BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	RECONSIDERATION AND
T-9379, Baker County, Oregon)	MODIFICATION OF FINAL ORDER
)	

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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. OAR 137-044-0080 describes the process for reconsideration of an order in other than contested case.

Applicant

Williams Ditch Company 13967 Hunt Mt. Ln. Baker City, OR 97814

Findings of Fact

- 1. The Department issued an order approving a change in point of diversion under application T-9379 on October 6, 2004. The order is entered at Special Order Volume 62, Pages 79 to 81.
- 2. The conditions prescribed in the order include the following requirement:
 - "5. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.

"The water users may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525."

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

- 3. On November 26, 2004, the Department received a petition for reconsideration from the applicant citing the costs of screening and the absence of cost-sharing monies to assist the applicant in installing the screens. The petition was filed within the 60-day period specified by ORS 183.484(2).
- 4. On January 24, 2005, the Department responded to the petition and notified the applicant that the order would be reconsidered after the Department had received notification of the results of discussions between the applicant and the Department of Fish and Wildlife to identify a mutually acceptable approach to resolving the screening issues.
- 5. On February 2, 2005, the Department received a letter from the Department of Fish and Wildlife recommending that, given the lack of availability of cost-share funds for screening, the fish screening condition be modified. The proposed conditions would allow the use of water at the new point of diversion with the understanding that the diversion will be screened within two years after cost-share funds be come available, but not later than five years after issuance of the order.

Now, therefore, it is ORDERED:

- 1. The order approving application T-9379 and entered at Special Order Volume 62, Pages 79 to 81 is withdrawn and modified to replace condition 5 requiring a fish screen or by-pass device with the following conditions:
 - "5. The Oregon Department of Fish and Wildlife (ODFW) that determined that the new point of diversion requires a fish screen and/or by-pass device, however, the water user may withdraw water without a fish screening and by-pass device until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. The point of diversion must be screened within two years after anticipated cost share funds become available. If cost share funds do not become available within five years after the date of this order, the water user must screen regardless of cost share funding availability.
 - "6. The fish screen and/or by-pass device must meet ODFW design, construction, operational and maintenance standards. Fish screening will prevent fish from entering the diversion, while a by-pass device safely transports fish back to the body of water from which the fish were diverted. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screen, and by-pass devices were installed to the state's criteria."
- 2. The order is further modified to change the date for completion of the proposed change, as established in condition 1, from October 1, 2006 to October 1, 2010.

3. All remaining portions of the order approving application T-9379 are affirmed and the order, as modified, issues.

Dated at Salem, Oregon this day of February, 2005.

Phillip C. Ward

Director

Mailing date: FEB 2 2 2005