



1/80<sup>th</sup> cubic foot per second per acre, and 2.5 acre-feet per acre associated with the number of acres transferred. The agent confirmed the change in period of use from the irrigation season to year round, and asked for clarification of the maximum annual duty that could be converted from domestic use.

5. On July 18, 2013, the applicant's agent submitted information on average day per capita residential use from the City of Gresham, to be considered in establishing the annual volume to be converted from domestic use. This data is reflected in this document.
6. On August 14, 2013, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-11481 and sent a copy of the draft Preliminary Determination to the applicant. The cover letter for the draft Preliminary requested a written response from the applicant, requesting the Department proceed with the issuance of a Preliminary Determination.
7. On December 23, 2013, the applicant submitted a request to also include a change in point of diversion for the water rights involved in Transfer Application T-11481
8. On January 6, 2014, the Department received all the necessary documents necessary to process the amendment requested.
9. On January 8, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11481 to the applicants. The applicants responded and requested the Department proceed with the issuance of the Preliminary Determination.
10. On March 4, 2014, the Department issued Preliminary Determination proposing to approve Transfer Application T-11481 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 11, 2014 and in the Gresham Outlook newspaper on March 14 and March 21, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

11. The portion of the first right to be transferred is as follows:

**Certificate:** 14525 in the name of WAYNE E. MCGILL (perfected under Permit S-14906)  
**Use:** DOMESTIC and IRRIGATION of 64.6 ACRES  
**Priority Date:** MAY 8, 1941  
**Rate:** 0.71 CUBIC FOOT PER SECOND (CFS) Mar. 1-Oct. 31; being 0.13 cfs from Spring 1, 0.44 cfs from Spring 2 and 0.13 from Unnamed Stream for irrigation; and 0.01 cfs from Spring 2 for domestic and 0.01 cfs Nov. 1-Feb.29 from Spring 2 for domestic.  
**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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** Spring 1, Spring 2 and an Unnamed Stream, all tributary to Arata Creek

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Source
1 N	3 E	WM	34	SW NW	55	SPRING 2
1 N	3 E	WM	34	SE NW	55	SPRING 1
1 N	3 E	WM	34	SE NW	55	UNNAMED STREAM

**Authorized Place of Use:**

DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	DLC	
1 N	3 E	WM	34	NW SW	55	

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NW	55	9.5
1 N	3 E	WM	34	NE SW	55	5.6
1 N	3 E	WM	34	NW SW	55	29.0
1 N	3 E	WM	34	SW SW	55	17.0
1 N	3 E	WM	34	SE SW	55	3.5
<b>Total:</b>						<b>64.6</b>

12. The season for domestic water is year round at 0.01 cfs from Spring 2. Best available information (from the City of Gresham) indicates the maximum beneficial use for a single household at 184 gallons per person per day x 3.7 persons per household in 1940 x 365 days ÷ 325,850 gallons per AF = 0.76 AF. Irrigation water is limited to 0.7 cfs from the various sources during the irrigation season (March 1 through October 31), further limited to an annual volume of 2.5 AF per acre x 64.6 acres =161.5 AF, in combination with water from Certificate 45430.
  
13. The portion of the second right to be transferred is as follows:
  - Certificate:** 45428 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit S-36765)
  - Use:** IRRIGATION of 136.4 ACRES
  - Priority Date:** JUNE 6, 1973
  - Rate:** 0.35 CUBIC FOOT PER SECOND (CFS); being 0.10 cfs from Spring Area, 0.03 cfs from Spring 3, 0.13 cfs from Stream 2 and 0.09 cfs from Stream 3
  - 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage [up to 7.0 AF in combination with Certificate 45430] from reservoir constructed under Permit R-5964.

