

CITY OF SPRINGFIELD, OREGON

CITY MANAGER'S OFFICE
CITY RECORDER
COMMUNICATIONS
COMMUNITY RELATIONS



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October 23, 1999

Mr. A. Reed Marbut
Adjudication Section
Oregon Water Resources Department
158 12th Street NE
Salem, OR 97310

Re: City of Springfield Registration Statement Amendment

Dear Mr. Marbut:

On December 14, 1992, the City of Springfield (the "City") filed a registration statement pursuant to ORS 539.240 for its pre-1909 surface water rights. The City claims 150 cfs of water from the Middle Fork of the Willamette River for industrial and municipal purposes. The water is diverted from the Middle Fork into a Millrace. The bulk of the water thus diverted is returned to the main stem of the Willamette about 3.5 miles downstream, although a small quantity is returned to the Middle Fork approximately 2 miles downstream by Gorrie Creek.

The City seeks to amend its registration statement pursuant to OAR 690-028-0055 to relocate the point or place of diversion from the Middle Fork of the Willamette River into the Springfield Millrace. Ongoing difficulties with maintaining the existing diversion point, as discussed further below, require that the diversion point be relocated.

As you know, the rules governing amendments to registration orders are contained in OAR 690-028-0055. Senate Bill 299 expressly validates these rules. Specifically, Senate Bill 299 amends ORS 539.240 to add subsection (11), which provides: "The director shall adopt by rule a process and standards for recognizing changes in the place of use, type of use or point of diversion of water uses registered pursuant to this section." Section 2 of the bill adds that "[a]ny rules adopted by the Water Resources Director before the effective date of this 1999 Act that comply with the requirements of ORS 539.240 as amended by section 1 of this 1999 Act are hereby validated, and enactment of this 1999 Act shall not prejudice changes made to registration statements prior to the effective date of this 1999 Act." The governor signed the bill into law on June 23, 1999.

Each of the requirements contained in OAR 690-028-0055 is addressed below.

1. **Nature of Proposed Amendment.**

The City seeks to amend its Registration Statement by changing the point of diversion from a point beginning at the Southeast corner of the R. R. Harper Donation Land Claim No. 66, in Section 6, Township 18 South, Range 2 West of the Willamette Meridian; thence Southerly 1794 feet parallel with the Westerly line of Sections 5 and 8 and Easterly 1671 feet parallel with the Southerly line of Section 5, to the existing point of diversion located in Section 8, Township 18 South, Range 2 West, in Lane County, Oregon. to a point Beginning at the North quarter corner of Section 8, Township 18 South, Range 2 West of the Willamette Meridian; thence Southerly parallel to the North - South centerline of the section 460 feet and Westerly 70 feet parallel to the North line of the section to the proposed new point of diversion. The location of the existing and the new diversion points are shown on the map attached as Exhibit 2 to the Affidavit of Edward Black (attached hereto as Exhibit A). Please understand that the precise location of the new point of diversion is subject to approval by other State and federal regulatory agencies. Should there be any significant difference between the point of diversion as identified herein, and the point ultimately approved and constructed, the City will file a further amendment to its Registration Statement.

2. **Water Under the Right Defined by the Registration Statement Has Been Used Over the Past Five Years in Accordance with the Terms and Conditions of the Registration.**

As claimed in the City's registration statement, the City has put 150 cfs to beneficial use. The date of first use was 1853, with the water use development initiated in 1852. The usual period of use is year-round, from January 1 to December 31. As indicated in the Affidavit of Edward Black (attached hereto as Exhibit A), the water under the right defined by the registration statement has been used over the past five years in accordance with the terms and conditions of the registration. Water has been put to beneficial use in the amount claimed (150 cfs), for the period claimed (January 1 to December 31), from the Middle Fork of the Willamette River, for industrial and municipal uses.

