



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

March 4, 2014

Applicant

PORT OF PORTLAND
c/o DEBRA CRAWFORD
PO BOX 3529
PORTLAND, OR 97208

SUBJECT: Water Right Transfer Application T-11481

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11481. 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 Gresham Outlook 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 503-986-0858 or Susan.M.Douthit@ wrd.state.or.us if I may be of assistance.

Sincerely,

Susan Douthit
Transfer and Conservation Section

cc: T-11481
Amy Kim, District 20 Watermaster (via e-mail)
Ted Ressler, GSI – Tressler@gsiws.com (via email)

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

In the Matter of Transfer Application)
T-11481, Multnomah County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF AN
ADDITIONAL POINT OF DIVERSION,
CHANGES IN PLACE OF USE,
POINTS OF DIVERSION AND
CHARACTER OF USE

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 October 23, 2012, the Port of Portland filed an application to change the place of use and character of use under Certificates 14525, 45428, 45429, 45430 and 87783. The Department assigned the application number T-11481.
2. Notice of the application for transfer was published on October 30, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 11, 2013, additional information was requested regarding how Certificates 14525 (primary irrigation) and 45430 (supplemental irrigation) would be related after the character of use change, and to confirm that the season of use was requested to be changed to year round.
4. On July 17, 2013, the applicant’s agent requested to condition the municipal uses so that the quantities converted from layered supplemental and primary irrigation would remain linked after the change. The combined rates and annual volumes of the rights will allow up to the

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.

face value of the original primary irrigation rights, provided that the total rates and annual volumes of the resulting municipal rights cannot exceed the rate and volume equivalent to 1/80th cubic foot per second per acre, and 2.5 acre-feet per acre associated with the number of acres transferred. The agent confirmed the change in period of use from the irrigation season to year round, and asked for clarification of the maximum annual duty that could be converted from domestic use.

5. On July 18, 2013, the applicant's agent submitted information on average day per capita residential use from the City of Gresham, to be considered in establishing the annual volume to be converted from domestic use. This data is reflected in this document.
6. On August 14, 2013, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-11481.
7. On December 23, 2013, the applicant submitted a request to also include a change in point of diversion for the water rights involved in Transfer Application T-11481.
8. On January 6, 2014, the Department received all the necessary documents necessary to process the amendment request noted in Finding of Fact #7.
9. The portion of the first right to be transferred is as follows:

Certificate: 14525 in the name of WAYNE E. MCGILL (perfected under Permit S-14906)

Use: DOMESTIC and IRRIGATION of 64.6 ACRES

Priority Date: MAY 8, 1941

Rate: 0.71 CUBIC FOOT PER SECOND (CFS) Mar. 1-Oct. 31; being 0.13 cfs from Spring 1, 0.44 cfs from Spring 2 and 0.13 from Unnamed Stream for irrigation; and 0.01 cfs from Spring 2 for domestic and 0.01 cfs Nov. 1-Feb.29 from Spring 2 for domestic.

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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Spring 1, Spring 2 and an Unnamed Stream, all tributary to Arata Creek

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Source
1 N	3 E	WM	34	SW NW	55	SPRING 2
1 N	3 E	WM	34	SE NW	55	SPRING 1
1 N	3 E	WM	34	SE NW	55	UNNAMED STREAM

Authorized Place of Use:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	NW SW	55

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NW	55	9.5
1 N	3 E	WM	34	NE SW	55	5.6
1 N	3 E	WM	34	NW SW	55	29.0
1 N	3 E	WM	34	SW SW	55	17.0
1 N	3 E	WM	34	SE SW	55	3.5
Total:						64.6

10. The season for domestic water is year round at 0.01 cfs from Spring 2. Best available information (from the City of Gresham) indicates the maximum beneficial use for a single household at 184 gallons per person per day x 3.7 persons per household in 1940 x 365 days ÷ 325,850 gallons per AF = 0.76 AF. Irrigation water is limited to 0.7 cfs from the various sources during the irrigation season (March 1 through October 31), further limited to an annual volume of 2.5 AF per acre x 64.6 acres =161.5 AF, in combination with water from Certificate 45430.