**Period of Use:** Irrigation season, March 1-October 31 from direct diversion and year round from reservoir storage.

**Source:** Spring Area, Spring 3, Unnamed Stream 2, Unnamed Stream 3 and Reservoir constructed under Permit R-5964, tributary to Arata Creek

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Source	Measured Distances
1 N	3 E	WM	34	SW NW	55	SPRING 3	500 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	STREAM 3	240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	RESERVOIR	160 FEET SOUTH AND 930 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	SPRING AREA	440 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	STREAM 2	370 FEET SOUTH AND 1080 FEET EAST FROM THE NW CORNER OF DLC 55

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NE	57	7.7
1 N	3 E	WM	34	SE NE	57	7.7
1 N	3 E	WM	34	SE SW	55	24.4
1 N	3 E	WM	34	NE SE	57	36.7
1 N	3 E	WM	34	NW SE	57	17.2
1 N	3 E	WM	34	SW SE	57	6.1
1 N	3 E	WM	34	SW SE	55	2.1
1 N	3 E	WM	34	SW SE	54	3.0
1 N	3 E	WM	34	SE SE	57	25.0
1 N	3 E	WM	35	NW SW	57	3.5
1 N	3 E	WM	35	SW SW	57	3.0
<b>Total:</b>						<b>136.4</b>

14. The portion of the third right to be transferred is as follows:

**Certificate:** 45429 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit R-5964)

**Use:** STORAGE FOR IRRIGATION AND SUPPLEMENTAL IRRIGATION appropriated under Permits S-36765 and S-36772

**Priority Date:** JUNE 6, 1973

**Limit:** 7.0 ACRE FEET

**Source:** SPRING 3, Spring Area, and 2 Unnamed Streams, tributary to ARATA CREEK

**Authorized Place of Use:**

STORAGE FOR IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	SW NW	55

15. Storage is allowed November 1-June 30 in McGill Reservoir for release throughout the year.

16. The portion of the fourth right to be transferred is as follows:

**Certificate:** 45430 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit S-36772)

**Use:** SUPPLEMENTAL IRRIGATION of 51.2 ACRES

**Priority Date:** JUNE 6, 1973

**Rate:** 0.243 CUBIC FOOT PER SECOND, being 0.045 cfs from Spring 3, 0.063 cfs from Unnamed Stream 2 and 0.14 cfs from Unnamed Stream 3.

**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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage [up to 7.0 AF in combination with Certificate 45430] from reservoir constructed under Permit R-5964.

**Source:** Spring 3, Unnamed Stream 2, Unnamed Stream 3 and Reservoir constructed under Permit R-5964, tributary to Arata Creek

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Source	Measured Distances
1 N	3 E	WM	34	SW NW	55	Spring 3	500 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	Reservoir	160 FEET SOUTH AND 930 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	Stream 3	240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	Stream 2	370 FEET SOUTH AND 1080 FEET EAST FROM THE NW CORNER OF DLC 55

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NW	55	3.8
1 N	3 E	WM	34	NE SW	55	4.4
1 N	3 E	WM	34	NW SW	55	22.5
1 N	3 E	WM	34	SW SW	55	17.0
1 N	3 E	WM	34	SE SW	55	3.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
<b>Total:</b>						<b>51.2</b>

17. The period of use is limited to the irrigation season, being March 1 through October 31.

18. The portion of the fifth right to be transferred is as follows:

**Certificate:** 87783 in the name of PORT OF PORTLAND (perfected under Permit G-15170)

**Use:** NURSERY USES on 151.3 ACRES

**Priority Date:** MARCH 15, 2001

**Rate:** 0.78 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second, or its equivalent, and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second, or its equivalent, and 2.5 acre-feet per acre per year, for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second, or its equivalent and 2.5 acre-feet per acre per year.

