



Oregon

John A. Kitzhaber, MD, Governor

September 11, 2013

VIA E-MAIL

Applicant

CITY OF LAFAYETTE
PO BOX 55
LAFAYETTE, OR 97127
prestonp@ci.lafayette.or.us

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
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www.wrd.state.or.us

SUBJECT: Water Right Transfer Application T-11638

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11638. 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, 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 Department's notice.

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@ wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11638
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Kim Grigsby, Agent for the applicant (*via e-mail*)
Theodore R. Ressler, CWRE # 78185 (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11638, Yamhill 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 July 10, 2013, the CITY OF LAFAYETTE filed an application to change the point of diversion under Certificate 35699. The Department assigned the application number T-11638.
2. Notice of the application for transfer was published on July 16, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 5, 2013, the Department sent a copy of the Preliminary Determination proposing to approve Transfer Application T-11638 to the applicant. The Preliminary Determination cover letter set forth a deadline of October 7, 2013, for the applicant to respond and remedy slight discrepancies in point of diversion (POD) locations on the map. The applicant requested that the Department proceed with issuance of a Preliminary Determination and pointed out that the stated distances from the section corner do scale out within the symbols for the PODs on the map. The Department agrees the map is acceptable.
4. The right to be transferred is as follows:

Certificate:	35699 in the name of TOWN OF LAFAYETTE (perfected under Permit S-25666)
Use:	MUNICIPAL USE

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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Priority Date: APRIL 23, 1958

Rate: 0.16 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.16 cubic foot per second, being 0.08 cfs from each spring

Source: LAFAYETTE SPRING AND DOUG NELSON SPRING, tributary to HENRY CREEK

Authorized Points of Diversion:

Spring	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
LAFAYETTE	4 S	3 W	WM	5	NW NE	125 FEET SOUTH AND 625 FEET EAST FROM THE N1/4 CORNER OF SECTION 5
DOUG NELSON	4 S	3 W	WM	5	NW NE	800 FEET SOUTH AND 425 FEET EAST FROM THE N1/4 CORNER OF SECTION 5

Authorized Place of Use:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	3 W	WM	6	SW NE
4 S	3 W	WM	6	SW NW
4 S	3 W	WM	6	NW SW
4 S	3 W	WM	6	SW SW
4 S	3 W	WM	6	SE SW
4 S	3 W	WM	6	SW SE
4 S	3 W	WM	6	SE SE
4 S	3 W	WM	7	NW NE
4 S	3 W	WM	7	SW NE
4 S	3 W	WM	7	NE NW
4 S	3 W	WM	7	NW NW
4 S	4 W	WM	1	SE NE
4 S	4 W	WM	1	NE SE
4 S	4 W	WM	1	SE SE
4 S	4 W	WM	12	NE NE

5. Transfer Application T-11638 proposes to move one of the authorized points of diversion (Doug Nelson Spring) approximately 700 feet north to Lafayette Spring (thereby taking the total of 0.16 cfs from the one spring):

Spring	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
LAFAYETTE	4 S	3 W	WM	5	NW NE	125 FEET SOUTH AND 625 FEET EAST FROM THE N1/4 CORNER OF SECTION 5

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

6. 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.

7. A pump, pipeline, and municipal distribution system 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-11638.
8. Both springs access the same water bearing formation and contribute flow to Henry Creek.
9. The proposed change, as conditioned, would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

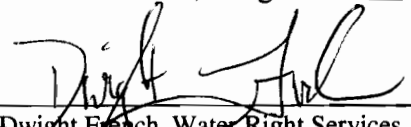
Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11638 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-11638 is approved, the final order will include the following:

1. *The change in point of diversion proposed in application T-11638 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 35699 and any related decree.*
3. *Water right certificate 35699 is cancelled.*
4. *The quantity of water diverted at Lafayette Spring shall not exceed the quantity of water lawfully available at the original points of diversion (Doug Nelson Spring and Lafayette Spring).*
5. *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 meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 11 day of September, 2013.


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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrds.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.