11. The portion of the second right to be transferred is as follows:

Certificate: 45428 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit S-36765)

Use: IRRIGATION of 136.4 ACRES

Priority Date: JUNE 6, 1973

Rate: 0.35 CUBIC FOOT PER SECOND (CFS); being 0.10 cfs from Spring Area, 0.03 cfs from Spring 3, 0.13 cfs from Stream 2 and 0.09 cfs from Stream 3

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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage [up to 7.0 AF in combination with Certificate 45430] from reservoir constructed under Permit R-5964.

Period of Use: Irrigation season, March 1-October 31 from direct diversion and year round from reservoir storage.

Source: Spring Area, Spring 3, Unnamed Stream 2, Unnamed Stream 3 and Reservoir constructed under Permit R-5964, tributary to Arata Creek

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Source	Measured Distances
1 N	3 E	WM	34	SW NW	55	SPRING 3	500 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	STREAM 3	240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	RESERVOIR	160 FEET SOUTH AND 930 FEET EAST FROM THE NW CORNER OF DLC 55

Twp	Rng	Mer	Sec	Q-Q	DLC	Source	Measured Distances
1 N	3 E	WM	34	SE NW	55	SPRING AREA	440 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	STREAM 2	370 FEET SOUTH AND 1080 FEET EAST FROM THE NW CORNER OF DLC 55

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NE	57	7.7
1 N	3 E	WM	34	SE NE	57	7.7
1 N	3 E	WM	34	SE SW	55	24.4
1 N	3 E	WM	34	NE SE	57	36.7
1 N	3 E	WM	34	NW SE	57	17.2
1 N	3 E	WM	34	SW SE	57	6.1
1 N	3 E	WM	34	SW SE	55	2.1
1 N	3 E	WM	34	SW SE	54	3.0
1 N	3 E	WM	34	SE SE	57	25.0
1 N	3 E	WM	35	NW SW	57	3.5
1 N	3 E	WM	35	SW SW	57	3.0
Total:						136.4

12. The portion of the third right to be transferred is as follows:

Certificate: 45429 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit R-5964)
Use: STORAGE FOR IRRIGATION AND SUPPLEMENTAL IRRIGATION appropriated under Permits S-36765 and S-36772
Priority Date: JUNE 6, 1973
Limit: 7.0 ACRE FEET
Source: SPRING 3, Spring Area, and 2 Unnamed Streams, tributary to ARATA CREEK

Authorized Place of Use:

STORAGE FOR IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	SW NW	55

13. Storage is allowed November 1-June 30 in McGill Reservoir for release throughout the year.

14. The portion of the fourth right to be transferred is as follows:

Certificate: 45430 in the name of PETER K. MCGILL, DBA: A. MCGILL & SON (perfected under Permit S-36772)
Use: SUPPLEMENTAL IRRIGATION of 51.2 ACRES
Priority Date: JUNE 6, 1973
Rate: 0.243 CUBIC FOOT PER SECOND, being 0.045 cfs from Spring 3, 0.063 cfs from Unnamed Stream 2 and 0.14 cfs from Unnamed Stream 3.

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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage [up to 7.0 AF in combination with Certificate 45430] from reservoir constructed under Permit R-5964.

Source: Spring 3, Unnamed Stream 2, Unnamed Stream 3 and Reservoir constructed under Permit R-5964, tributary to Arata Creek

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Source	Measured Distances
1 N	3 E	WM	34	SW NW	55	Spring 3	500 FEET SOUTH AND 700 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SW NW	55	Reservoir	160 FEET SOUTH AND 930 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	Stream 3	240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF DLC 55
1 N	3 E	WM	34	SE NW	55	Stream 2	370 FEET SOUTH AND 1080 FEET EAST FROM THE NW CORNER OF DLC 55

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NW	55	3.8
1 N	3 E	WM	34	NE SW	55	4.4
1 N	3 E	WM	34	NW SW	55	22.5
1 N	3 E	WM	34	SW SW	55	17.0
1 N	3 E	WM	34	SE SW	55	3.5
Total:						51.2

15. The period of use is limited to the irrigation season, being March 1 through October 31.
16. The portion of the fifth right to be transferred is as follows:
 - Certificate:** 87783 in the name of PORT OF PORTLAND (perfected under Permit G-15170)
 - Use:** NURSERY USES on 151.3 ACRES
 - Priority Date:** MARCH 15, 2001
 - Rate:** 0.78 CUBIC FOOT PER SECOND
 - Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second, or its equivalent, and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic

foot per second, or its equivalent, and 2.5 acre-feet per acre per year, for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second, or its equivalent and 2.5 acre-feet per acre per year.

