



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**  
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725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
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June 11, 2014

VIA E-MAIL

**Applicant**

City of Rockaway Beach  
c/o City Manager, Lars Gare  
P.O. Box 5  
Rockaway, Oregon 97136  
[LukeShepard@rockawaybeach.or.us](mailto:LukeShepard@rockawaybeach.or.us)

**Agent**

Stuntzner Engineering and Forestry  
2137 19<sup>th</sup> Ave.  
Forest Grove, Oregon 97116  
[ericurstadt@stuntzner.com](mailto:ericurstadt@stuntzner.com)

SUBJECT: Water Right Transfer Application T-11477

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-11477. At this point, you may accept the Department's determination, file a protest pursuant to OAR 690-380-4030, or pursue consent to injury pursuant to OAR 690-380-5050.

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 503-986-0892 or [Joan.M.Smith@ wrd.state.or.us](mailto:Joan.M.Smith@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11477  
District 1 Watermaster (via e-mail)  
encs

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-11477, Tillamook County                    )    DENYING AN ADDITIONAL  
  )    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.

**Applicant**

CITY OF ROCKAWAY BEACH  
C/O CITY MANAGER, LARS GARE  
PO BOX 5  
ROCKAWAY, OR 97136

**Findings of Fact**

***Background***

1. On September 19, 2012, CITY OF ROCKAWAY BEACH filed an application for an additional point of diversion under Certificate 47952. The Department assigned the application number T-11477.
2. Notice of the application for transfer was published on October 2, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 11, 2013, the Department received clarification from the applicants’ agent that the change requested is for an additional point of diversion.
4. On September 18, 2013, the Department sent the applicant a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11477 . The draft Preliminary Determination cover letter set forth a deadline of October 21, 2013, for the applicant to respond. The applicant did not respond.
5. On December 20, 2013, the applicant contacted the Tillamook County Watermaster and indicated that they would not be pursuing the Transfer at this time.

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.

6. The right to be transferred is as follows:

**Certificate:** 47952 in the name of CITY OF ROCKAWAY (perfected under Permit S-34498)  
**Use:** MUNICIPAL USES  
**Priority Date:** DECEMBER 8, 1969  
**Rate:** 1.0 CUBIC FOOT PER SECOND  
**Source:** JETTY CREEK, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 N	10 W	WM	17	NE SE	3	1700 FEET NORTH AND 300 FEET WEST FROM THE SE CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 N	10 W	WM	5	NW NW
1 N	10 W	WM	5	SW NW
1 N	10 W	WM	5	NE SW
1 N	10 W	WM	5	NW SW
1 N	10 W	WM	5	SW SW
1 N	10 W	WM	5	SE SW
1 N	10 W	WM	6	NE NE
1 N	10 W	WM	6	NW NE
1 N	10 W	WM	6	SW NE
1 N	10 W	WM	6	SE NE
1 N	10 W	WM	6	NE NW
1 N	10 W	WM	6	NW NW
1 N	10 W	WM	6	SW NW
1 N	10 W	WM	6	SE NW
1 N	10 W	WM	6	NE SW
1 N	10 W	WM	6	NW SW
1 N	10 W	WM	6	SW SW
1 N	10 W	WM	6	SE SW
1 N	10 W	WM	6	NE SE
1 N	10 W	WM	6	NW SE
1 N	10 W	WM	6	SW SE
1 N	10 W	WM	6	SE SE
2 N	10 W	WM	17	NE SE
2 N	10 W	WM	17	SW SE
2 N	10 W	WM	17	SE SE
2 N	10 W	WM	20	NE NE
2 N	10 W	WM	20	NW NE
2 N	10 W	WM	20	SW NE
2 N	10 W	WM	20	NE NW
2 N	10 W	WM	20	SE NW
2 N	10 W	WM	20	NE SW
2 N	10 W	WM	20	SE SW
2 N	10 W	WM	20	NW SE
2 N	10 W	WM	29	NE NW
2 N	10 W	WM	29	NW NW
2 N	10 W	WM	29	SW NW
2 N	10 W	WM	29	SE NW

Twp	Rng	Mer	Sec	Q-Q
2 N	10 W	WM	29	NE SW
2 N	10 W	WM	29	NW SW
2 N	10 W	WM	29	SW SW
2 N	10 W	WM	29	SE SW
2 N	10 W	WM	32	NW NW
2 N	10 W	WM	32	SW NW
2 N	10 W	WM	32	SE NW
2 N	10 W	WM	32	NE SW
2 N	10 W	WM	32	NW SW
2 N	10 W	WM	32	SW SW
2 N	10 W	WM	32	SE SW
2 N	10 W	WM	32	NW SE
2 N	10 W	WM	32	SW SE

7. Certificate 47952 describes the authorized location of the point of diversion as in the previous finding, however the applicant has supplied a description that better describes the location as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 N	10 W	WM	17	NE SE	3	1680 FEET NORTH AND 280 FEET WEST FROM THE SE CORNER OF SECTION 17

8. Transfer Application T-11477 proposes an additional point of diversion approximately 200 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 W	WM	17	NE SE	1830 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF SECTION 17

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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


10. Water has been used within the five-year period prior to submittal of the transfer application 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.
11. A pump and pipeline and a municipal 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-11477.
12. The proposed change would not result in enlargement of the right.
13. An instream water right, Certificate 59625, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed additional point of diversion.

### Determination and Proposed Action

The additional point of diversion proposed in Transfer application T-11477 appears NOT to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be denied unless:

- Pursuant to OAR 690-380-4030, the applicant notifies the Department that the applicant intends to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 and the ODFW recommends that the Department consent to injury of an instream water right, or
- Protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 18 day of June 2014.

  
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Dwight French, Water Right Services Administrator, for  
Director  
Oregon Department of Water Resources

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or [Joan.M.Smith@wrds.state.or.us](mailto:Joan.M.Smith@wrds.state.or.us)

Protests should be addressed to the attention of Water Right Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266