



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 1, 2014

VIA E-MAIL

CITY OF FOREST GROVE
1928 COUNCIL ST
FOREST GROVE, OR 97116

SUBJECT: Water Right Transfer Application T-11677

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11677. 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 Forest Grove Times News 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 503-986-0892 or Joan.M.Smith@ wrd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist

cc: T-11677
Mike McCord, Northwest Region Manager (*via e-mail*)
Jake Constans, District 18 Watermaster (*via e-mail*)
Adam Sussman, Agent for the applicant (*via e-mail*)
Theodore R. Ressler, CWRE (*via e-mail*)

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

In the Matter of Transfer Application)
T-11677, Washington County)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF 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 FOREST GROVE
1928 COUNCIL ST
FOREST GROVE, OR 97116-0326

Findings of Fact

- 1. On October 21, 2013, CITY OF FOREST GROVE filed an application for an additional point of diversion under Certificate 85513. The Department assigned the application number T-11677.
- 2. Notice of the application for transfer was published on October 29, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On April 30, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve the change in the point of diversion requested by Transfer Application T-11677. The draft Preliminary Determination set forth a deadline of May 30, 2014, for the applicant to respond. The applicant requested that the Department proceed with the issuance of a Preliminary Determination.
- 4. After issuance of the draft Preliminary Determination for Transfer Application T-11677, and upon further review, it was found that Department staff failed to incorporate conditions necessary to determine if water is available at the original point of diversion during the low flow season of June 1 to September 30 of each year.
- 5. On June 7, 2014, in cooperation with the Applicant, Applicant’s agent, and the Watermaster a revised draft set forth a deadline of July 17, 2014 for the applicant to respond.
- 6. On June 25, 2014, the Applicant’s Agent requested Transfer Application T-11677, be placed on administrative hold.

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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7. On October 29, 2014, the Applicant's agent requested the removal of the administrative hold and responded to the Revised Draft Preliminary Determination.

8. The right to be transferred is as follows:

Certificate: 85513 in the name of CITY OF FOREST GROVE (perfected under Permit S-17549)

Use: MUNICIPAL USES

Priority Date: FEBRUARY 14, 1947

Rate: 4.46 CUBIC FEET PER SECOND

Source: GALES CREEK, tributary to the TUALATIN RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	4 W	WM	27	NE SW	2149 FEET NORTH AND 1821 FEET EAST FROM THE SW CORNER OF SECTION 27

Authorized Place of Use:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
1 N	3 W	WM	30	SW SW
1 N	3 W	WM	30	SE SW
1 N	3 W	WM	31	NE NE
1 N	3 W	WM	31	NW NE
1 N	3 W	WM	31	SW NE
1 N	3 W	WM	31	SE NE
1 N	3 W	WM	31	NE NW
1 N	3 W	WM	31	NW NW
1 N	3 W	WM	31	SW NW
1 N	3 W	WM	31	SE NW
1 N	3 W	WM	31	NE SW
1 N	3 W	WM	31	NW SW
1 N	3 W	WM	31	SW SW
1 N	3 W	WM	31	SE SW
1 N	3 W	WM	31	NE SE
1 N	3 W	WM	31	NW SE
1 N	3 W	WM	31	SW SE
1 N	3 W	WM	31	SE SE
1 N	4 W	WM	25	NE SE
1 N	4 W	WM	25	NW SE
1 N	4 W	WM	25	SW SE
1 N	4 W	WM	25	SE SE
1 N	4 W	WM	36	NE NE
1 N	4 W	WM	36	NW NE
1 N	4 W	WM	36	SW NE
1 N	4 W	WM	36	SE NE
1 N	4 W	WM	36	NE NW
1 N	4 W	WM	36	NW NW
1 N	4 W	WM	36	SW NW
1 N	4 W	WM	36	SE NW
1 N	4 W	WM	36	NE SW
1 N	4 W	WM	36	NW SW
1 N	4 W	WM	36	SW SW

