

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13121, Yamhill County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION

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 AMITY
ATTN: JUSTIN HOGUE
PO BOX 126
AMITY, OR 97101

Findings of Fact

1. On February 11, 2019, CITY OF AMITY filed an application for an additional point of diversion under Certificate 61988. The Department assigned the application number T-13121.
2. Notice of the application for transfer was published on February 19, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 26, 2019 the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13121 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2019, for the applicants to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
4. On September 24, 2019, the Department recognized a scrivener's error in the draft Preliminary Determination dated August 26, 2019. The Authorized Place of Use table was missing on the draft Preliminary Determination.

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 October 10, 2019, the Department sent a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13121 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of November 17, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
6. The right to be transferred is as follows:

Certificate: 61988 in the name of CITY OF AMITY, CITY HALL (perfected under Permit S-13455)
Use: MUNICIPAL USE
Priority Date: JANUARY 24, 1939
Rate: 0.475 CUBIC FOOT PER SECOND AND NOT MORE THAN 95 ACRE-FEET DURING THE PERIOD APRIL 1 TO SEPTEMBER 30 OF EACH YEAR
Source: SOUTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE NE	1	AUTHORIZED POD - 500 FEET SOUTH AND 250 FEET WEST FROM THE NE CORNER OF SECTION 26

Authorized Place of Use:

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
5 S	4 W	WM	19	SW SW
5 S	4 W	WM	19	SE SW
5 S	4 W	WM	19	SW SE
5 S	4 W	WM	19	SE SE
5 S	4 W	WM	20	SW NE
5 S	4 W	WM	20	SE NE
5 S	4 W	WM	20	NE SW
5 S	4 W	WM	20	SW SW
5 S	4 W	WM	20	SE SW
5 S	4 W	WM	20	NE SE
5 S	4 W	WM	20	NW SE
5 S	4 W	WM	20	SW SE
5 S	4 W	WM	20	SE SE
5 S	4 W	WM	21	SW SW
5 S	4 W	WM	21	SE SW
5 S	4 W	WM	21	SW SE
5 S	4 W	WM	21	SE SE
5 S	4 W	WM	27	NE NE
5 S	4 W	WM	27	NW NE
5 S	4 W	WM	27	SW NE
5 S	4 W	WM	27	SE NE
5 S	4 W	WM	27	NE NW
5 S	4 W	WM	27	NW NW
5 S	4 W	WM	27	SW NW
5 S	4 W	WM	27	SE NW
5 S	4 W	WM	28	NE NE
5 S	4 W	WM	28	NW NE

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
5 S	4 W	WM	28	NE NW
5 S	4 W	WM	28	NW NW
5 S	4 W	WM	29	NE NE
5 S	4 W	WM	29	NW NE
5 S	4 W	WM	29	SW NE
5 S	4 W	WM	29	SE NE
5 S	4 W	WM	29	NE NW
5 S	4 W	WM	29	NW NW
5 S	4 W	WM	30	NE NE
5 S	4 W	WM	30	NW NE
5 S	4 W	WM	30	NE NW
5 S	4 W	WM	30	NW NW
5 S	5 W	WM	24	SE SE
5 S	5 W	WM	25	NE NE

7. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 61988 (perfected under Permit S-13455) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE NE	1	AUTHORIZED POD - 515 FEET SOUTH AND 425 FEET WEST FROM THE NE CORNER OF SECTION 26

8. Transfer Application T-13121 proposes an additional point of diversion approximately 0.4 mile upstream from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	26	SE NE	69	PROPOSED POD - 2650 FEET SOUTH AND 650 FEET WEST FROM THE NE CORNER OF SECTION 26

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

10. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch 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-13121.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

14. All other application requirements are met.

Determination and Proposed Action

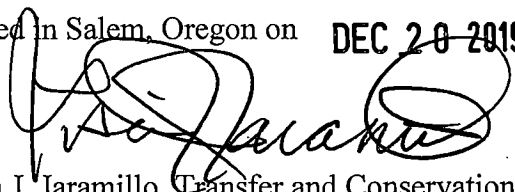
The additional point of diversion proposed in Transfer Application T-13121 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13121 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-13121 is 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 61988 and any related decree.*
3. *Water right Certificate 61988 is cancelled.*
4. *The quantity of water diverted at the new additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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 change and full beneficial use of the water.*

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

Dated in Salem, Oregon on **DEC 20 2019**


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

This revised draft Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at 503-986-0890 or scott.a.grew@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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 16, 2019

Applicant

CITY OF AMITY
ATTN: JUSTIN HOGUE
PO BOX 126
AMITY, OR 97101

SUBJECT: Water Right Transfer Application T-13121

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13121. 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 McMinneville News Register 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 if I may be of assistance.

Please contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: T-13121
Joel M. Plahn, District 16 Watermaster (via e-mail)
Kimberly Grigsby, GSI Water Solutions Inc., Agent for the applicant (via e-mail)

encs