**Period of Use:** Year round.

**Source:** WELL 3 within the ARATA CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 N	3 E	WM	34	SW SE	55	585 FEET NORTH AND 50 FEET EAST FROM THE S1/4 CORNER OF SECTION 34

**Authorized Place of Use:**

NURSERY USES						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NE	57	5.8
1 N	3 E	WM	34	SE NE	57	6.0
1 N	3 E	WM	34	NE SW	55	1.8
1 N	3 E	WM	34	NW SW	55	10.1
1 N	3 E	WM	34	SW SW	55	15.1
1 N	3 E	WM	34	SE SW	55	22.6
1 N	3 E	WM	34	NE SE	57	35.1
1 N	3 E	WM	34	NW SE	57	16.3
1 N	3 E	WM	34	SW SE	57	5.9
1 N	3 E	WM	34	SW SE	54	2.0
1 N	3 E	WM	34	SW SE	55	1.0
1 N	3 E	WM	34	SE SE	57	24.1
1 N	3 E	WM	35	NW SW	57	3.0
1 N	3 E	WM	35	SW SW	57	2.5
<b>Total:</b>						<b>151.3</b>

19. The total maximum annual amount authorized under Certificate 87783 for nursery use is 5.0 AF per acre x 151.3 acres = 756.5 AF annually, at a diversion rate of 0.78 cfs year round.
20. Transfer Application T-11481 proposes to change the character of use of all the above rights to municipal uses year round.
21. Transfer Application T-11481 proposes to change the place of use of all the above rights to:

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	SW NE	57
1 N	3 E	WM	34	SE NE	55
1 N	3 E	WM	34	SE NE	57
1 N	3 E	WM	34	SW NW	55
1 N	3 E	WM	34	SE NW	55
1 N	3 E	WM	34	NE SW	55
1 N	3 E	WM	34	NW SW	55
1 N	3 E	WM	34	SW SW	55
1 N	3 E	WM	34	SE SW	55
1 N	3 E	WM	34	NE SE	57
1 N	3 E	WM	34	NW SE	57
1 N	3 E	WM	34	NW SE	55
1 N	3 E	WM	34	SW SE	54
1 N	3 E	WM	34	SW SE	55
1 N	3 E	WM	34	SW SE	57
1 N	3 E	WM	34	SE SE	57
1 N	3 E	WM	35	NW SW	57
1 N	3 E	WM	35	SW SW	57

22. Transfer Application T-11481 proposes to change the point of diversion for the portion of Certificate 14525 and add a point of diversion to replace the Spring Area, Unnamed Stream 2 and Unnamed Stream 3 diversions for the portions of Certificates 45428, 45429 and 45430 involved in this transfer at the following location:

**Proposed Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Description/Measured Distances
1 N	3 E	WM	34	SW NW	Common channel - 240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF MOLLOY DLC 55

23. If the transfer is fully completed as outlined in this order, the following points of diversion will be authorized for the certificates, or portion of certificates involved:

Certificate	Point(s) of Diversion		
14525	Common channel		
45428	Spring 3	Reservoir	Common channel
45429	Spring 3	Common channel	
45430	Spring 3	Reservoir	Common channel

24. The applicant has requested a period of 20 years from issuance of the Final Order for completion of the changes.

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

25. Water has been used within the five-year period prior to submittal of the transfer application 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.
26. Pumps, pipelines, and sprinkler systems 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-11481.
27. The applicant proposes to extend the season for the portions of the rights being converted from irrigation uses, from the irrigation season (March 1 through October 31) to year round. Diverting continuously year round at the existing rates would exceed the annual duty. To avoid enlargement or injury to other users, continuous rates of diversion would need to be pro-rated downward in order not to exceed the following values. However, if the water user were to divert water at a variable rate to meet changing needs, and maintain measurement devices or flow restrictors to ensure that the diversion rate does not exceed the original rates at any time during the year, and that the annual volume does not exceed the limits of the rights as stated below, the rights would not be enlarged:

<b>Certificate</b>	<b>Maximum rate, if diverted year round at a variable rate</b>	<b>Maximum Annual Volume (AF/yr)</b>
14525	Spring 1: 0.13 cfs Spring 2: 0.45 cfs Stream: 0.13 cfs <b>Total: up to 0.71 cfs, limited to no more than 0.82 cfs in combination with Certificate 45430</b>	Converted from irrigation: 64.6 ac x 2.5 AF/ac = <b>161.5 AF</b> Converted from domestic: 184 gpd per person (City of Gresham information) x 3.7 persons/household in 1940 US Census = 680.8 gpd x 365 days = 248,492 gallons/year ÷ 325,850 gal per AF = <b>0.76 AF</b> <b>Total = 162.26 AF</b> , in combination with water from Certificate 45430
45428	Spring area: 0.10 cfs Spring 3: 0.03 cfs Stream 2: 0.13 cfs Stream 3: 0.09 cfs <b>Total: up to 0.35 cfs</b>	136.4 ac x 2.5 AF = up to <b>341 AF</b> ; <b>including up to 7.0 AF from McGill Reservoir</b> , in combination with Certificate 45430
45429	Rate not specified for storage 11/1-6/30 from Spring, spring area and 2 unnamed streams	<b>7.0 AF</b>
45430	Spring 3: 0.045 cfs Stream 2: 0.063 cfs Stream 3: 0.135 cfs <b>Total: up to 0.243 cfs, limited to no more than 0.82 cfs in combination with Certificate 14525</b>	51.2 ac x 2.5 AF = up to <b>128 AF</b> , <b>(including up to 7.0 AF from McGill Reservoir</b> , in combination with Certificate 45428); <b>provided use in combination with Certificate 14525 does not exceed 162.26 AF</b>
87783	<b>0.78 cfs from Well 3</b>	151.3 ac x 5.0 AF/ac = <b>756.5 AF</b>



28. The proposed changes, as conditioned above and with agreement to measure and monitor the diversion rate and maximum annual volume so that the limits in the above table are not exceeded, would not result in enlargement of the rights.
29. The applicant requested in the application that the transferred rights be structured to allow year round municipal use while retaining the full rate listed on the current certificates, limited to an annual volume based on the irrigation season duty limit. On October 2, 2013, the applicant agreed to condition the year round municipal use under the transferred rights, to allow variable rates with maximum limits as illustrated in the table in Finding of Fact #24 above, so as not to exceed the maximum annual volume (also described in the table above.)
30. Annual reporting of monthly water use is required to be submitted to the Department each year under the provisions of ORS 537.099 and OAR 690-085.
31. The proposed changes would not result in injury to other water rights.

### **Conclusions of Law**

The changes proposed in Transfer Application T-11481, as conditioned, 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 point of diversion, place of use, character of use and additional point of diversion to replace the Spring Area, Unnamed Stream 2 and Unnamed Stream 3 (see Finding of Fact #23) proposed in Transfer Application T-11481 are approved, as conditioned.
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 Certificates 14525, 45428, 45429, 45430 and 87783 and any related decree.
3. Water right certificates 14525, 45428, 45429, 45430 and 87783 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
4. Water use measurement conditions:
  - a. **Before water use may begin** under the new use approved in this order 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 diversion.
  - 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.

5. Reservoir water use measurement:
  - a. **Before water use may begin** under the new use approved in this order, the water user shall install a staff gage, or, with prior approval of the Director, other suitable measuring device, that measures the entire range and stage between empty and full in the reservoir. The staff gage shall be United States Geological Survey style.
  - b. Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.
6. The portions of the former place of use from which water rights have been transferred, that are not included in the proposed place of use, shall no longer receive water under the rights.
7. The year round municipal use under the transferred rights shall allow variable diversion rates with maximum limits as described in the table in Finding of Fact #27, so as not to exceed the maximum annual volume also described in the table in Finding of Fact #27.
8. The quantity of water diverted at the new and/or additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2034**. 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 changes and full beneficial use of the water.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 28 day of May, 2014.

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

Mailing Date:           MAY 30 2014