



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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December 15, 2014

VIA E-MAIL

POLEHN HEIGHTS WATER ASSOCIATION INC.
PO BOX 1434
OREGON CITY, OR 97045

SUBJECT: Water Right Transfer Application T-11759

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11759. 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 Tracy.L.Fox@wr.d.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-11759
Amy Kim, District 20 Watermaster (*via e-mail*)
Sheila H. Wahl Consulting, LLC, Agent for the applicant (*via e-mail*)
Gregory E. Kupillas, CWRE #432 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11759, Clackamas 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

POLEHN HEIGHTS WATER ASSOCIATION INC.
PO BOX 1434
OREGON CITY, OR 97045

Findings of Fact

1. On March 11, 2014, POLEHN HEIGHTS WATER ASSOCIATION INC. filed an application for an additional point of appropriation under Certificate 77016. The Department assigned the application number T-11759.
2. Notice of the application for transfer was published on March 18, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 26, 2014, the Department contacted Sheila Wahl, the applicant’s agent, by email to notify the applicant’s agent of a minor deficiency in the application. The Department requested that the deficiency be resolved by October 24, 2014. On October 21, 2014, the applicant’s agent submitted an amended application page resolving the deficiency.
4. On October 23, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11759 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 24, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. The right to be transferred is as follows:

Certificate: 77016 in the name of POLEHN HEIGHTS WATER ASSOCIATION, INC.
 (perfected under Permit G-10673)

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.

Use: DOMESTIC USE FOR 44 FAMILIES INCLUDING THE IRRIGATION OF ONE-HALF ACRE LAWN AND NON-COMMERCIAL GARDEN FOR EACH FAMILY

Priority Date: APRIL 29, 1986 – FOR 0.016 CUBIC FOOT PER SECOND (CFS) AND OCTOBER 10, 1986 – FOR 0.114 CFS

Rate: 0.13 CUBIC FOOT PER SECOND

Source: A WELL in the SOAP CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	3 E	WM	21	NE NE	58	1290 FEET SOUTH AND 410 FEET WEST FROM THE NE CORNER OF SECTION 21

Authorized Place of Use:

DOMESTIC EXPANDED						
Twp	Rng	Mer	Sec	Q-Q	DLC	# of Families
3 S	3 E	WM	21	NE NE	58	21
3 S	3 E	WM	21	SE NE	58	9
3 S	3 E	WM	22	NW NW	58	5
3 S	3 E	WM	22	SW NW	58	8
3 S	3 E	WM	22	NW SW	58	1

6. Information is available from the applicant and the Certified Water Rights Examiner (CWRE) that more accurately describes the location of the authorized point of appropriation as being:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	3 E	WM	21	NE NE	58	WELL 1 - 1210 FEET SOUTH AND 480 FEET WEST FROM THE NE CORNER OF SECTION 21

7. Transfer Application T-11759 proposes an additional point of appropriation approximately 50 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
3 S	3 E	WM	21	NE NE	58	WELL 2 - 1160 FEET SOUTH AND 470 WEST FROM THE NE CORNER OF SECTION 21

Transfer Review Criteria (OAR 690-380-4010)

8. 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.
9. A pump, pipeline, and 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-11759.
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.

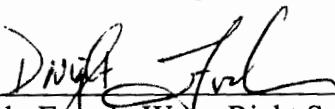
Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11759 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-500. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11759 is approved, the final order will include the following:

- 1. The additional point of appropriation proposed in Transfer Application T-11759 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 77016 and any related decree.*
- 3. Water right Certificate 77016 is cancelled.*
- 4. The quantity of water diverted at the 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 shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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 10 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 Tracy Fox. If you have questions about the information in this document, you may reach me at 503-986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.