

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10642, Yamhill County)	CHANGES IN POINTS OF DIVERSION
)	AND PLACES OF USE

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

CITY OF WILLAMINA
411 NE "C"
WILLAMINA OR 97396

Findings of Fact

Background

1. On June 5, 2008, CITY OF WILLAMINA filed an application to change the point of diversion, to change the place of use and to change the character of use under Certificate 11706. The Department assigned the application number T-10642.
2. On April 19, 2010, the applicant amended the transfer application by removing Certificate 11706 and the proposed change in character of use. The applicant added Certificates 41796 and 67793 to the application.

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

Certificate:	41796 in the name of CITY OF WILLAMINA (perfected under Permit R-768)
Use:	PUBLIC FISH FACILITY
Priority Date:	JUNE 13, 1941
Rate:	20.0 ACRE FEET
Source:	WILLAMINA CREEK, tributary to the YAMHILL 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	DLC	Measured Distances
6 S	7 W	WM	1	NE SE	43	2050 FEET NORTH AND 520 FEET WEST FROM THE SE CORNER OF SECTION 1

Authorized Place of Use:

PUBLIC FISH FACILITY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	7 W	WM	1	SE SE	43

4. Transfer Application T-10642 proposes to move the authorized point of diversion approximately 1500 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	6	NW SW	93	225 FEET SOUTH AND 400 FEET EAST FROM THE W¼ CORNER OF SECTION 6

5. Transfer Application T-10642 also proposes to change the place of use of the right to:

PUBLIC FISH FACILITY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	6 W	WM	6	SW NW	93
6 S	6 W	WM	6	SW NW	91
6 S	6 W	WM	6	NW SW	91
6 S	6 W	WM	6	NW SW	93

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

Certificate: 67793 in the name of CITY OF WILLAMINA (perfected under Permit S-15022)

Use: MAINTENANCE OF PUBLIC FISH FACILITY

Priority Date: JUNE 13, 1941

Rate: 0.20 CUBIC FOOT PER SECOND

Source: WILLAMINA CREEK, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	7 W	WM	1	NE SE	43	2050 FEET NORTH AND 520 FEET WEST FROM THE SE CORNER OF SECTION 1

Authorized Place of Use:

PUBLIC FISH FACILITY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	7 W	WM	1	SE SE	43

7. Transfer Application T-10642 proposes to move the authorized point of diversion approximately 1500 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	6 W	WM	6	NW SW	93	225 FEET SOUTH AND 400 FEET EAST FROM THE W¼ CORNER OF SECTION 6

8. Transfer Application T-10642 also proposes to change the place of use of the right to:

PUBLIC FISH FACILITY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	6 W	WM	6	SW NW	93
6 S	6 W	WM	6	SW NW	91
6 S	6 W	WM	6	NW SW	91
6 S	6 W	WM	6	NW SW	93

9. Notice of the application for transfer was published on June 17, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. 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.
11. On April 12, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10642 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 14, 2010, 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.
12. On April 26, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10642 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 5, 2010, 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)]

13. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A pump, pipeline sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10642.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.

Conclusions of Law

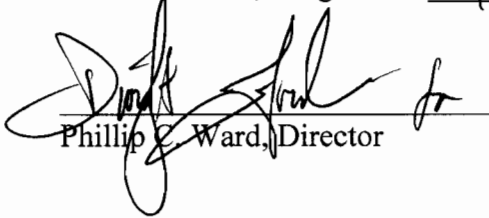
The change in points of diversion and change in places of use proposed in Transfer Application T-10642 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in points of diversion and change in places of use proposed in Transfer Application T-10642 are 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 Certificates 41796 and 67793 and any related decree.
3. Water right certificates 41976 and 67793 are cancelled.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. 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.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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(s) and full beneficial use of the water.

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

Dated at Salem, Oregon this 7 day of June 2010.


Phillip C. Ward, Director

Mailing date: JUN 08 2010