

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10475, Coos 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

INDIAN POINT, INC.
PO BOX 2767
BROOKINGS, OR 97415

Agent

DENNIS GOUDE
STUNTZNER ENGINEERING & FORESTRY
PO BOX 118
COOS BAY, OR 97420

Findings of Fact

Background

1. On October 18, 2007, INDIAN POINT, INC. filed an application to change from a surface water point of diversion to a groundwater appropriation point under Certificate 1922. The Department assigned the application number T-10475.
2. Notice of the application for transfer was published on October 30, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 4 and December 26, 2008, and January 13, 2009, Larry and Dawn Vonderlin submitted comments in opposition to the proposed transfer.
4. On November 10, 2010, the Department issued a Final Order in Contested Case *In the Matter of the Proposed Partial Cancellation of the Water Right Evidenced By Water Right Certificate 1922 for Use of Water from McKee Spring, Tributary of Coquille River, for Manufacturing and Domestic Uses, Coos County, Oregon*, recorded at Special Order Volume 83, Pages 43-61. The Final Order reduced the quantity of water available under Certificate 1922 from 0.44 cubic foot per second (cfs) to 0.135 cfs.

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.

5. The right to be transferred is as follows:

Certificate: 1922 in the name of ROBERT DOLLAR COMPANY (perfected under Permit S-3440)
Use: MANUFACTURING AND DOMESTIC USES
Priority Date: JUNE 18, 1917
Rate: 0.135 CUBIC FOOT PER SECOND
Source: MCKEE SPRING, tributary to the COQUILLE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
28 S	14 W	WM	20	NE NW

Authorized Place of Use:

MANUFACTURING AND DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
28 S	14 W	WM	17	NW SW

6. Certificate 1922 does not describe the location of the point of diversion; however, the best information available, including that information provided by the Certified Water Right Examiner, indicates that the point of diversion from McKee Spring is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 W	WM	20	NE NW	SOUTH 69 DEGREES 5 MINUTES EAST, 1640 FEET FROM THE NW CORNER OF SECTION 20

7. The applicant did not provide specific location descriptions for the proposed points of appropriation. Therefore, the map does not meet the requirements of OAR 690-380-3100(1)(h).
8. Transfer application T-10475 proposes to change from a surface water diversion point to two wells located approximately 2650 feet and 2900 feet northwest from the original diversion point as shown on the transfer map as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 W	WM	19	NW SW	None provided

9. On June 8, 2011, the Department sent an e-mail to the applicant's agent, requesting clarification of the quantity of water requested to be transferred based on the partial cancellation, and an updated land use form. No response was received to the communication.
10. On June 30, 2011, the Department mailed a letter to the applicant requesting the applicant provide an amended application identifying the amount of water to be transferred and an updated land use form. The previously submitted land use form indicated the land use

decision was being appealed. The letter set forth a deadline of July 29, 2011, for the applicant to respond.

11. On July 15, 2011, the applicant contacted the Department and requested additional time to provide the necessary information. The deadline was extended to August 16, 2011.
12. On August 9, 2011, the applicant contacted the Department by telephone. The Department returned the phone call on August 10, 2011, and left a message. On August 11, 2011, two telephone calls were exchanged between the applicant and the Department, wherein the criteria of OAR 690-380-2130 were explained. The deadline for submission of the required information was verbally extended to August 24, 2011. No response was received.
13. On August 31, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-10475 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 3, 2011, for the applicant to respond. The applicant did not respond by the deadline and did not provide the necessary documentation to demonstrate that the applicant is authorized to proceed with this transfer.
14. OAR 690-380-2130 governs the procedures for changes from a surface water point of diversion to a groundwater appropriation.
15. OAR 690-380-2130 provides that (1) the new point of appropriation will appropriate groundwater from an aquifer that is hydraulically connected to the authorized surface source; (2) the proposed change in point of diversion will affect the surface water source [McKee Spring] similarly to the authorized point of diversion specified in the water use subject to transfer; (3) the groundwater at the new point of diversion is located within 500 feet of the surface water source [McKee Spring] and, is also located within 1000 feet upstream or downstream from the original point of diversion; and (4) if the distance requirements are not met, the holder of the water use subject to transfer shall submit to the Department evidence prepared by licensed geologist that demonstrates that the use of groundwater at the new point of diversion will meet the criteria listed for hydraulic connectivity and affecting the surface water source similarly to the authorized point of diversion.
16. The proposed points of appropriation as described in Finding of Fact #8 are not within the distance required as stated in Finding of Fact #15(3). No geologist report has been submitted to satisfy Finding of Fact #15(4).

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

17. Water was partially used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. A partial cancellation proceeding was held during the pendency of this transfer application. A Final Order in Contested Case was issued on November 10, 2010, finding a portion of the water right evidenced by Certificate 1922 was forfeited for non-use over a period of five or more years. The Final Order determined that 0.135 cfs is the water right that remains.

18. 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-10475.
19. The application does not meet the completeness requirements because it lacks a satisfactory geologist report and land use compliance.
20. The application does not meet the completeness requirements because the applicant has not provided a report of ownership information as provided in OAR 690-390-0100(3).
21. Because of lack of adequate information, the Department cannot determine whether the proposed change would result in enlargement of the right.
22. Because of the lack of adequate information, the Department cannot make an affirmative finding of no injury to other water rights.

Determination and Proposed Action

The change from a surface water diversion point to groundwater points of appropriation proposed in Transfer Application T-10475 appears to be not 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 or the application is withdrawn, the transfer application will be **denied** as incomplete for failing to meet the minimum application requirements under OAR 690-380-3000 and the requirements of OAR 690-380-2130.

Dated at Salem, Oregon this 7 day of October 2011.


Dwight French, Water Right Services Administrator, 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@wrds.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.