



Water Resources Department

North Mall Office Building 725 Summer St NE, Suite A Salem, OR 97301 Phone (503) 986-0900 Fax (503) 986-0904 www.wrd.state.or.us

November 9, 2015

VIA E-MAIL

CITY OF ROCKAWAY BEACH PO BOX 5 276 HWY 101 S ROCKAWAY BEACH, OR 97136

SUBJECT: Water Right Transfer Application T-11986

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-11986. At this point, based on information you provided the Department will 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 if I may be of assistance.

Sincerely,

Joan Smith Transfer Specialist Transfer and Conservation Section

cc: T-11986 Nikki Hendricks, 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-11986, Tillamook County)	PROPOSING DENIAL 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 ROCKAWAY BEACH C/O CITY MANAGER, LUKE SHEPARD PO BOX 5 ROCKAWAY, OR 97136

Findings of Fact

- 1. On February 27, 2015, CITY OF ROCKAWAY BEACH filed an application for an additional point of diversion under Certificates 47952 and 88869. The Department assigned the application number T-11986.
- 2. Notice of the application for transfer was published on March 3, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On April 21, 2015, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11986 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of May 22, 2015, 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.
- 4. The first right to be transferred is as follows:

Certificate:47952 in the name of CITY OF ROCKAWAY (perfected under Permit
S-34498)Use:MUNICIPALPriority Date:DECEMBER 8, 1969

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.

Rate:1.0 CUBIC FOOT PER SECONDSource:JETTY CREEK, tributary to the 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:

Autio	Authorized Flace of Use:								
Twp	Rng	Mer	Sec	Q-Q					
1 N	10 W	WM	5	NWNW					
1 N	10 W	WM	5	SWNW					
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	NENE					
1 N	10 W	WM	6	NWNE					
1 N	10 W	WM	6	SW NE					
1 N	10 W	WM	6	SE NE					
1 N	10 W	WM	6	NENW					
1 N	10 W	WM	6	NWNW					
1 N	10 W	WM	6	SWNW					
1 N	10 W	WM	6	SENW					
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	NENW					
2 N	10 W	WM	20	SENW					
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	SWNW					
2 N	10 W	WM	29	SE NW					
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	SWNW					

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

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

Ľ	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

6. Transfer Application T-11986 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

7. The second right to be transferred is as follows:

Certificate: 88869 in the name of CITY OF ROCKAWAY (perfected under Permit S-46245)

Use:	MUNICIPAL USE
Priority Date:	JUNE 24, 1981
Rate:	1.0 CUBIC FOOT PER SECOND
Source:	JETTY CREEK, tributary to the NEHALEM RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

	MUNICIPAL USES								
Twp	Rng	Mer	Sec	Q-Q					
1 N	10 W	WM	5	NW NE					
1 N	10 W	WM	5	NENW					
1 N	10 W	WM	5	NWNW					
1 N	10 W	WM	5	SWNW					
1 N	10 W	WM	5	SENW					
1 N	10 W	WM	5	NE SW					
1 N	10 W	WM	5	NW SW					
1 N	10 W	WM	5	SWSW					
1 N	10 W	WM	5	SE SW					
1 N	10 W	WM	5	NW SE					
1 N	10 W	WM	5	SW SE					
1 N	10 W	WM	6	SE NE					

	MUNICIPAL USES							
Twp	Rng	Mer	Sec	Q-Q				
1 N	10 W	WM	6	NE SE				
1 N	10 W	WM	6	SE SE				
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	SENW				
2 N	10 W	WM	20	NE SW				
2 N	10 W	WM	20	NW SW				
2 N	10 W	WM	20	SW SW				
2 N	10 W	WM	20	SE SW				
2 N	10 W	WM	20	NW SE				
2 N	10 W	WM	20	SW SE				
2 N	10 W	WM	29	NW NE				
2 N	10 W	WM	29	SW NE				
2 N	10 W	WM	29	SE NE				
2 N	10 W	WM	29	NE NW				
2 N	10 W	WM	29	NWNW				
2 N	10 W	WM	29	SWNW				
2 N	10 W	WM	29	SE NW				
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	29	NE SE				
2 N	10 W	WM	29	NW SE				
2 N	10 W	WM	29	SW SE				
2 N	10 W	WM	29	SE SE				
2 N	10 W	WM	32	NW NE				
2 N	10 W	WM	32	SW NE				
2 N	10 W	WM	32	NENW				
2 N	10 W	WM	32	NWNW				
2 N	10 W	WM	32	SWNW				
2 N	10 W	WM	32	SE NW				
2 N	10 W	WM	32	NE SW				
2 N	10 W	WM	32	NWSW				
2 N	10 W	WM	32	SWSW				
2 N	10 W	WM	32	SE SW				
2 N	10 W	WM	32	NW SE				
2 N	10 W	WM	32	SW SE				

8. Transfer Application T-11986 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-11986.
- 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-11986 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 <u>10</u> day of <u>Novem ber</u> 2015.

Dwight French, Water Right Services Administrator, for Thomas M. Byler, 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@wrd.state.or.us