

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

In the Matter of Transfer Application                    )     FINAL ORDER  
T-9373, Linn County                                        )

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

City of Albany  
333 Broadalbin St. SW  
Albany, Oregon 97321

**Findings of Fact**

1. On March 17, 2003, the City of Albany filed an application to transfer the place of use and character of use under Certificate 49387. The Department assigned the application number T-9373.

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

**Certificate:** 49387 in the name of Pacific Power and Light Company

**Use:** Hydroelectric Generation of 1125 THP

**Priority Date:** 1874

**Quantity:** 85.0 cfs

**Source:** South Santiam River, tributary to Santiam River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼	DLC	Survey Coordinates
12	S	1	W	W.M.	19	NW NW	Cheadle 55	1430 feet north and 1050 feet east from the W ¼ corner Section 19

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	DLC
11	S	4	W	W.M.	12	NE NE	Montieth 55

3. Application T-9373 proposes to change the place of use of the right to:

Stream	Beginning of Reach Where Water is Rediverted from Albany-Santiam Canal								CFS	End of Reach
	Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates		
Burkhart Cr	11	S	2	W	W.M.	32	NE SE	1,570 ft N and 765 ft W of the SE Corner of Sec 32	15.0	Mouth of Burkhart Cr
Cox Cr	11	S	2	W	W.M.	30	SW NW	2,350 ft S and 645 ft E of the NW Corner of Sec 30	20.0	Mouth of Cox Cr
Periwinkle Cr	11	S	3	W	W.M.	21	NW NE	150 ft S and 1,635 ft W of the NE Corner of Sec 21	20.0	Mouth of Periwinkle Cr
Unnamed Canal to Oak Cr	11	S	3	W	W.M.	19	NE NE	100 ft S and 820 ft W of the NE Corner of Sec 19	15.0	To Calapooia R and then to Mouth of Calapooia R
Cathey Canal / Creek	11	S	3	W	W.M.	7	SW SW	680 ft N and 60 ft E of the SW Corner of Sec 7	13.0	To Oak Cr, then to Calapooia R and then to Mouth of Calapooia R
8 <sup>th</sup> Street Canal	11	S	4	W	W.M.	12	SE NE	1725 ft S and 415 ft W of the NE Corner of Sec 12	2.0	Mouth of 8 <sup>th</sup> Street Canal

4. Application T-9373 proposes to change the character of use to flow augmentation.
5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. Comments were received from the Oregon Department of Fish and Wildlife alleging that the proposed transfer would injure the instream water right on the South Santiam River.
6. Water has not been used within the last five years according to the terms and conditions of the right. However, the presumption of forfeiture would likely be rebutted pursuant to ORS 540.610(2)(k). On October 19, 1990, the Federal Energy Regulatory Commission (FERC) ordered the City of Albany to obtain a license for the continued operation of the Albany Hydropower Project. On October 23, 1998, FERC issued the City a license. The City of Albany submitted this transfer application within five years of being issued the FERC license.
7. The diversion structure and canal had an initial design flow capacity of 395 cfs. However, in 1994 it was determined that due to sedimentation the canal capacity had been reduced to 220 cfs. The City plans to remove some of sediment in the canal and restore the canal's capacity to 310 cfs. Although the water user is not ready, willing and able to use the full amount of water allowed under the right (275.0 cfs), no portion of the right has been forfeited due to ORS 540.610(2)(k).

8. The proposed change would not result in enlargement of the right, since the full quantity of water could have been beneficially used without waste for the existing authorized purpose.
9. The proposed change would not result in injury to the instream water right on the Calapooia River, certificate 66857, if the Oak Creek and Cathey Creek flow augmentation transfers are additive to certificate 66857, and if the City of Albany measured and reported the augmentation flows to the Department.
10. The proposed change would not result in injury to the instream water right on the South Santiam River or other water rights, since the impacts on these water rights will be no greater than if the City of Albany had resumed use of water under the existing authorized purpose.

### **Conclusions of Law**

The proposed changes in place of use and character of use in application T-9373 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The changes in place of use and character of use proposed in application T-9373 are approved.
2. Water right certificate 49387 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer. The remaining right shall be limited to 190 cfs for hydroelectric generation of 777 THP.
3. The right to the use of the water is restricted to beneficial use at the place of use described in Finding of Fact #3 and is subject to all other conditions and limitations contained in Certificate 49387 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The City of Albany shall measure and report the augmentation flows entering the Calapooia River from Oak Creek, including those originating from Cathey Creek. For purposes of measurement and reporting, the augmentation flows shall be measured at a location acceptable to the Department, as described below. The measurement and reporting shall be done on a weekly basis from July 15 through September 30, or as necessary to ensure


continued protection of the instream water right established by certificate 66857. The Director may modify or waive the time period and frequency when flows need to be measured and reported in order to ensure that the instream water right established by certificate 66857 is not injured.

Oak Creek augmentation flows shall be measured downstream of diversion point #4 and as close to the confluence of the unnamed canal along Lochner Road and Oak Creek as possible, unless the Department determines that measuring at the point of diversion or an intermediary point is acceptable.

Cathey Creek augmentation flows shall be measured downstream of diversion point #5 and as close to the confluence of Cathey Creek and Oak Creek as possible, unless the Department determines that measuring at Park Terrace SW Road or an intermediary point is acceptable.

8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 26<sup>th</sup> day of August, 2005.

*For*   
Phillip C. Ward  
Director

Mailing date: SEP 02 2005