

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11180, Clackamas County) PROPOSING APPROVAL OF A
) CHANGE IN 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

U.S. FOREST SERVICE
MT HOOD NATIONAL FOREST
16400 CHAMPION WAY
SANDY, OR 97055

Findings of Fact

Background

1. On December 30, 2010, US FOREST SERVICE MT. HOOD NATIONAL FOREST filed an application to change the character of use under Certificate 29948. The Department assigned the application number T-11180.
2. The portion of the first right to be transferred is as follows:

Certificate: 29948 in the name of U.S. FOREST SERVICE (perfected under Permit S-26057)
Use: DOMESTIC USE IN TIMBERLINE LODGE
Priority Date: APRIL 7, 1959
Rate: 0.50 CUBIC FOOT PER SECOND (CFS), BEING 0.25 CFS FROM EACH SPRING
Source: TWO UNNAMED SPRINGS, tributary to the SANDY RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	7	SE SW

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:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 E	WM	6	SE SE

3. Certificate 29948 does not describe the location of the points of diversion; however, information is available from the Certified Water Right Examiner and transfer map indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 E	WM	7	SE SW	500 FEET NORTH AND 2840 FEET WEST FROM THE SE CORNER OF SECTION 7

4. Transfer Application T-11180 proposes to change the character of use to commercial use.
5. Notice of the application for transfer was published on January 4, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On February 11, 2011, the Department issued a draft Preliminary Determination and mailed a copy to the applicants. The Preliminary Determination cover letter set forth a deadline of March 18, 2011, for the applicant to respond.
7. On February 17, 2011, the applicant's agent contacted the Department by e-mail, requesting reconsideration of the measuring devices required by the Watermaster. The applicant's agent proposed language that the water user shall measure and record water diverted from the source for all uses allowed in this transfer.
8. On February 18, 2011, the Watermaster submitted an amended Watermaster Review Form indicating that measurement devices may be required in the future.
9. On February 24, 2011, the Department mailed a revised draft Preliminary Determination proposing to approve Transfer Application T-11180 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 18, 2011, for the applicant to respond.
10. On March 7, 2011, the applicant requested the Department proceed with issuance of the 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)]

11. 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.
12. A pump, pipeline, and finished water reservoir 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-11180.

13. The proposed change in character of use would not result in enlargement of the right, provided the rate of diversion for commercial use is limited to 0.5 cubic foot per second as set forth in the certificate. Certificate 29948 indicates the use is for domestic use at Timberline Lodge. The proposed change in character of use to commercial use more accurately describes the use of water for the accommodations at Timberline Lodge. The applicant submitted documentation to support the conclusion that the full 0.5 cfs has been beneficially used.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

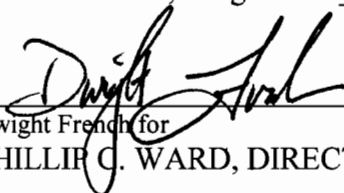
The change in character of use proposed in Transfer Application T-11180 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11180 is approved, the final order will include the following:

1. *The change in character of use proposed in Transfer Application T-11180 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 29948 and any related decree.*
3. *Water right certificate 29948 is cancelled.*
4. *The water user shall measure and record water diverted from the source for all uses allowed under this Order.*
5. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
6. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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. *When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of March 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrд.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.

**Notice of Preliminary Determination for
Water Right Transfer T-11180**

T-11180 filed by U.S Forest Service, Mt. Hood National Forest, 16400 Champion Way, Sandy, OR 97055, proposes a change in character of use under Certificate 29948. The right allows the use of 0.50 cubic foot per second (priority date April 7, 1959) from two unnamed springs in Sec. 7, T 3 S, R 9 E, W.M. for domestic use at Timberline Lodge. The applicant proposes to change the character of use to commercial use. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is **[DATE OF LAST PUBLICATION]**. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.