

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

| | | |
|---------------------------------------|---|-----------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER |
| T-12190, Tillamook County |) | APPROVING A CHANGE IN POINT |
| |) | OF APPROPRIATION |

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

FAIRVIEW WATER DISTRICT
403 MAROLF LOOP RD
TILLAMOOK, OR 97141

Findings of Fact

1. On October 27, 2015, FAIRVIEW WATER DISTRICT filed an application to change the point of appropriation under Certificate 30205. The Department assigned the application number T-12190.
2. Notice of the application for transfer was published on November 3, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 8, 2016 the applicant submitted a revised application and map correcting the location and description of the authorized points of appropriation.
4. On April 13, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12190 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of May 13, 2016, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2022 and for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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.

5. On June 3, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12190 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on June 7, 2016, and in the Tillamook Headlight Herald newspaper on June 15 and 22, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

6. The right to be transferred is as follows:

Certificate: 30205 in the name of FAIRVIEW WATER DISTRICT (perfected under Permit G-1115)

Use: ALL OF THE PURPOSES FOR WHICH WATER COULD BE USED IN A CITY UNDER A RIGHT INITIATED FOR MUNICIPAL USES

Priority Date: AUGUST 27, 1958

Rate: 2.11 CUBIC FEET PER SECOND (CFS), BEING 0.78 CFS FROM WELL No. 1 AND 1.33 CFS FROM WELL No. 2

Sources: WELLS No. 1 and No. 2 within the WILSON RIVER BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 1 S | 9 W | WM | 29 | NW SE | WELL No. 1 - 935.2 FEET NORTH AND 40 FEET EAST FROM THE SW CORNER OF TRIPP DLC 42 |
| 1 S | 9 W | WM | 29 | NW SE | WELL No. 2 - 733.2 FEET NORTH AND 224.5 FEET EAST FROM THE SW CORNER OF TRIPP DLC 42 |

Authorized Place of Use:

| MUNICIPAL USES | | | | |
|----------------|-----|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 1 S | 9 W | WM | 19 | NE SE |
| 1 S | 9 W | WM | 19 | NW SE |
| 1 S | 9 W | WM | 19 | SW SE |
| 1 S | 9 W | WM | 19 | SE SE |
| 1 S | 9 W | WM | 20 | SW NE |
| 1 S | 9 W | WM | 20 | SE NE |
| 1 S | 9 W | WM | 20 | SW NW |
| 1 S | 9 W | WM | 20 | NE SW |
| 1 S | 9 W | WM | 20 | NW SW |
| 1 S | 9 W | WM | 20 | SW SW |
| 1 S | 9 W | WM | 20 | SE SW |
| 1 S | 9 W | WM | 20 | NE SE |
| 1 S | 9 W | WM | 20 | NW SE |
| 1 S | 9 W | WM | 20 | SW SE |
| 1 S | 9 W | WM | 20 | SE SE |
| 1 S | 9 W | WM | 21 | NE NE |
| 1 S | 9 W | WM | 21 | NW NE |
| 1 S | 9 W | WM | 21 | SW NE |
| 1 S | 9 W | WM | 21 | SE NE |
| 1 S | 9 W | WM | 21 | NE NW |
| 1 S | 9 W | WM | 21 | SW NW |
| 1 S | 9 W | WM | 21 | SE NW |
| 1 S | 9 W | WM | 21 | NE SW |

| MUNICIPAL USES | | | | |
|----------------|------|-----|-----|-------|
| Twp | Ring | Mer | Sec | Q-Q |
| 1 S | 9 W | WM | 21 | NW SW |
| 1 S | 9 W | WM | 21 | SW SW |
| 1 S | 9 W | WM | 21 | SE SW |
| 1 S | 9 W | WM | 21 | NE SE |
| 1 S | 9 W | WM | 21 | NW SE |
| 1 S | 9 W | WM | 21 | SW SE |
| 1 S | 9 W | WM | 22 | SW NE |
| 1 S | 9 W | WM | 22 | NE NW |
| 1 S | 9 W | WM | 22 | NW NW |
| 1 S | 9 W | WM | 22 | SW NW |
| 1 S | 9 W | WM | 22 | SE NW |
| 1 S | 9 W | WM | 22 | NE SW |
| 1 S | 9 W | WM | 22 | NW SW |
| 1 S | 9 W | WM | 22 | SW SW |
| 1 S | 9 W | WM | 22 | SE SW |
| 1 S | 9 W | WM | 22 | NE SE |
| 1 S | 9 W | WM | 22 | NW SE |
| 1 S | 9 W | WM | 22 | SW SE |
| 1 S | 9 W | WM | 22 | SE SE |
| 1 S | 9 W | WM | 23 | SW SW |
| 1 S | 9 W | WM | 23 | SE SW |
| 1 S | 9 W | WM | 23 | SW SE |
| 1 S | 9 W | WM | 23 | NW NE |
| 1 S | 9 W | WM | 26 | SW NE |
| 1 S | 9 W | WM | 26 | NE NW |
| 1 S | 9 W | WM | 26 | NW NW |
| 1 S | 9 W | WM | 26 | SW NW |
| 1 S | 9 W | WM | 26 | SE NW |
| 1 S | 9 W | WM | 26 | NE SE |
| 1 S | 9 W | WM | 26 | NW SE |
| 1 S | 9 W | WM | 26 | SW SE |
| 1 S | 9 W | WM | 26 | NE SW |
| 1 S | 9 W | WM | 26 | SW SW |
| 1 S | 9 W | WM | 27 | NE NE |
| 1 S | 9 W | WM | 27 | NW NE |
| 1 S | 9 W | WM | 27 | SW NE |
| 1 S | 9 W | WM | 27 | SE NE |
| 1 S | 9 W | WM | 27 | NE NW |
| 1 S | 9 W | WM | 27 | NW NW |
| 1 S | 9 W | WM | 27 | SW NW |
| 1 S | 9 W | WM | 27 | SE NW |
| 1 S | 9 W | WM | 27 | NE SW |
| 1 S | 9 W | WM | 27 | NW SW |
| 1 S | 9 W | WM | 27 | SW SW |
| 1 S | 9 W | WM | 27 | SE SW |
| 1 S | 9 W | WM | 27 | NE SE |
| 1 S | 9 W | WM | 27 | NW SE |
| 1 S | 9 W | WM | 27 | SW SE |

