



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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January 28, 2014

VIA E-MAIL

CITY OF NORTH POWDER
ATTN: BONITA HEBERT
635 THIRD STREET
NORTH POWDER, OR 97867

SUBJECT: Water Right Transfer Application T-11554

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11554. 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 La Grande Observer 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 503-986-0886 or Patrick.K.Starnes@wr.d.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst
Water Right Transfer and Conservation Section

cc: Water Right Transfer Application file T-11554
Rick Lusk, District 8 Watermaster (*via e-mail*)
Patrick D. Curran, Agent/CWRE for the applicant (*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-11554, Union County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

CITY OF NORTH POWDER
ATTN: BONITA HEBERT
635 THIRD STREET
NORTH POWDER, OR 97867

Agent

PATRICK CURRAN, CWRE
6655 SW HAMPTON STREET, SUITE 210
PORTLAND, OR 97223

Findings of Fact

1. On March 25, 2013, the City of North Powder filed an application for an additional point of appropriation under Certificate 65088. The Department assigned the application number T-11554.
2. Notice of the application for transfer was published on April 2, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 2, 2013, the applicant submitted an amended application and map to better describe the place of use within the political/Urban Growth/or Service Area boundary required in the Department's administrative rules regarding map requirements under OAR 690-380-3100 (2)(j).
4. On December 11, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11554 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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: 65088 in the name of CITY OF NORTH POWDER (perfected under Permit G-10589)
Use: MUNICIPAL USE
Priority Date: DECEMBER 9, 1985
Rate: 2.2 CUBIC FEET PER SECOND
Source: A WELL within the NORTH POWDER RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	39 E	WM	22	SE SW	WELL #4 - 1120 FEET NORTH AND 2048 FEET EAST FROM SW CORNER OF SECTION 22

Authorized Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q - Q
6 S	39 E	WM	22	NE NE
6 S	39 E	WM	22	NW NE
6 S	39 E	WM	22	SW NE
6 S	39 E	WM	22	SE NE
6 S	39 E	WM	22	NE NW
6 S	39 E	WM	22	NW NW
6 S	39 E	WM	22	SW NW
6 S	39 E	WM	22	SE NW
6 S	39 E	WM	22	NE SW
6 S	39 E	WM	22	NW SW
6 S	39 E	WM	22	SW SW
6 S	39 E	WM	22	SE SW
6 S	39 E	WM	22	NE SE
6 S	39 E	WM	22	NW SE
6 S	39 E	WM	22	SW SE
6 S	39 E	WM	22	SE SE
6 S	39 E	WM	23	NE NW
6 S	39 E	WM	23	NW NW
6 S	39 E	WM	23	SW NW
6 S	39 E	WM	23	SE NW
6 S	39 E	WM	23	NE SW
6 S	39 E	WM	23	NW SW
6 S	39 E	WM	23	SW SW
6 S	39 E	WM	23	SE SW

6. Transfer Application T-11554 proposes an additional point of appropriation located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
6 S	39 E	WM	22	SW NE	WELL #5 - 3370 FEET NORTH AND 2990 FEET EAST FROM THE SW CORNER OF SECTION 22

7. The Department has determined that the new proposed Well #5 construction will develop the same source of water as the authorized existing Well #4 (UNIO 1537).

Transfer Review Criteria (OAR 690-380-4010)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11554 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.
9. A well, pumps and municipal water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11554.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11554 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11554 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-11554 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 65088 and any related decree.*
3. *Water right certificate 65088 is cancelled.*
4. *The quantity of water diverted at the proposed additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 each (new and existing) point of appropriation.*
 - 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.*

6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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 changes 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 27 day of January 2014.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrp.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.