Period of Use: Year round.

Source: WELL 3 within the ARATA CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 N	3 E	WM	34	SW SE	55	585 FEET NORTH AND 50 FEET EAST FROM THE S1/4 CORNER OF SECTION 34

Authorized Place of Use:

NURSERY USES						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	3 E	WM	34	SW NE	57	5.8
1 N	3 E	WM	34	SE NE	57	6.0
1 N	3 E	WM	34	NE SW	55	1.8
1 N	3 E	WM	34	NW SW	55	10.1
1 N	3 E	WM	34	SW SW	55	15.1
1 N	3 E	WM	34	SE SW	55	22.6
1 N	3 E	WM	34	NE SE	57	35.1
1 N	3 E	WM	34	NW SE	57	16.3
1 N	3 E	WM	34	SW SE	57	5.9
1 N	3 E	WM	34	SW SE	54	2.0
1 N	3 E	WM	34	SW SE	55	1.0
1 N	3 E	WM	34	SE SE	57	24.1
1 N	3 E	WM	35	NW SW	57	3.0
1 N	3 E	WM	35	SW SW	57	2.5
Total:						151.3

17. The total maximum annual amount authorized under Certificate 87783 for nursery use is 5.0 AF per acre x 151.3 acres = 756.5 AF annually, at a diversion rate of 0.78 cfs year round.
18. Transfer Application T-11481 proposes to change the character of use of all the above rights to municipal uses year round.
19. Transfer Application T-11481 proposes to change the place of use of all the above rights to:

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	SW NE	57
1 N	3 E	WM	34	SE NE	55
1 N	3 E	WM	34	SE NE	57
1 N	3 E	WM	34	SW NW	55
1 N	3 E	WM	34	SE NW	55
1 N	3 E	WM	34	NE SW	55
1 N	3 E	WM	34	NW SW	55
1 N	3 E	WM	34	SW SW	55
1 N	3 E	WM	34	SE SW	55

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	3 E	WM	34	NE SE	57
1 N	3 E	WM	34	NW SE	57
1 N	3 E	WM	34	NW SE	55
1 N	3 E	WM	34	SW SE	54
1 N	3 E	WM	34	SW SE	55
1 N	3 E	WM	34	SW SE	57
1 N	3 E	WM	34	SE SE	57
1 N	3 E	WM	35	NW SW	57
1 N	3 E	WM	35	SW SW	57

20. Transfer Application T-11481 proposes to change the point of diversion for the portion of Certificates 14525 and add a point of diversion for Certificates 45428, 45429 and 45430 involved in this transfer at the following location:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 E	WM	34	SW NW	240 FEET SOUTH AND 1000 FEET EAST FROM THE NW CORNER OF MOLLOY DLC 55

21. The applicant has requested a period of 20 years from issuance of the Final Order for completion of the changes.

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

22. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
23. Pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11481.
24. The applicant proposes to extend the season for the portions of the rights being converted from irrigation uses, from the irrigation season (March 1 through October 31) to year round. Diverting continuously year round at the existing rates would exceed the annual duty. To avoid enlargement or injury to other users, continuous rates of diversion would need to be pro-rated downward in order not to exceed the following values. However, if the water user were to divert water at a variable rate to meet changing needs, and maintain measurement devices or flow restrictors to ensure that the diversion rate does not exceed the original rates at any time during the year, and that the annual volume does not exceed the limits of the rights as stated below, the rights would not be enlarged:

Certificate	Maximum rate, if diverted year round at a variable rate	Maximum Annual Volume (AF/yr)
14525	Spring 1: 0.13 cfs Spring 2: 0.45 cfs Stream: 0.13 cfs Total: up to 0.71 cfs, limited to no more than 0.82 cfs in combination with Certificate 45430	Converted from irrigation: 64.6 ac x 2.5 AF/ac = 161.5 AF Converted from domestic: 184 gpd per person (City of Gresham information) x 3.7 persons/household in 1940 US Census = 680.8 gpd x 365 days = 248,492 gallons/year ÷325,850 gal per AF = 0.76 AF Total = 162.26 AF , in combination with water from Certificate 45430
45428	Spring area: 0.10 cfs Spring 3: 0.03 cfs Stream 2: 0.13 cfs Stream 3: 0.09 cfs Total: up to 0.35 cfs	136.4 ac x 2.5 AF = up to 341 AF ; including up to 7.0 AF from McGill Reservoir , in combination with Certificate 45430
45429	Rate not specified for storage 11/1-6/30 from Spring, spring area and 2 unnamed streams	7.0 AF
45430	Spring 3: 0.045 cfs Stream 2: 0.063 cfs Stream 3: 0.135 cfs Total: up to 0.243 cfs, limited to no more than 0.82 cfs in combination with Certificate 14525	51.2 ac x 2.5 AF = up to 128 AF , (including up to 7.0 AF from McGill Reservoir , in combination with Certificate 45428); provided use in combination with Certificate 14525 does not exceed 162.26 AF
87783	0.78 cfs from Well 3	151.3 ac x 5.0 AF/ac = 756.5 AF

25. The proposed changes, as conditioned above and with agreement to measure and monitor the diversion rate and maximum annual volume so that the limits in the above table are not exceeded, would not result in enlargement of the rights.
26. The applicant requested in the application that the transferred rights be structured to allow year round municipal use while retaining the full rate listed on the current certificates, limited to an annual volume based on the irrigation season duty limit. On October 2, 2013, the applicant agreed to condition the year round municipal use under the transferred rights, to allow variable rates with maximum limits as illustrated in the table in Finding of Fact #24 above, so as not to exceed the maximum annual volume (also described in the table above.)
27. Annual reporting of monthly water use is required to be submitted to the Department each year under the provisions of ORS 537.099 and OAR 690-085.
28. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in place of use and character of use proposed in Transfer Application T-11481, as conditioned, appear 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.

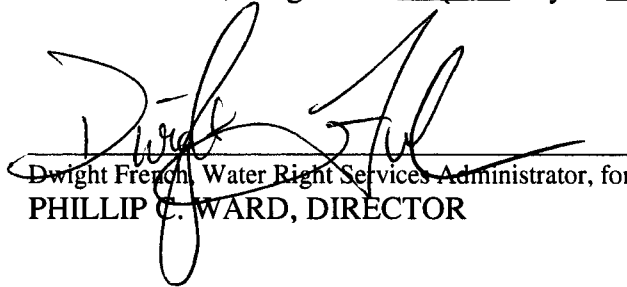
If Transfer Application T-11481 is approved, the final order will include the following:

1. *The additional point of diversion and changes in place of use, point of diversion and character of use proposed in Transfer Application T-11481 are approved, as conditioned.*
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 Certificates 14525, 45428, 45429, 45430 and 87783 and any related decree.*
3. *Water right certificates 14525, 45428, 45429, 45430 and 87783 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.*
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 each 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. *Reservoir water use measurement:*
 - a. *Before water use may begin under this order, the water user shall install a staff gage, or, with prior approval of the Director, other suitable measuring device, that measures the entire range and stage between empty and full in the reservoir. The staff gage shall be United States Geological Survey style.*
 - b. *Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*
6. *The portions of the former place of use from which water rights have been transferred, that are not included in the proposed place of use, shall no longer receive water under the rights.*
7. *The year round municipal use under the transferred rights shall allow variable diversion rates with maximum limits as described in the table in Finding of Fact #24, so as not to exceed the maximum annual volume also described in the table in Finding of Fact #24.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2033**. 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.

9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of March, 2014.


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

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