



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 11, 2012

VIA E-MAIL

Applicant

CITY OF NEWPORT
169 SW COAST HWY
NEWPORT, OR 97365

SUBJECT: Water Right Transfer Application T-11323

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11323. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Newport News Times newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrds.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11323
Greg Beaman, District 1 Watermaster (*via e-mail*)
Theodore Ressler, Agent for the applicant (*via e-mail*)
encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11323, Lincoln County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION

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.

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Findings of Fact

Background

1. On December 5, 2011, City of Newport filed an application to change the point of diversion under Certificate 1012. The Department assigned the application number T-11323.
2. The right to be transferred is as follows:

Certificate: 1012 in the name of City of Newport (perfected under Permit S-20)

Use: Municipal Uses

Priority Date: May 10, 1909

Rate: 0.54 cubic foot per second

Source: Blattner's Creek, being the north branch of Big Creek

Authorized Place of Use: The City of Newport, in Lincoln County, State of Oregon

3. Certificate 1012 does not describe the location of the point of diversion, however information is available from the water right application map indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
10 S	11 W	WM	27	NW SE	FROM THE CENTER OF SECTION 27, EAST 310 FEET, THENCE SOUTH 1 DEGREE 45 MINUTES WEST 195 FEET, THENCE SOUTH 30 DEGREES EAST 95 FEET

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.

4. Transfer Application T-11323 proposes to move the authorized point of diversion approximately 2.25 miles to Intake 2 and 3.4 miles to Intake 1 downstream to:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
INTAKE 2	10 S	11 W	WM	33	NE SE	1885 FEET NORTH AND 1190 FEET WEST FROM THE SE CORNER OF SECTION 33
INTAKE 1	10 S	11 W	WM	33	SW SW	1190 FEET NORTH AND 870 FEET EAST FROM THE SW CORNER OF SECTION 33

5. Notice of the application for transfer was published on December 13, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
7. On March 9, 2012, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11323 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 8, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and requested that the completion date be extended to 2027, to allow 15 years for development, citing the complexity of the project and its dependence on engineering studies and sufficiency of financial resources.
8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish is necessary at the new point of diversion and that the diversion is currently equipped with an appropriate fish screen.

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

9. Water has been used according to the terms and conditions of the right. The right is not subject to forfeiture under ORS 540.610 because it is a right held by a municipality.
10. A pump, pipelines, and a municipal system sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

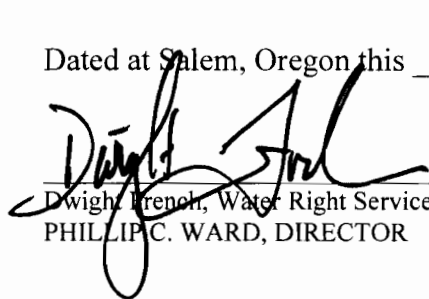
Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11323 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-11323 is approved, the final order will include the following:

- 1. The change in point of diversion proposed in application T-11323 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 1012 and any related decree.*
- 3. Water right certificate 1012 is cancelled.*
- 4. The quantity of water diverted at the new points of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 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 water user shall maintain and operate a fish screen at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.*
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 10 day of May, 2012.


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

This Preliminary Determination was prepared by Joel Plahn and Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.