| MUNICIPAL USES | | | | |
|----------------|-----|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 1S | 9W | WM | 27 | SE SE |
| 1S | 9W | WM | 28 | NE NE |
| 1S | 9W | WM | 28 | NW NE |
| 1S | 9W | WM | 28 | SW NE |
| 1S | 9W | WM | 28 | SE NE |
| 1S | 9W | WM | 28 | NE NW |
| 1S | 9W | WM | 28 | NW NW |
| 1S | 9W | WM | 28 | SW NW |
| 1S | 9W | WM | 28 | SE NW |
| 1S | 9W | WM | 28 | NE SE |
| 1S | 9W | WM | 28 | NW SE |
| 1S | 9W | WM | 28 | SW SE |
| 1S | 9W | WM | 28 | SE SE |
| 1S | 9W | WM | 29 | NE NE |
| 1S | 9W | WM | 29 | SW NE |
| 1S | 9W | WM | 29 | SE NE |
| 1S | 9W | WM | 29 | NW NE |
| 1S | 9W | WM | 29 | SW NE |
| 1S | 9W | WM | 29 | SE SE |
| 1S | 9W | WM | 29 | NE SE |
| 1S | 9W | WM | 29 | SW SW |
| 1S | 9W | WM | 29 | SE SW |
| 1S | 9W | WM | 29 | NW SE |
| 1S | 9W | WM | 29 | SW SE |
| 1S | 9W | WM | 29 | SE SE |
| 1S | 9W | WM | 30 | NE NE |
| 1S | 9W | WM | 30 | SE NE |
| 1S | 9W | WM | 30 | NW SE |
| 1S | 9W | WM | 30 | SW SE |
| 1S | 9W | WM | 30 | SE SE |
| 1S | 9W | WM | 31 | NE NE |
| 1S | 9W | WM | 31 | NW NE |
| 1S | 9W | WM | 31 | SW NE |
| 1S | 9W | WM | 31 | SE NE |
| 1S | 9W | WM | 32 | NE NE |
| 1S | 9W | WM | 32 | NW NE |
| 1S | 9W | WM | 32 | SW NE |
| 1S | 9W | WM | 32 | SE NE |
| 1S | 9W | WM | 32 | NE NW |
| 1S | 9W | WM | 32 | NW NW |
| 1S | 9W | WM | 32 | SW NW |
| 1S | 9W | WM | 32 | SE NW |
| 1S | 9W | WM | 32 | NE SW |
| 1S | 9W | WM | 32 | NW SW |

| MUNICIPAL USES | | | | |
|----------------|-----|-----|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q |
| 1 S | 9 W | WM | 32 | SW SW |
| 1 S | 9 W | WM | 32 | SE SW |
| 1 S | 9 W | WM | 33 | NE NE |
| 1 S | 9 W | WM | 33 | NW NE |
| 1 S | 9 W | WM | 33 | SW NE |
| 1 S | 9 W | WM | 33 | SE NE |
| 1 S | 9 W | WM | 33 | NE NW |
| 1 S | 9 W | WM | 33 | NW NW |
| 1 S | 9 W | WM | 33 | SW NW |
| 1 S | 9 W | WM | 33 | SE NW |

7. Certificate 30205 describes the location of the points of appropriation above, however information is available from the COBU and the consultant's on site survey indicating that the authorized points of appropriation are located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 1 S | 9 W | WM | 29 | NE SW | WELL No. 1 – 2119.3 FEET NORTH AND 2712.6 FEET WEST FROM THE SE CORNER OF SECTION 29 |
| 1 S | 9 W | WM | 29 | NW SE | WELL No. 2 – 1892.8 FEET NORTH AND 2570.2 FEET WEST FROM THE SE CORNER OF SECTION 29 |

8. The proposed points of appropriation are described in the table below with the approximate measure distanced from the authorized points of appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Distance from original well location in feet (ft) | |
|-----|-----|-----|-----|-------|--|---|----------|
| | | | | | | WELL #1 | WELL #2 |
| 1 S | 9 W | WM | 29 | NW SE | WELL No. 1 - 2119.3 FEET NORTH AND 2712.6 FEET WEST FROM THE SE CORNER OF SECTION 29 | 0 ft. | 260 ft. |
| 1 S | 9 W | WM | 29 | NE SE | PROP WELL - 1684.3 FEET NORTH AND 240.6 FEET WEST FROM THE SE CORNER OF SECTION 29 | 2640 ft. | 2380 ft. |

Transfer Review Criteria (OAR 690-380-4010)

9. 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.
10. A pump, pipeline, and sprinkler 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 Transfer Application T-12190.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-12190 is 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 change in point of appropriation proposed in Transfer Application T-12190 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 30205 and any related decree.
3. Water right Certificate 30205 is cancelled.
4. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
5. 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 (new and existing).
 - 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 18 day of August, 2017.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: AUG 24 2017