



Oregon

Kate Brown, Governor

Water Resources Department

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April 28, 2016

VIA E-MAIL

Applicant

City of Westfir
PO Box 296
Westfir, OR 97492
westfircity@gmail.com

SUBJECT: Water Right Transfer Application T-12101

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-. 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 Eugene Register Guard 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 503-986-0881 or teri.k.hranac@wr.d.state.or.us, 503-986-0886 or Patrick.K.Starnes@wr.d.state.or.us if I may be of assistance.

Sincerely,

Teri Hranac
Transfer and Conservation Section

Enclosures

cc: T-12101
Michael Mattick, District #2 Watermaster (*via e-mail*)
HGE, INC., 375 Park Ave., Coos Bay, OR 97420 (*via email at rnored@hge1.net*)



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

In the Matter of Transfer Application)
T-12101, Lane County)
)
)
)
)

**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF DIVERSION,
PLACE OF USE, AND CHARACTER
OF USE**

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

CITY OF WESTFIR
PO BOX 296
WESTFIR, OR 97492

Findings of Fact

1. On July 6, 2015, the City of Westfir filed an application to change the point of diversion, place of use, and character of use under Certificate 10022. The Department assigned the application number T-12101.
2. Notice of the application for transfer was published on July 14, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 16, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12101 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 17, 2016, for the applicants to respond. The applicants requested the Department proceed with issuance of a Preliminary Determination.
4. The portion of the first right to be transferred is as follows:
Certificate: 10022 in the name of WESTERN LUMBER CO. (perfected under Permit S-8519)
Use: DOMESTIC AND MANUFACTURING

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.

Priority Date

and Rate: APRIL 29, 1924 for 1.0 CUBIC FEET PER SECOND (cfs); and JUNE 6, 1928 for 0.02 cfs

Source: NORTH FORK OF THE MIDDLE FORK OF THE WILLAMETTE RIVER, and WATER STORED IN CATCHING RESERVOIR (constructed under Permit R-605)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	3 E	WM	7	NW SE	NONE GIVEN

Authorized Place of Use:

DOMESTIC and MANUFACTURING					
Twp	Rng	Mer	Sec	Q-Q	
21 S	3 E	WM	7	NW SE	

5. Certificate 10022 does not describe the location of the point of diversion. Information available from the Department's records and the applicant, indicate the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	3 E	WM	7	NW SE	434 FEET SOUTH AND 1422 FEET WEST FROM THE E¼ CORNER OF SECTION 7

6. Transfer Application T-12101 proposes to move the authorized point of diversion approximately 880 feet upstream to the existing point of diversion for Permit S-49765:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	3 E	WM	7	SE NE	139 FEET NORTH AND 762 FEET WEST FROM THE E¼ CORNER OF SECTION 7

7. Transfer Application T-12101 also proposes to change the character of use to MUNICIPAL and to change the place of use of the right to:

MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	
21 S	2 E	WM	12	NE SW	
21 S	2 E	WM	12	NW SW	
21 S	2 E	WM	12	NE SE	
21 S	2 E	WM	12	NW SE	
21 S	3 E	WM	7	NE NE	
21 S	3 E	WM	7	NW NE	
21 S	3 E	WM	7	SW NE	
21 S	3 E	WM	7	SE NE	
21 S	3 E	WM	7	NE NW	
21 S	3 E	WM	7	NW NW	
21 S	3 E	WM	7	SW NW	
21 S	3 E	WM	7	SE NW	
21 S	3 E	WM	7	NE SW	
21 S	3 E	WM	7	NW SW	
21 S	3 E	WM	7	SW SW	

MUNICIPAL				
Twsp	Rng	Mer	Sec	Q-Q
21 S	3 E	WM	7	SE SW
21 S	3 E	WM	7	NE SE
21 S	3 E	WM	7	NW SE
21 S	3 E	WM	7	SW SE
21 S	3 E	WM	7	SE SE
21 S	3 E	WM	8	NW SW

8. Water right Certificate 10022 was acquired by the City of Westfir on August 6, 1979, along with the equipment, pumphouse, storage tank, transmission lines, and pipes.
9. OAR 690-300-010(29) defines municipal water use as “the delivery and use of water through the service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples of these water uses shall include but are not limited to domestic water use, irrigation of law and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities, and street washing.”
10. Documentation submitted with the transfer application and the Department’s application file (S-9486) for Certificate 10022 indicate the original uses were the types of uses that are usual and ordinary for a mill town. These are also the types of uses that are usual and ordinary for a municipality.
11. Instream water right certificate 59721 is a minimum flow conversion for 115 cfs on the North Fork of the Middle Fork of the Willamette River. The instream flow is for a point measured between the confluence of the North Fork of the Middle Fork of the Willamette River and the Middle Fork of the Willamette River to one mile above said confluence. The authorized point of diversion for Certificate 10022 is located more than one mile above said confluence. Therefore, the proposal to move the authorized point of diversion upstream approximately 880 feet will not injure any instream water rights. There are no intervening points of diversion between the authorized point of diversion and the proposed point of diversion. The Department finds no existing water rights would be injured.
12. 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 may not be 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)]

13. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Since the water right was acquired by a municipality in 1979, the water right is not subject to forfeiture under ORS 540.610.

14. Evidence was submitted with the application indicating that a diversion and distribution system existed within the five years prior to submission of the transfer.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The changes in point of diversion, place of use, and character of use proposed in Transfer Application T-12101 appear 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-12101 is approved, the final order will include the following:

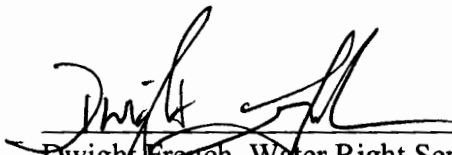
1. *The changes in point of diversion, place of use, and character of use proposed in Transfer Application T-12101 are approved.*
2. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 10022 and any related decree.*
3. *Water right Certificate 10022 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 changes and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 30 day of April, 2016.


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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrds.state.or.us.

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

Notice Regarding Servicemembers: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>