



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1266  
503-986-0900  
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December 21, 2005

City of Philomath  
Department of Public Works  
P.O. Box 400  
Philomath, Oregon 97370

SUBJECT: Transfer Application T-8527

Please find enclosed a copy of the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-8527.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day 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.

Because a new character of use is proposed for the water rights, the applicant is responsible for giving public notice of the transfer change(s) in a local newspaper having a general circulation in the area of the water right (newspapers with statewide circulation such as the Capital Press, Journal of Commerce, etc. do not qualify). The notice must be published at least once a week for three consecutive weeks. I have prepared the notice for you (enclosed). The deadline for individuals to file protests or standing statements is 30 days after the date of last publication. Please have the newspaper insert the date of last publication in the proper place.

After publication, the Department needs to receive an affidavit specifying the dates the notice was published. Please request an **affidavit of publication** from the newspaper following publication and send it to me, Kelly Starnes, at the address at the top of the letter.

**Payment of the cost of publication in the local newspaper is your responsibility; please do not send any billing to the Water Resources Department.**

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.

Sincerely,

Kelly Starnes  
Northwest Region Transfer Processor

cc: Ken Wilcke, acting District 16 Watermaster  
Walt Trimmer, CWRE  
Bill Pearcy

encs

**Notice of Preliminary Determination for  
Water Right Transfer T-8527**

T-8527 filed by City of Philomath, proposes a change in place of use and character of use under Certificates 33572 and 48112. Certificate 33572 allows the use of 0.19 cfs (priority date November 5, 1964) from a diversion in Sec. 13, T 12 S, R 6 W, W.M. (Marys River Basin) for irrigation in Sec. 13. Certificate 48112 allows the use of 1.00 cfs (priority date December 8, 1952) from a diversion in Sec. 18, T 12 S, R 5 W, W.M. (Marys River Basin) for irrigation in Sec. 13, T 12 S, R 5 W, W.M. and Sects 18 and 19, T 12 S, R 5 W, W.M.. The applicant proposes to change the character of use to municipal use; and to change the place of use to Sects. 1, 2, 11, 12, and 13, T 12 S, R 6 W, W.M. and Sects 6, 7, and 18, T 12 S, R 5 W, W.M.. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0881. The last date of newspaper publication is [DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

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

In the Matter of Transfer Application            )  
T-8527, Benton County                            )  
  )  
  )    **PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF A  
CHANGE IN CHARACTER OF USE  
AND PLACE OF USE**

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 Philomath  
Department of Public Works  
P.O. Box 400  
Philomath, Oregon 97370

**Findings of Fact**

1. City of Philomath filed an application to add a point of diversion and to change the character of use and place of use under Certificates 33572 and 48112. The Department assigned the application number T-8527.
2. On February 1, 2005, the Department notified the applicant of its conclusion that the proposed additional point of diversion would cause injury to an instream water right.
3. On September 8, 2005, the applicant amended the transfer application by removing the request for an additional point of diversion.
4. The portions of the rights to be transferred are as follows:

**Certificate:** 33572 in the name of Gilbert Faxon  
**Use:** Irrigation  
**Priority Date:** November 5, 1964  
**Quantity:** 0.19 cubic foot per second  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre  
**Acres:** 15.4 acres  
**Source:** Marys River, tributary to the Willamette River

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 transfer application and preliminary determination.

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	6	W	W.M.	13	SE	NE	51	1730 feet South and 330 feet West from the NW Corner of Liggetts DLC 52.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
12	S	6	W	W.M.	13	NE	SE	51	10.9
12	S	6	W	W.M.	13	SE	SE	51	4.5

**Certificate:** 48112 in the name of William Leiner

**Use:** Irrigation

**Priority Date:** December 8, 1952

**Quantity:** 1.0 cubic foot per second, if available at the original point of diversion

**Rate/Duty:** 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre

**Acres:** 80.8 acres

**Source:** Marys River, tributary to the Willamette River

**Original Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	5	W	W.M.	18	SW	NW	52	South 30°28' East 26.2 chains from the NW Corner of E. Liggetts DLC 52.

