

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-8307, Jefferson County) PROPOSING DENIAL OF A CHANGE
) FROM A SURFACE WATER
) DIVERSION POINT TO A GROUND
) WATER POINT OF APPROPRIATION

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

PORTLAND GENERAL ELECTRIC
121 SW SALMON ST
PORTLAND, OR 97204

Findings of Fact

Background

1. On July 21, 1999, PORTLAND GENERAL ELECTRIC CO. filed an application to change from a surface water diversion point to a ground water point of appropriation under Certificates 27497 and 86761. The Department assigned the application number T-8307.
2. The first right to be transferred is as follows:

Certificate: 27497 in the name of PORTLAND GENERAL ELECTRIC CO. (perfected under Permit S-25800)
Use: DOMESTIC USE for 9 FAMILIES
Priority Date: SEPTEMBER 25, 1958
Rate: 0.02 CUBIC FOOT PER SECOND
Source: DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
10 S	12 E	WM	1	SE SW	12

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	GLot
10 S	12 E	WM	1	NW SE	11
10 S	12 E	WM	1	SW SE	12

3. The second right to be transferred is as follows:

Certificate: 86761 in the name of PORTLAND GENERAL ELECTRIC CO. (perfected under Permit S-50237)

Use: DOMESTIC EXPANDED FOR 7 HOUSEHOLDS, IRRIGATION OF UP TO ½ ACRE LAWN AND NON-COMMERCIAL GARDENS FOR 9 HOUSEHOLDS, AND IRRIGATION 1.66 ACRES

Priority Date: OCTOBER 29, 1987

Rate: 0.18 CUBIC FOOT PER SECOND, BEING 0.03 CFS FOR DOMESTIC EXPANDED FOR 7 HOUSEHOLDS; 0.11 CFS FOR IRRIGATION OF UP TO ½ ACRE LAWN AND NON-COMMERCIAL GARDENS FOR 9 HOUSEHOLDS; AND 0.04 CFS FOR IRRIGATION.

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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	12 E	WM	1	SE SW	NORTH 7 DEGREES 51 MINUTES 17 SECONDS WEST, 838.72 FEET FROM THE SOUTH ¼ CORNER OF SECTION 1

Authorized Place of Use:

DOMESTIC EXPANDED USE FOR 7 HOUSEHOLDS						
Twp	Rng	Mer	Sec	Q-Q	GLot	See's Addition Lot Number
10 S	12 E	WM	1	SE SW SW SE	12	3
10 S	12 E	WM	1	NW SE SW SE	11 12	7
10 S	12 E	WM	1	NW SE SW SE	11 12	8
10 S	12 E	WM	1	NW SE	11	11 & 12
10 S	12 E	WM	1	NW SE	11	14
10 S	12 E	WM	1	NW SE	11	16
10 S	12 E	WM	1	NW SE	11	17

IRRIGATION OF UP TO ONE HALF ACRE LAWN AND NON-COMMERCIAL GARDENS FOR 9 HOUSEHOLDS						
Twp	Rng	Mer	Sec	Q-Q	GLot	See's Addition Lot Number
10 S	12 E	WM	1	SE SW SW SE	12	4 & 5
10 S	12 E	WM	1	SW SE	12	6
10 S	12 E	WM	1	NW SE	11	9
10 S	12 E	WM	1	NW SE	11	10
10 S	12 E	WM	1	NW SE	11	13
10 S	12 E	WM	1	NW SE SW SE	11 12	19
10 S	12 E	WM	1	NW SE SW SE	11 12	21
10 S	12 E	WM	1	SW SE	12	22
10 S	12 E	WM	1	SW SE	12	26

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	See's Addition Lot Number	Acres
10 S	12 E	WM	1	NW SE	11	15	0.29
10 S	12 E	WM	1	NW SE	11	18	0.22
10 S	12 E	WM	1	NW SE SW SE	11 12	20	0.15
10 S	12 E	WM	1	SW SE	12	23, 24, & 25	1.00

4. Transfer Application T-8307 proposes to change from a surface water diversion point to a ground water point of appropriation (well) approximately 4,000 feet upstream along the Deschutes River located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	12 E	WM	12	NE SE	SOUTH 27 DEGREES 20 MINUTES EAST, 3150 FEET FROM THE NORTH 1/4 CORNER OF SECTION 12

5. Notice of the application for transfer was published on July 27, 1999, pursuant to OAR 690-380-4000. In addition, notice of Transfer Application T-8307 was published in the Madras Pioneer newspaper on August 27, and September 3 and 10, 2003. No comments were filed in response to the notices.
6. The proposed change in point of appropriation is approximately 4,000 feet upstream from the authorized point of diversion. OAR 690-380-2130(2)(e) requires that the applicant submit evidence prepared by a licensed geologist that demonstrates that the use of ground water at the new point appropriates ground water from an aquifer that is hydraulically connected to the authorized surface source. In addition, OAR 690-380-2130 (3)(d) requires

that the use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer

7. On November 28, 2001, the applicants submitted a report by Charles Hammond, a certified engineering geologist, meeting the requirements of ORS 540.531. On December 13, 2002, the Department concurred with Mr. Hammond's conclusions that the use of the new point of appropriation will affect the surface water source hydraulically connected to the authorized point of diversion.
8. On March 7, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-8307 to the applicant and applicant's agent. The draft Preliminary Determination cover letter set forth a deadline of April 7, 2011, for the applicant to respond. The applicant's agent requested the Department send a request to the Oregon Department of Fish and Wildlife as to whether it will recommend consent to injury of the instream water rights. The applicant's agent requested 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)]

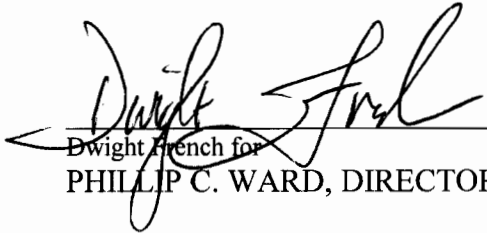
9. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610. Water Right Certificate 86761 was issued on January 20, 2011.
10. A pump, pipeline, and steel tank reservoirs 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-8307.
11. The proposed point of appropriation meets the requirements of ORS 540.531. and OAR 690-280-2130(3) and (4).
12. The proposed changes would not result in enlargement of the right.
13. Instream Water Right Certificates 73188 and 73237 exist in the stream reach of the Deschutes River from river mile 100.1 (SESW of Sec. 1, T 10 S, R 12 E, W.M.) to the confluence with the Columbia River at river mile 0.0 (SWSW of Sec. 23, T 2 N, R 15 E, W.M.). The stream flows within the reach in which the authorized points of diversion would be moved upstream are frequently below the levels allocated under the instream water rights. Thus, the instream water rights would be injured as a result of the proposed change in point of diversion.

Determination and Proposed Action

The changes from a surface water point of diversion to a ground water point of appropriation proposed in Transfer Application T-8307 appear not to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-2130 and 690-380-5000, due to injury of an

instream water right. If protests are not filed pursuant to OAR 690-380-4030, the application will be denied unless the Oregon Department of Fish and Wildlife recommends that the Department consent to injury of an instream water right, or the application is withdrawn.

Dated at Salem, Oregon this 29 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 Water Right Services Division, Transfer Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.