioning", has included service to six restrooms as well. The site visit report confirmed that the air conditioning system has always been used year round.
8. Notice of the application for transfer was published on AUGUST 12, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On August 5, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10687 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 8, 2009, for the applicant to respond, and to settle a discrepancy between the transfer map and application with reference to the distance of Well #4 from the DLC corner. Prior to that date, the applicant requested that the Department proceed with issuance of a Preliminary Determination, clarified the position of Well #4 and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On October 5, 2009, Dan Golden submitted a request on behalf of the Applicant for a period of five years to complete the changes, because of uncertainty of funding at North Clackamas School District for capital projects such as the drilling of an additional well. The Department considers the request reasonable and is therefore allowing the applicant five years for completion of the changes.
11. On December 11, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10687 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 December 15, 2009, and in the Daily Journal of Commerce newspaper on January 11, 18 and 25, 2010, 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)

12. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A pumping and delivery system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10687, though severe iron problems have reduced the volume from the authorized well.

14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional points of appropriation and change in character of use proposed in application T-10687 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of appropriation and change in character of use proposed in application T-10687 are approved.
2. Water right certificate 35291 is cancelled.
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 Certificate 35291 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
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 point 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 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 changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.

8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25th day of February 2010.

William E. Feber
R Phillip C. Ward, Director

Mailing date: FEB 26 2010