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
12	S	5	W	W.M.	18	SW	NW	52	1840 feet South and 630 feet East from the NW Corner of E. Liggetts DLC 52.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		DLC	Acres
12	S	5	W	W.M.	18	SW	NW	52	1.8
12	S	5	W	W.M.	18	NW	SW	52	32.8
12	S	5	W	W.M.	18	SW	SW	52	33.6
12	S	5	W	W.M.	19	NW	NW	52	6.0
12	S	6	W	W.M.	13	NE	SE	52	4.0
12	S	6	W	W.M.	13	SE	SE	52	2.6

5. Application T-8527 proposes to change the place of use of both rights to:

Township		Range		Meridian	Sec	¼ ¼	
12	S	5	W	W.M.	6	NE	NE
12	S	5	W	W.M.	6	NW	NE
12	S	5	W	W.M.	6	SW	NE
12	S	5	W	W.M.	6	SE	NE
12	S	5	W	W.M.	6	NE	NW
12	S	5	W	W.M.	6	NW	NW
12	S	5	W	W.M.	6	SW	NW
12	S	5	W	W.M.	6	SE	NW
12	S	5	W	W.M.	6	NE	SW
12	S	5	W	W.M.	6	NW	SW
12	S	5	W	W.M.	6	SW	SW
12	S	5	W	W.M.	6	SE	SW
12	S	5	W	W.M.	6	NE	SE
12	S	5	W	W.M.	6	NW	SE
12	S	5	W	W.M.	6	SW	SE
12	S	5	W	W.M.	6	SE	SE
12	S	5	W	W.M.	7	NE	NE
12	S	5	W	W.M.	7	NW	NE
12	S	5	W	W.M.	7	SW	NE
12	S	5	W	W.M.	7	SE	NE
12	S	5	W	W.M.	7	NE	NW
12	S	5	W	W.M.	7	NW	NW
12	S	5	W	W.M.	7	SW	NW
12	S	5	W	W.M.	7	SE	NW
12	S	5	W	W.M.	7	NE	SW
12	S	5	W	W.M.	7	NW	SW
12	S	5	W	W.M.	7	SW	SW
12	S	5	W	W.M.	7	SE	SW
12	S	5	W	W.M.	7	NE	SE
12	S	5	W	W.M.	7	NW	SE
12	S	5	W	W.M.	7	SW	SE
12	S	5	W	W.M.	7	SE	SE
12	S	5	W	W.M.	18	NE	NE
12	S	5	W	W.M.	18	NW	NE
12	S	5	W	W.M.	18	SW	NE
12	S	5	W	W.M.	18	SE	NE
12	S	5	W	W.M.	18	NE	NW

Township		Range		Meridian	Sec	¼ ¼	
12	S	5	W	W.M.	18	NW	NW
12	S	5	W	W.M.	18	SW	NW
12	S	5	W	W.M.	18	SE	NW
12	S	5	W	W.M.	18	NE	SW
12	S	5	W	W.M.	18	NW	SW
12	S	5	W	W.M.	18	SW	SW
12	S	5	W	W.M.	18	SE	SW
12	S	5	W	W.M.	18	NE	SE
12	S	5	W	W.M.	18	NW	SE
12	S	5	W	W.M.	18	SW	SE
12	S	5	W	W.M.	18	SE	SE
12	S	6	W	W.M.	1	NE	NE
12	S	6	W	W.M.	1	NW	NE
12	S	6	W	W.M.	1	SW	NE
12	S	6	W	W.M.	1	SE	NE
12	S	6	W	W.M.	1	NE	NW
12	S	6	W	W.M.	1	NW	NW
12	S	6	W	W.M.	1	SW	NW
12	S	6	W	W.M.	1	SE	NW
12	S	6	W	W.M.	1	NE	SW
12	S	6	W	W.M.	1	NW	SW
12	S	6	W	W.M.	1	SW	SW
12	S	6	W	W.M.	1	SE	SW
12	S	6	W	W.M.	1	NE	SE
12	S	6	W	W.M.	1	NW	SE
12	S	6	W	W.M.	1	SW	SE
12	S	6	W	W.M.	1	SE	SE
12	S	6	W	W.M.	2	NE	NE
12	S	6	W	W.M.	2	NW	NE
12	S	6	W	W.M.	2	SW	NE
12	S	6	W	W.M.	2	SE	NE
12	S	6	W	W.M.	2	NE	NW
12	S	6	W	W.M.	2	NW	NW
12	S	6	W	W.M.	2	SW	NW
12	S	6	W	W.M.	2	SE	NW
12	S	6	W	W.M.	2	NE	SW
12	S	6	W	W.M.	2	NW	SW
12	S	6	W	W.M.	2	SW	SW

