

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-8414, Linn County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN CHARACTER OF USE
	)	AND PARTIAL CANCELLATION OF A
	)	WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

City of Sweet Home
1730 N 9th Ave
Sweet Home, Oregon 97386

Findings of Fact

Background

1. On January 10, 2000, the City of Sweet Home filed an application to change the character of use under Certificate 9288. The Department assigned the application number T-8414.
2. On April 1, 2011, the applicant agreed to reduce the rate to 34 gallons per minute or 0.076 cubic foot per second (cfs), further limited to 10 acre-feet per year, measured at the point of diversion.
3. The portion of the first right to be transferred is as follows:

Certificate:	9288 in the name of NORVAL L. RICE (perfected under Permit S-10140)
Use:	MAINTENANCE OF A MILL POND
Priority Date:	APRIL 24, 1931
Rate:	34.0 GALLONS PER MINUTE (0.076 CUBIC FOOT PER SECOND)

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.
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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-EIGHTIETH of one cubic foot per second, or its equivalent in case of rotation.

Source: AMES CREEK, tributary to the SOUTH FORK OF THE SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
13 S	1 E	WM	31	NE SE

Authorized Place of Use:

POND MAINTENANCE				
Twp	Rng	Mer	Sec	Q-Q
13 S	1 E	WM	31	NE SE

4. Certificate 9288 does not describe the location of the point of diversion, however information is available from the transfer application map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	1 E	WM	31	NE SE	360 FEET NORTH AND 310 FEET EAST FROM THE SE CORNER OF LOT 1, BLOCK 1, RIDENOUR ADDITION TO THE CITY OF SWEET HOME, OREGON

5. Certificate 9288 does not describe period of use, however information is available from the final proof survey notes which indicates that the period of use was for the entire year.
6. Transfer Application T-8414 proposes to change the character of use to Municipal Use.
7. Notice of the application for transfer was published on January 18, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On April 7, 2011, the Department mailed a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-8414 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of May 6, 2011, for the applicant to respond. On April 8, 2011, 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)]

9. Water has been used within the five-year period prior to submittal 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.

10. A pond capable of using the full amount of water proposed for transfer was present within the five-year period prior to submittal of Transfer Application T-8414.
11. The transfer application originally proposed to change the full rate and duty of the original right to Municipal, which would cause enlargement due to the fact that the water use was historically limited to the quantity of water needed to replace water lost from the pond by evaporation. The proposed change, if not conditioned to limit the right to the maximum amount that could have been beneficially used for the original character of use, could result in enlargement of the right.
12. Evaporation tables for the North Willamette Experimental Station and Cottage Grove, Oregon, which are the closest stations to the City of Sweet Home, were consulted, since data for the City of Sweet Home were not available. The applicant and the Watermaster discussed various figures that would have been reasonable for the original use, and agreed on a rate of 34 gallons per minute (0.076 cfs), further limited to an annual volume of 10 acre-feet. Limiting the new use to that rate and annual volume would avoid enlarging the right as the character of use is changed to municipal.
13. The change would not result in enlargement of the right if it is conditioned as described in Finding of Fact #12 and as indicated below.
14. An instream water right, Certificate 72608, exists within the reach of Ames Creek where the transfer change would occur. If enlargement of the right were to occur, the instream right could be injured. The reduced rate and annual volume limit described in Finding of Fact #12 would prevent injury to the instream right.
15. The proposed change, as conditioned below to avoid enlargement, would not result in injury to other water rights.

Partial Cancellation of a Water Right

16. On April 12, 2011, an affidavit certifying that a portion of the rate within the water right has been abandoned and requesting cancellation of the right was received from Michael J. Adams, Public Works Director for the City of Sweet Home. The portion of the right to be cancelled is as follows:

Certificate: 9288 in the name of NORVAL L. RICE (perfected under Permit S-10140)
Use: MAINTENANCE OF A MILL POND
Priority Date: APRIL 24, 1931
Rate: 0.924 CUBIC FOOT PER SECOND
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-EIGHTIETH of one cubic foot per second, or its equivalent in case of rotation.

Source: AMES CREEK, tributary to the SOUTH FORK OF THE SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
13 S	1 E	WM	31	NE SE

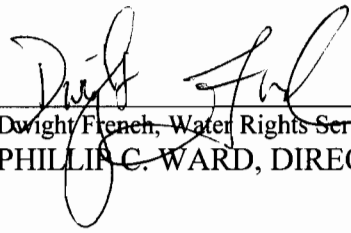
Determination and Proposed Action

The change in character of use proposed in Transfer Application T-8414 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-8414 is approved, the final order will include the following:

- 1. The change in character of use proposed in application T-8414 is approved. The portion of the right that has been abandoned is cancelled.*
- 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 9288 and any related decree.*
- 3. Water right certificate 9288 is cancelled.*
- 4. Water use measurement conditions:*
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of diversion.*
 - 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.*
- 5. The right is limited to a maximum diversion of 34 gallons per minute (0.076 cfs) and shall be further limited to 10 acre-feet per year.*
- 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 4 day of May, 2011.


Dwight French, Water Rights Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@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.