

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

In the Matter of Special Order Volume 93,) **SUPERSEDING FINAL ORDER**
Page 1201, approving Transfer Application) **APPROVING AN ADDITIONAL POINT**
T-11677, Washington County) **OF DIVERSION**

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

CITY OF FOREST GROVE
1928 COUNCIL ST
FOREST GROVE, OR 97116-0326

Findings of Fact

1. On October 21, 2013, CITY OF FOREST GROVE filed an application for an additional point of diversion under Certificate 85513. The Department assigned the application number T-11677.
2. Notice of the application for transfer was published on October 29, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On April 30, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve the change in the point of diversion requested by Transfer Application T-11677. The draft Preliminary Determination set forth a deadline of May 30, 2014, for the applicant to respond. The applicant requested that the Department proceed with the issuance of a Preliminary Determination.
4. After issuance of the draft Preliminary Determination for Transfer Application T-11677, and upon further review, it was found that Department staff failed to incorporate conditions necessary to determine if water is available at the original point of diversion during the low flow season of June 1 to September 30 of each year.
5. On June 7, 2014, in cooperation with the Applicant, Applicant's agent, and the Watermaster a revised draft Preliminary Determination was issued and set forth a deadline of July 17, 2014, for the applicant to respond.

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.

6. On June 25, 2014, the Applicant's Agent requested Transfer Application T-11677, be placed on administrative hold.
7. On December 2, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11677 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 December 9, 2014, and in the Forest Grove Times News newspaper on December 12 and 24, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were files in response to the notice.
8. On January 28, 2015, the Department issued a Final Order approving Transfer Application T-11677, recorded at Special Order Volume 93, Page 1201 to 1205.
9. This order is issued to supersede the previous order recorded at Special Order Volume 93, Pages 1201 to 1205, to correct a scrivener's error in the agreed upon conditions.
10. The right to be transferred is as follows:

Certificate: 85513 in the name of CITY OF FOREST GROVE (perfected under Permit S-17549)

Use: MUNICIPAL USES

Priority Date: FEBRUARY 14, 1947

Rate: 4.46 CUBIC FEET PER SECOND

Source: GALES CREEK, tributary to the TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	4 W	WM	27	NE SW	2149 FEET NORTH AND 1821 FEET EAST FROM THE SW CORNER OF SECTION 27

Authorized Place of Use:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
1 N	3 W	WM	30	SW SW
1 N	3 W	WM	30	SE SW
1 N	3 W	WM	31	NE NE
1 N	3 W	WM	31	NW NE
1 N	3 W	WM	31	SW NE
1 N	3 W	WM	31	SE NE
1 N	3 W	WM	31	NE NW
1 N	3 W	WM	31	NW NW
1 N	3 W	WM	31	SW NW
1 N	3 W	WM	31	SE NW
1 N	3 W	WM	31	NE SW
1 N	3 W	WM	31	NW SW
1 N	3 W	WM	31	SW SW
1 N	3 W	WM	31	SE SW
1 N	3 W	WM	31	NE SE
1 N	3 W	WM	31	NW SE
1 N	3 W	WM	31	SW SE
1 N	3 W	WM	31	SE SE