Township		Range		Meridian	Sec	¼ ¼	
12	S	6	W	W.M.	2	SE	SW
12	S	6	W	W.M.	2	NE	SE
12	S	6	W	W.M.	2	NW	SE
12	S	6	W	W.M.	2	SW	SE
12	S	6	W	W.M.	2	SE	SE
12	S	6	W	W.M.	11	NE	NE
12	S	6	W	W.M.	11	NW	NE
12	S	6	W	W.M.	11	SW	NE
12	S	6	W	W.M.	11	SE	NE
12	S	6	W	W.M.	11	NE	NW
12	S	6	W	W.M.	11	NW	NW
12	S	6	W	W.M.	11	SW	NW
12	S	6	W	W.M.	11	SE	NW
12	S	6	W	W.M.	11	NE	SW
12	S	6	W	W.M.	11	NW	SW
12	S	6	W	W.M.	11	SW	SW
12	S	6	W	W.M.	11	SE	SW
12	S	6	W	W.M.	11	NE	SE
12	S	6	W	W.M.	11	NW	SE
12	S	6	W	W.M.	11	SW	SE
12	S	6	W	W.M.	11	SE	SE
12	S	6	W	W.M.	12	NE	NE
12	S	6	W	W.M.	12	NW	NE
12	S	6	W	W.M.	12	SW	NE
12	S	6	W	W.M.	12	SE	NE
12	S	6	W	W.M.	12	NE	NW
12	S	6	W	W.M.	12	NW	NW
12	S	6	W	W.M.	12	SW	NW
12	S	6	W	W.M.	12	SE	NW
12	S	6	W	W.M.	12	NE	SW
12	S	6	W	W.M.	12	NW	SW
12	S	6	W	W.M.	12	SW	SW
12	S	6	W	W.M.	12	SE	SW
12	S	6	W	W.M.	12	NE	SE
12	S	6	W	W.M.	12	NW	SE
12	S	6	W	W.M.	12	SW	SE
12	S	6	W	W.M.	12	SE	SE
12	S	6	W	W.M.	13	NE	NE

Township		Range		Meridian	Sec	¼ ¼	
12	S	6	W	W.M.	13	NW	NE
12	S	6	W	W.M.	13	SW	NE
12	S	6	W	W.M.	13	SE	NE
12	S	6	W	W.M.	13	NE	NW
12	S	6	W	W.M.	13	NW	NW
12	S	6	W	W.M.	13	SW	NW
12	S	6	W	W.M.	13	SE	NW
12	S	6	W	W.M.	13	NE	SW
12	S	6	W	W.M.	13	NW	SW
12	S	6	W	W.M.	13	SW	SW
12	S	6	W	W.M.	13	SE	SW
12	S	6	W	W.M.	13	NE	SE
12	S	6	W	W.M.	13	NW	SE
12	S	6	W	W.M.	13	SW	SE
12	S	6	W	W.M.	13	SE	SE

6. Application T-8527 proposes to change the character of use of both rights to municipal use.
7. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
8. Water has been used within the last five years according to the terms and conditions of the rights and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. Pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The proposed changes in character of use and place of use in application T-8527 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

If approved, the change and subsequent use of water shall be subject to the following conditions:

1. 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 33572 and 48112 and any related decree.

2. The proposed change shall be completed on or before October 1, 2011.
3. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2012.
4. The quantity of water used for municipal use under the right described by Certificate 33572 shall not exceed a rate of diversion of 0.19 cubic foot per second and a total quantity of water diverted of 38.5 acre feet during the time period April 1 to September 30 of each year.
5. The quantity of water used for municipal use under the right described by Certificate 48112 shall not exceed a rate of diversion of 1.00 cubic foot per second and a total quantity of water diverted of 202.0 acre feet during the time period April 1 to September 30 of each year.
6. The former places of use shall no longer be irrigated as part of these water rights.
7. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

Dated at Salem, Oregon this 19<sup>th</sup> day of December, 2005.

  
for Phillip C. Ward  
Director

*Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271*

This Preliminary Determination was prepared by Kelly Starnes. If you have any questions about the information in this document, you may reach me at (503) 986-0886 or Patrick.K.STARNES@ wrd.state.or.us.