

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING AN  
T-13121, Yamhill County                        )     ADDITIONAL POINT OF DIVERSION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

CITY OF AMITY  
ATTN: JUSTIN HOGUE  
PO BOX 159  
AMITY, OR 97101

**Findings of Fact**

1. On February 11, 2019, CITY OF AMITY filed an application for an additional point of diversion under Certificate 61988. The Department assigned the application number T-13121.
2. Notice of the application for transfer was published on February 19, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 26, 2019 the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13121 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2019, for the applicants to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
4. On September 24, 2019, the Department recognized a scrivener's error in the draft Preliminary Determination dated August 26, 2019. The Authorized Place of Use table was missing on the draft Preliminary Determination.
5. On October 10, 2019, the Department sent a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13121 to the applicant. The

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.

revised draft Preliminary Determination cover letter set forth a deadline of November 17, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

6. On December 20, 2019, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13121 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 24, 2019, and in the News-Register newspaper on December 24 and December 31, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The right to be transferred is as follows:

**Certificate:** 61988 in the name of CITY OF AMITY, CITY HALL (perfected under Permit S-13455)  
**Use:** MUNICIPAL USE  
**Priority Date:** JANUARY 24, 1939  
**Rate:** 0.475 CUBIC FOOT PER SECOND AND NOT MORE THAN 95 ACRE-FEET DURING THE PERIOD APRIL 1 TO SEPTEMBER 30 OF EACH YEAR  
**Source:** SOUTH YAMHILL RIVER, tributary of YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE NE	1	AUTHORIZED POD - 500 FEET SOUTH AND 250 FEET WEST FROM THE NE CORNER OF SECTION 26

**Authorized Place of Use:**

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
5 S	4 W	WM	19	SW SW
5 S	4 W	WM	19	SE SW
5 S	4 W	WM	19	SW SE
5 S	4 W	WM	19	SE SE
5 S	4 W	WM	20	SW NE
5 S	4 W	WM	20	SE NE
5 S	4 W	WM	20	NE SW
5 S	4 W	WM	20	SW SW
5 S	4 W	WM	20	SE SW
5 S	4 W	WM	20	NE SE
5 S	4 W	WM	20	NW SE
5 S	4 W	WM	20	SW SE
5 S	4 W	WM	20	SE SE
5 S	4 W	WM	21	SW SW
5 S	4 W	WM	21	SE SW
5 S	4 W	WM	21	SW SE
5 S	4 W	WM	21	SE SE
5 S	4 W	WM	27	NE NE
5 S	4 W	WM	27	NW NE
5 S	4 W	WM	27	SW NE
5 S	4 W	WM	27	SE NE

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
5 S	4 W	WM	27	NE NW
5 S	4 W	WM	27	NW NW
5 S	4 W	WM	27	SW NW
5 S	4 W	WM	27	SE NW
5 S	4 W	WM	28	NE NE
5 S	4 W	WM	28	NW NE
5 S	4 W	WM	28	NE NW
5 S	4 W	WM	28	NW NW
5 S	4 W	WM	28	NE NE
5 S	4 W	WM	29	NE NE
5 S	4 W	WM	29	NW NE
5 S	4 W	WM	29	SW NE
5 S	4 W	WM	29	SE NE
5 S	4 W	WM	29	NE NW
5 S	4 W	WM	29	NW NW
5 S	4 W	WM	30	NE NE
5 S	4 W	WM	30	NW NE
5 S	4 W	WM	30	NE NW
5 S	4 W	WM	30	NW NW
5 S	5 W	WM	24	SE SE
5 S	5 W	WM	25	NE NE

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

1. The additional point of diversion proposed in Transfer Application T-13121 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 61988 and any related decree.
3. Water right Certificate 61988 is cancelled.
4. The quantity of water diverted at the new additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

**JAN 29 2020**

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M BYLER, DIRECTOR  
Oregon Water Resources Department

**JAN 30 2020**

Mailing date: \_\_\_\_\_

8. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 61988 (perfected under Permit S-13455) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE NE	1	AUTHORIZED POD - 515 FEET SOUTH AND 425 FEET WEST FROM THE NE CORNER OF SECTION 26

9. Transfer Application T-13121 proposes an additional point of diversion approximately 0.4 mile upstream from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	26	SE NE	69	PROPOSED POD - 2650 FEET SOUTH AND 650 FEET WEST FROM THE NE CORNER OF SECTION 26

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

11. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch 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-13121.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

**Conclusions of Law**

The additional point of diversion proposed in Transfer Application T-13121 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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