



Oregon

Kate Brown, Governor

Water Resources Department

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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@wrdd.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



Rate: 1.0 CUBIC FOOT PER SECOND
Source: 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:

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
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

Twp	Rng	Mer	Sec	Q-Q
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

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:

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	NE NW
1 N	10 W	WM	5	NW NW
1 N	10 W	WM	5	SW NW
1 N	10 W	WM	5	SE 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	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	SE NW
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	NW NW
2 N	10 W	WM	29	SW NW
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	NE NW
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

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 10 day of November 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