

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

In the Matter of Transfer Application)
T-11056, Clatsop and Columbia Counties)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE PLACE OF USE AND
CHARACTER OF USE

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

FISHHAWK LAKE WATER COMPANY
9997 BEACH DRIVE
BIRKENFELD, OR 97016

Agent

STUNTZNER ENIGEERING & FORESTRY
ATTN: ERIC URSTADT
2137 19TH AVE
FOREST GROVE, OR 97116

Findings of Fact

Background

1. On April 2, 2010, FISHHAWK LAKE WATER COMPANY filed an application to change the place of use and character of use under Certificate 46757. The Department assigned the application number T-11056.
2. The right to be transferred is as follows:

Certificate: 46757 in the name of FISHHAWK LAKE WATER COMPANY (perfected under Permit S-34179)
Use: GROUP DOMESTIC FOR 97 DWELLINGS
Priority Date: MAY 1, 1969
Rate: 0.10 CUBIC FOOT PER SECOND
Source: FISHHAWK CREEK, tributary to the NEHALEM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	5 W	WM	6	SE NW	288.5 FEET NORTH AND 1611.5 FEET EAST FROM THE W¼ CORNER OF SECTION 6

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

Authorized Place of Use:

GROUP DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	GLot
6 N	5 W	WM	6	SW NW	5
6 N	5 W	WM	6	SE NW	
6 N	6 W	WM	1	NE NE	1
6 N	6 W	WM	1	NW NE	2
6 N	6 W	WM	1	SW NE	
6 N	6 W	WM	1	SE NE	
6 N	6 W	WM	1	SE NW	
6 N	6 W	WM	1	NE SW	
6 N	6 W	WM	1	NW SE	

3. Transfer Application T-11056 proposes to change the character of use to quasi-municipal use.

4. Transfer Application T-11056 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	GLot
6 N	5 W	WM	6	NW NW	4
6 N	5 W	WM	6	SW NW	5
6 N	5 W	WM	6	SE NW	
6 N	6 W	WM	1	NE NE	1
6 N	6 W	WM	1	NW NE	2
6 N	6 W	WM	1	SW NE	
6 N	6 W	WM	1	SE NE	
6 N	6 W	WM	1	SE NW	
6 N	6 W	WM	1	NE SW	
6 N	6 W	WM	1	NW SE	

5. Certificate 46757 lists the county as Clatsop County. The place of use is located in both Clatsop and Columbia Counties.

6. Certificate 46757 does not set an annual duty for group domestic use; however, ORS 540.610 states, “beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.”

7. Use of more water per year than could maximally have been beneficially used for the original group domestic use would constitute enlargement of the right, which is not allowable. Therefore, to avoid enlarging the right in the conversion to quasi-municipal use, an annual volume limit should be added to the right, based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for group domestic use during a year.

8. The quantity of water, if diverted continuously at a rate of 0.10 cubic foot per second (CFS) for 365 days of the year (0.10 CFS x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre) would be 72.39 acre-feet per year. However, it is unlikely that the full rate could be beneficially used continuously night and day 365 days of the year.

9. Fishhawk Lake Water Company provided information that each household has used 450 gallons per day (gpd). This correlates with the best available data estimating 70-110 gpd per person with a four person household (being 280 to 440 gpd per household). Using this information yields an estimate of 48.5 acre feet for annual maximum beneficial use (450 gpd x 365 days ÷ 325,850 gallons per acre-foot = 0.5 acre feet x 97 dwellings = 48.5 acre feet).
10. Notice of the application for transfer was published on April 13, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On September 9, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11056 to the applicant. The draft Preliminary Determination set forth a deadline of October 11, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

12. 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.
13. A pump, pipeline, and 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-11056.
14. The proposed changes, as limited in Finding of Fact No. 9, would not result in enlargement of the right.
15. The proposed changes, as limited in Finding of Fact No. 9, would not result in injury to other water rights.

Determination and Proposed Action

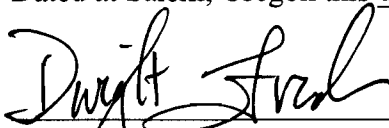
The change in place of use and character of use proposed in Transfer Application T-11056 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11056 is approved, the final order will include the following:

1. *The changes in place of use and character of use proposed in Transfer Application T-11056 are 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 46757 and any related decree.*
3. *Water right certificate 46757 is cancelled.*
4. *The use of water for quasi-municipal purposes shall be limited to a maximum rate of diversion of 0.10 cfs and shall be further limited to a total volume diverted of 48.5 acre-feet per year.*
5. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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.*
7. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 29 day of September 2010.



Dwight W. French, Water Right Transfer Administrator, for
Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you have questions about the information in this document, you may reach me at 503-986-0898 or Kara.B.Morris@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.