



Oregon

Kate Brown, Governor

Water Resources Department

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May 16, 2017

CITY OF INDEPENDENCE
PO BOX 7
INDEPENDENCE, OR 97351

SUBJECT: Water Right Transfer Application T-12261

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12261. 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 Lanaya.F.Blakely@oregon.gov or by phone at 503-986-0888, if I may be of assistance.

Sincerely,

Lanaya Blakely
Transfer Specialist
Transfer and Conservation Section

cc: T-12261
Joel M. Plahn, District #16 Watermaster (*via e-mail*)
4b Engineering and Consulting LLC, Agent for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12261, Polk County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, PLACE OF USE
)	AND CHARACTER OF USE

Authority

Oregon Revised Statutes (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. 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 INDEPENDENCE
PO BOX 7
INDEPENDENCE, OR 97351

Findings of Fact

1. On February 4, 2016, 4B Engineering & Consulting, LLC, on behalf of the City of Independence, filed an application to change the point of appropriation, to change the place of use and to change the character of use under Certificate 31510. The Department assigned the application number T-12261.
2. Notice of the application for transfer was published on February 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 29, 2016, the Department informed the applicant's agent of the potential for Polk Well #1 to be over pumped due to the number of water rights pumping from the well.
4. On January 4, 2017, the Department informed the applicant's agent of several deficiencies in the transfer application and map that needed to be resolved prior to issuance of the draft preliminary determination. The agent provided revised application materials on January 5, January 6, and February 7, 2017.
5. On February 9, 2017, the Department notified the applicant's agent that a new Land Use Information Form, approved by the county, was required. The Land Use Information Form,

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.

submitted with the application on February 4, 2016, inaccurately described the place of use proposed in transfer T-12261.

6. On February 14, 2017, the agent submitted a new Land Use Form, approved by the County, which encompassed the urban growth boundary of the City of Independence.
7. On March 2, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12261 to the applicant's agent. The draft Preliminary Determination cover letter set forth a deadline of April 3, 2017, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
8. The right to be transferred is as follows:

Certificate: 31510 in the name of Valley Concrete and Gravel Company, Inc. (perfected under Permit G-2279)
Use: Washing sand and gravel and production of concrete
Priority Date: October 15, 1962
Rate: 0.56 cubic foot per second
Source: A Well within the Willamette River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	4 W	WM	28	NW NE	45	1286.46 FEET SOUTH AND 599.05 FEET EAST FROM THE N1/4 CORNER OF SECTION 28

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	4 W	WM	28	NW NE	45

9. Transfer Application T-12261 proposes to move the authorized point of appropriation approximately 0.7 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	4 W	WM	21	NW SE	RIVER DRIVE: 2383 FEET NORTH AND 2437.5 FEET WEST FROM THE SE CORNER OF SECTION 21
8 S	4 W	WM	21	NW SE	POLK #1: 2378.6 FEET NORTH AND 2003.2 FEET WEST FROM THE SE CORNER OF SECTION 21
8 S	4 W	WM	21	NW SE	POLK #2: 2082.9 FEET NORTH AND 2039.7 FEET WEST FROM THE SE CORNER OF SECTION 21
8 S	4 W	WM	21	NW SE	POLK #3: 2033.7 FEET NORTH AND 2221.2 FEET WEST FROM THE SE CORNER OF SECTION 21

10. Transfer Application T-12261 also proposes to change the place of use of the right to:

Municipal Use
Within the urban growth boundary of the City of Independence

11. Transfer Application T-12261 proposes to change the character of use to municipal.

Transfer Review Criteria (OAR 690-380-4010)

12. Water has been used within the last five years

13. A pump, pipeline, and 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-12261.

14. The proposed change would not result in enlargement of the right.

15. The proposed change would not result in injury to other water rights.

16. All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation, change in place of use and change in character of use proposed in Transfer Application T-12261 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12261 is approved, the final order will include the following:

17. The change in point of appropriation, change in place of use and change in character of use proposed in Transfer Application T-12261 are approved.

18. 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 31510 and any related decree.

19. Water right Certificate 31510 is cancelled.

20. The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

21. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.

22. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 16 day of May 2017.


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

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members 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>

This Preliminary Determination was prepared by Lanaya Blakely. If you have questions about the information in this document you may reach me at [redacted] or (503) 986-0888.