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
1 N	4 W	WM	25	NE SE
1 N	4 W	WM	25	NW SE
1 N	4 W	WM	25	SW SE
1 N	4 W	WM	25	SE SE
1 N	4 W	WM	36	NE NE
1 N	4 W	WM	36	NW NE
1 N	4 W	WM	36	SW NE
1 N	4 W	WM	36	SE NE
1 N	4 W	WM	36	NE NW
1 N	4 W	WM	36	NW NW
1 N	4 W	WM	36	SW NW
1 N	4 W	WM	36	SE NW
1 N	4 W	WM	36	NE SW
1 N	4 W	WM	36	NW SW
1 N	4 W	WM	36	SW SW
1 N	4 W	WM	36	SE SW
1 N	4 W	WM	36	NE SE
1 N	4 W	WM	36	NW SE
1 N	4 W	WM	36	SW SE
1 N	4 W	WM	36	SE SE
1 S	3 W	WM	5	NE NW
1 S	3 W	WM	5	NW NW
1 S	3 W	WM	5	SW NW
1 S	3 W	WM	5	SE NW
1 S	3 W	WM	6	NE NE
1 S	3 W	WM	6	NW NE
1 S	3 W	WM	6	SW NE
1 S	3 W	WM	6	SE NE
1 S	3 W	WM	6	NE NW
1 S	3 W	WM	6	NW NW
1 S	3 W	WM	6	SW NW
1 S	3 W	WM	6	SE NW
1 S	3 W	WM	6	NE SW
1 S	3 W	WM	6	NW SW
1 S	3 W	WM	6	SW SW
1 S	3 W	WM	6	SE SW
1 S	3 W	WM	6	NE SE
1 S	3 W	WM	6	NW SE
1 S	3 W	WM	6	SW SE
1 S	3 W	WM	6	SE SE
1 S	4 W	WM	1	NE NE
1 S	4 W	WM	1	NW NE
1 S	4 W	WM	1	SW NE
1 S	4 W	WM	1	SE NE
1 S	4 W	WM	1	NE NW
1 S	4 W	WM	1	NW NW
1 S	4 W	WM	1	SW NW
1 S	4 W	WM	1	SE NW

- Transfer Application T-11677 proposes an additional point of diversion approximately five miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	8	SW SW	SPRING HILL INTAKE: 500 FEET NORTH AND 410 FEET EAST FROM THE SW CORNER OF SECTION 8

- The Oregon Department of Fish and Wildlife (ODFW) have determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

- Water has been used within the last five years of the transfer application 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.
- A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11677.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-11677 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

Now, therefore, it is ORDERED:

- The additional point of diversion proposed in Transfer Application T-11677 is approved.
- Except as provided in ORS 540.510(3)(a) 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 85513 and any related decree.
- Water right Certificate 85513 is cancelled.
- The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed 4.46 cubic feet per second (cfs), and shall not exceed the quantity of water lawfully available at the original point of diversion (POD) under the subject right.
- In the event a need arises to distribute water to benefit this water right, the Department will only distribute water to make water available to the subject water right at the original point of diversion.

6. This water right may be used at the additional point of diversion during the period of June 1 to September 30, only if the applicant installs a suitable stream-flow gaging station with telemetry at or near the original point of diversion on Gales Creek. Such installation shall be made under the supervision of and approved by the Watermaster. This condition does not apply to use of water at the original point of diversion.
7. The applicant, following USGS protocol and standards, shall operate and maintain the stream-flow gaging station during the period of June 1 through September 30 of each year. A minimum of eight flow measurements, at various rates of flow, are required during the first full period of operation, one measurement every four to six weeks is required thereafter. The stream-flow and gage height data shall be collected for ten years, if after ten years of operation it can be demonstrated that the flows are available at the original point of diversion location, the Department may discontinue the requirement of operating the gaging station. Otherwise, the condition may continue into the future. Measurement and flow data shall be completed to the Department's standards and provided to the Department as it is collected.
8. The applicant can satisfy the stream-flow gage requirement above by entering into an agreement with the Department, or any qualified person of their choosing to install, maintain, and operate the required gage.
9. Water use measurement conditions:
 - a. Before diverting water at the additional point of diversion, 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 at which water is being diverted.
 - 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.
10. The water users shall operate, inspect, and maintain the existing intake system at the additional point of diversion (checking seals, integrity of screens, etc.) as needed to function as designed and at a minimum of once per year. If ODFW determines the screen is not functioning properly and is unsuccessful in working with the water users to meet functioning requirements, ODFW may request the Oregon Department of Water Resources (OWRD) regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
11. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2035**. 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.

12. 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 February 2015.



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

Mailing date: FEB 20 2015