



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

July 31, 2019

CITY OF NEWBERG
ATTN: JAY HARRIS
PO BOX 970
NEWBERG, OR 97132

SUBJECT: Water Right Transfer Application T-12831

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12831. 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 Newberg Graphic 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12831
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Ted Ressler, Agent for the applicant (*via e-mail*)
Chehalem Springs Water Association, Receiving Landowner (*via e-mail*)

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

| | | |
|---------------------------------------|---|----------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-12831, Yamhill County |) | PROPOSING APPROVAL OF A |
| |) | CHANGE IN 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 NEWBERG
ATTN: JAY HARRIS
PO BOX 970
NEWBERG, OR 97132

Receiving Landowner

CHEHALEM SPRINGS WATER ASSOCIATION
15165 NE CULLEN ROAD
NEWBERG, OR 97132

Findings of Fact

1. On January 25, 2018, CITY OF NEWBERG; ATTN: JAY HARRIS filed an application to change the place of use and to change the character of use under Certificate 5456. The Department assigned the application number T-12831.
2. The City of Newberg and Chehalem Springs Water Association will be responsible for completion of the changes.
3. Notice of the application for transfer was published on February 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On February 14, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12831 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2019, for the applicant to respond.

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.

5. On March 6, 2019, the applicant requested that the Department proceed with issuance of a Preliminary Determination, and requested to extend the date to complete full beneficial use of the water 20 years, being October 1, 2039. Pursuant to OAR 690-380-5140, the Department requested additional information from the applicant to justify the need for longer period of time.
6. On May 10, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent, the Department had not received the additional information requested to justify the need for a longer period of time. The Department requested that the deficiencies be resolved by May 17, 2019.
7. On May 14, 2019, the applicant's agent submitted a development plan and timeline, satisfying the request for additional information.

8. The portion of the right to be transferred is as follows:

Certificate: 5456 in the name of CITY OF NEWBERG (perfected under Permit S-5977)
Use: MUNICIPAL, including DOMESTIC, FIRE PROTECTION and MANUFACTURING PURPOSES
Priority Date: JUNE 24, 1919
Rate: 0.07 CUBIC FOOT PER SECOND
Source: SKELTON SPRINGS, tributaries of CHEHALEM CREEK, a tributary of WILLAMETTE WATERSHED

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|-------------------------------------|-----|-----|-----|-----|--------------------|
| <i>Not specified in Certificate</i> | | | | | |

Authorized Place of Use:

| MUNICIPAL, INCLUDING DOMESTIC, FIRE PROTECTION and MANUFACTURING PURPOSES | | | | | |
|---|-----|-----|-----|-------|--|
| Twp | Rng | Mer | Sec | Q-Q | |
| 3 S | 2 W | WM | 20 | SW SW | |

9. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 5456 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 2 S | 2 W | WM | 31 | SW SW | 1265 FEET NORTH AND 310 FEET EAST FROM THE SW CORNER OF SECTION 31 |

10. Transfer Application T-12831 proposes to change the character of use to quasi-municipal use for a portion of the right, to be serviced by Chehalem Springs Water Association.

11. Transfer Application T-12831 also proposes to change the place of use of the right to:

| |
|--|
| QUASI-MUNICIPAL USE |
| WITHIN THE CHEHALEM SPRINGS WATER ASSOCIATION WATER SERVICE AREA |

Transfer Review Criteria [OAR 690-380-4010(2)]

12. Water has been used within the last five years 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.
13. A diversion structure, pipeline, and distribution 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-12831.
14. The proposed changes would not result in enlargement of the right.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-12831 appears 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-12831 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-12831 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 5456 and any related decree.*
3. *Water right Certificate 5456 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2039**. 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.*

5. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this JUL 31 2019,



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

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>