

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10403, Clatsop County) CHANGE IN POINT OF DIVERSION

Authority

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

CLATSOP COUNTY ECONOMIC DEVELOPMENT COUNCIL FISHERIES PROJECT
800 EXCHANGE STREET SUITE 300
ASTORIA, OREGON 97103

Findings of Fact

Background

1. On June 6, 2007, Clatsop County Economic Development Council Fisheries Project filed an application to change the point of diversion under Certificates 63289 and 66301. The Department assigned the application number T-10403.

2. The first right to be transferred is as follows:

Certificate: 63289 in the name of CLATSOP COUNTY ECONOMIC DEVELOPMENT COMMITTEE FISHERIES PROJECT (perfected under Permit S-44782)

Use: AQUACULTURE

Priority Date: AUGUST 31, 1979

Rate: 10.0 CUBIC FEET PER SECOND

Season of Use: JANUARY 1 THROUGH MAY 31

Source: SOUTH FORK KLASKANINE RIVER, tributary to the KLASKANINE RIVER

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 N	8 W	WM	31	NW NE	850 FEET SOUTH AND 150 FEET EAST FROM THE N1/4 CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
7 N	8 W	WM	30	SE SW
7 N	8 W	WM	31	NE NW

3. Application T-10403 proposes to move the authorized point of diversion approximately 150 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 N	8 W	WM	31	NW NE	46.05130 DEGREES NORTH, 123.72596 DEGREES WEST

4. The second right to be transferred is as follows:

Certificate: 63301 in the name of CLATSOP COUNTY ECONOMIC DEVELOPMENT COMMITTEE FISHERIES PROJECT (perfected under Permit S-46895)

Use: MAINTAINING THE RESERVOIR CONSTRUCTED UNDER PERMIT R-8108 FOR AQUACULTURE

Priority Date: OCTOBER 21, 1981

Rate: 5.0 CUBIC FEET PER SECOND

Season of Use: JUNE 1 THROUGH JULY 31 AND OCTOBER 1 THROUGH DECEMBER 31

Source: SOUTH FORK KLASKANINE RIVER, tributary to the KLASKANINE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 N	8 W	WM	31	NW NE	850 FEET SOUTH AND 150 FEET EAST FROM THE N1/4 CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
7 N	8 W	WM	30	SE SW
7 N	8 W	WM	31	NE NW

5. Application T-10403 proposes to move the authorized point of diversion approximately 150 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 N	8 W	WM	31	NW NE	46.05130 DEGREES NORTH; 123.72596 DEGREES WEST

6. Notice of the application for transfer was published on June 12, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. 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 currently equipped with an appropriate fish screening and/or by-pass device.
8. On August 6, 2007, the Clatsop County Assessor's office was contacted to clarify current ownership of the lands involved in Transfer T-10403. The Assessor's office confirmed that Weyerhaeuser Corporation is the current owner of record for Tax Lot 4900 in the SE ¼ SW ¼ of Section 30 and the NE ¼ NW ¼ of Section 31, T 7 N, R 8 W, W.M., as well as the existing and proposed points of diversion (Tax Lot 3100 in the NW ¼ NE ¼ of Section 31, T 7 N, R 8 W, W.M.) for Certificates 63289 and 63301. The place of use is in Tax Lot 700, owned by Clatsop County.
9. On October 24, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10403 to the applicant. The draft Preliminary Determination set forth a deadline of November 30, 2007, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On January 3, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10403 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 15, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Application T-10403.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in application T-10403 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-10403 is approved.
2. Water right certificates 63289 and 63301 are cancelled.
3. 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 Certificates 63289 and 63301, and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
7. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
8. The approved change shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
9. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 15th day of February 2008.


Phillip C. Ward, Director

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Mailing date: FEB 20 2008