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
1 N	4 W	WM	36	SE SW
1 N	4 W	WM	36	NE SE
1 N	4 W	WM	36	NW SE
1 N	4 W	WM	36	SW SE
1 N	4 W	WM	36	SE SE
1 S	3 W	WM	5	NE NW
1 S	3 W	WM	5	NW NW
1 S	3 W	WM	5	SW NW
1 S	3 W	WM	5	SE NW
1 S	3 W	WM	6	NE NE
1 S	3 W	WM	6	NW NE
1 S	3 W	WM	6	SW NE
1 S	3 W	WM	6	SE NE
1 S	3 W	WM	6	NE NW
1 S	3 W	WM	6	NW NW
1 S	3 W	WM	6	SW NW
1 S	3 W	WM	6	SE NW
1 S	3 W	WM	6	NE SW
1 S	3 W	WM	6	NW SW
1 S	3 W	WM	6	SW SW
1 S	3 W	WM	6	SE SW
1 S	3 W	WM	6	NE SE
1 S	3 W	WM	6	NW SE
1 S	3 W	WM	6	SW SE
1 S	3 W	WM	6	SE SE
1 S	4 W	WM	1	NE NE
1 S	4 W	WM	1	NW NE
1 S	4 W	WM	1	SW NE
1 S	4 W	WM	1	SE NE
1 S	4 W	WM	1	NE NW
1 S	4 W	WM	1	NW NW
1 S	4 W	WM	1	SW NW
1 S	4 W	WM	1	SE NW

9. Transfer Application T-11677 proposes an additional point of diversion approximately five miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	8	SW SW	SPRING HILL INTAKE: 500 FEET NORTH AND 410 FEET EAST FROM THE SW CORNER OF SECTION 8

10. The Oregon Department of Fish and Wildlife (ODFW) have 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 currently equipped with an appropriate fish screen.

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

11. Water has been used within the last five years 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.

12. A diversion structure and ditch 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-11677.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Determination and Proposed Action


The additional point of diversion proposed in Transfer Application T-11677 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-11677 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-11677 is approved.*
2. *Except as provided in ORS 540.510(3)(a) 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 85513 and any related decree.*
3. *Water right Certificate 85513 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed 4.46 cubic feet per second (cfs), and shall not exceed the quantity of water lawfully available at the original point of diversion (POD) under the subject right.*
5. *In the event a need arises to distribute water to benefit this water right, the Department will only distribute water to make water available to the subject water right at the original point of diversion.*
6. *This water right may be used at the additional point of diversion during the period of June 1 to September 30, only if the applicant installs a suitable stream-flow gaging station with telemetry at or near the original point of diversion on Gales Creek. Such installation shall be made under the supervision of and approved by the Watermaster. This condition does not apply to use of water at the original point of diversion.*
7. *The applicant, following USGS protocol and standards, shall operate and maintain the stream-flow gaging station during the period of June 1 through September 30 of each year. A minimum of eight flow measurements, at various rates of flow, are required during the first full period of operation, one measurement every four to six weeks is required thereafter. The stream-flow and gage height data shall be collected for ten years, if after ten years of operation it can be demonstrated that the flows are available at the original point of diversion location, the Department may discontinue the requirement of operating the gaging station. Otherwise, the condition may continue into the future. Measurement and flow data shall be completed to the Department's standards and provided to the Department as it is collected.*

8. *The applicant can satisfy the stream-flow gage requirement above by entering into an agreement with the Department to have the Department install and maintain the required gage.*
9. *The quantity of water diverted at the additional point of diversion shall be considered the first water appropriated in calculating or determining the quantity of water appropriated under any subsequent right to divert water at the additional point of diversion. .*
10. *Water use measurement conditions:*
 - a. *Before diverting water at the additional point of diversion, 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 (new and existing).*
 - 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.*
11. *The water users shall operate, inspect, and maintain the existing intake system (checking seals, integrity of screens, etc.) as needed to function as designed and at a minimum of once per year. If ODFW determines the screen is not functioning properly and is unsuccessful in working with the water users to meet functioning requirements, ODFW may request the Oregon Department of Water Resources (OWRD) regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2035**. 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.*
13. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 2 day of December, 2014.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

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@ wrd.state.or.us

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