3. **Reasons for the Request to Amend the Point of Diversion Point within the Right Defined by the Registration Statement.**

In February 1996, OTAK and Ogden Beeman & Assoc. Inc. completed a final report assessing the Springfield Millrace. The report is entitled "Springfield Millrace: Hydrologic Study and Alternatives Evaluation," and a copy is attached hereto as Exhibit B. As the report explains, "[t]he current operation of the Millrace inlet involves a process of maintaining inflow by modifying the Millrace inlet channel entrance and the north channel of the Middle Fork Willamette River. Periodically, heavy equipment is used in the river to divert water from the

Willamette River. Periodically, heavy equipment is used in the river to divert water from the Middle Fork Willamette River into the Millrace. This is necessary because seasonal high water flows in the Willamette River deposit gravel in the north channel which restricts flows to the north channel and Millrace." As the report further explains, "[t]he use of heavy equipment to maintain the north channel and the inlet to the Millrace may affect fish habitat, including spawning areas downstream of the north channel. Potential negative impacts to fisheries are caused by sediment stirred up during dredging and from oil and grease off the heavy equipment operating in the stream." Executive Summary at i-1 to i-2. The goal of the report was to identify and evaluate alternate inlets to the Millrace.

In December 1997, OTAK completed a second report, entitled "Phase II Evaluation and Recommendations," a copy of which is attached hereto as Exhibit C. This study also recognized the poor conditions surrounding the existing diversion point. As this study noted, "[t]he existing condition of the Millrace is typified by low velocities in the Millrace and Millpond, and poor water quality conditions (i.e. high temperatures and low dissolved oxygen) in the Millpond. These conditions negatively impact fish habitat and water quality in the Millrace system." Executive Summary at i. The report notes that regulatory agencies (the Corps of Engineers and the Division of State Lands) have indicated that unless environmental conditions improve in the Millrace, fish screens will be required to prevent fish from entering the Millrace. It is the preference of the community as expressed in the 1992 *Millrace Concept Report* to maximize water quality and quantity and sustain the function of the Millrace as a habitat for wildlife. *Id.*; see also "Conditions for Material Removal in Division of State Lands Permit Number 4935," (Division of State Lands, 1998) (attached hereto as Exhibit D) (expressing concern with present maintenance activities and with temporary increases in turbidity and oil, grease, and hydraulic fluid pollution from the heavy equipment). The resource agencies have frequently expressed their desire for a long-term solution that reliably conveys flows to the Millrace and which does not require periodic and intrusive modifications to the riverine system. See 1997 OTAK Report at 7-8.

The 1997 OTAK study went on to evaluate the feasibility of improving the Millrace in regard to fish habitat and passage, water quality, and flow quantity. Several alternatives were analyzed in this context, and the report recommended that a new inlet location be constructed for the Millrace at Clearwater Park. According to the report, "[t]his is a permanent solution and provides a reliable source of water. It is at a location where the channel is most likely to be stable for the short and long term." *Id.* at ii. The change in diversion point requested herein is intended to accomplish the goals and achieve the benefits set forth in the OTAK analysis. The proposed diversion point is described and discussed at length in the OTAK report.

4. **The Change in Diversion Point Will Not Result in Injury to Other Water**

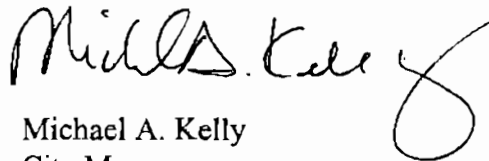
an Expansion of the Right Under the Original Registration.

The change in diversion point will not result in injury to other water rights holders. By moving the diversion point upstream, current water users on the Millrace will not be injured. Similarly, the change does not affect water rights holders on the Middle Fork of the Willamette. There will be no net loss of water available to downstream users and no expansion of the right under the original registration as the City will continue to use the amount of water originally claimed (150 cfs). The change in diversion point will not alter the amount of water used or the purposes for which the water is used.

Finally, this amendment is being submitted in writing to the Department, pursuant to OAR 690-028-0055(1). No lands are being sold such that a registration statement is being assigned in whole or in part from an Indian reserved right to a non-Indian, and, therefore, OAR 690-028-0055(5) is not applicable here. We request that the Department publish a notice of the change in diversion point in the Department's public notice of applications, pursuant to OAR 690-028-0055(2). Further, we request that the Director accept the amendment to the registration statement and include it as part of the records of the Department, pursuant to OAR 690-028-0055(4).

Please do not hesitate to contact Ed Black, of the City's Public Works Department, at (541)726-3761, should questions arise regarding this registration statement amendment.

Very truly yours,



Michael A. Kelly
City Manager

DEF/ljg

Enclosures

c (w/encl.): Joseph Leahy
Gail Achterman
Dan Brown