

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

In the Matter of Transfer Application                    )     **FINAL ORDER APPROVING AN**  
T-12160, Clackamas County                            )     **ADDITIONAL POINT OF DIVERSION**

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

**Applicant**

OREGON DEPARTMENT OF FISH AND WILDLIFE  
4034 FAIRVIEW INDUSTRIAL DR SE  
SALEM, OR 97302

**Findings of Fact**

1. On September 9, 2015, OREGON DEPARTMENT OF FISH AND WILDLIFE filed an application for an additional point of diversion under Certificates 53427 and 82966. The Department assigned the application number T-12160.
2. Notice of the application for transfer was published on September 15, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 16, 2016, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12160 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 15, 2016, for the applicant to respond. The applicant requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife (ODFW) as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5030, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
4. On May 26, 2016, the Department issued a Preliminary Determination proposing to deny Transfer Application T-12160 and sent 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 31, 2016, and in the Portland Tribune newspaper on June 7 and 14,

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.

2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

5. On April 20, 2016, ODFW submitted the agency's recommendation in favor of consent to injury of the instream water right.
6. Notice of the agency's recommendation was published on the Department's weekly notice on June 7, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. ODFW's recommendation stated that the transfer would result in net benefits to the resource due to an instream transfer of 1.5 cfs from Rivermill Dam to the mouth of the Clackamas River, increased year-round flow and improved water quality in Dog Creek, increased attraction into Dog Creek to reduce hatchery fish straying, and protections to native fish provided by the updated fish screen.
8. The first right to be transferred is as follows:

**Certificate:** 53427 in the name of OREGON DEPARTMENT OF FISH AND WILDLIFE (perfected under Permit S-42105)  
**Use:** FISH HATCHERY  
**Priority Date:** AUGUST 4, 1977

**Rate:** 45.0 CUBIC FEET PER SECOND  
**Source:** CLACKAMAS RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
3 S	4 E	WM	19	NW NE	2	POD 1: 1100 FEET SOUTH AND 2100 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot
3 S	4 E	WM	19	SW NE	8

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

**Certificate:** 82966 in the name of OREGON DEPARTMENT OF FISH AND WILDLIFE (perfected under Permit S-49433)  
**Use:** FISH CULTURE  
**Priority Date:** SEPTEMBER 3, 1985  
**Rate:** 5.0 CUBIC FEET PER SECOND  
**Source:** CLACKAMAS RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
3 S	4 E	WM	19	NW NE	2	POD 1: 1100 FEET SOUTH AND 2100 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot
3 S	4 E	WM	19	SW NE	8

10. Transfer Application T-12160 proposes an additional point of diversion approximately 0.6 mile upstream from the authorized point of diversion. The additional point of diversion is located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances/GPS Coordinates
3 S	4 E	WM	20	SW NW	POD 2: 1620 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 20. FURTHER DESCRIBED AS: LATITUDE 45.29823 LONGITUDE -122.35020

11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
12. Instream water right Certificate 59491 exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflow's within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed additional point of diversion.

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

13. Water has been used within the last five years according to the terms and conditions of the right. 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, and sprinkler system 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-12160.
15. The proposed change would not result in enlargement of the rights.
16. Instream water right Certificate 59491 is for flows to be maintained in the Clackamas River above USG GAGE NO. 14-2095, ABOVE THREE LYNX, (NE, Section 21, T5S, R6E) to the mouth RM 0.0 (NE, Section 30, T2S, R2E).
17. Instream water right Certificate 59491 exists for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed additional point of diversion. The following table provides a comparison of monthly streamflows on the Clackamas River at Gage #14210000 and the instream water right:

Month	Natural Stream Flow @ 80% Exceedance (cfs)	Instream Water Right Certificate 59491 (cfs) (Monthly period)		80% Flows minus any out-of-stream consumptive uses, reserved and instream requirements (cfs) (net water available)
		1 <sup>st</sup> Half	2 <sup>nd</sup> Half	
January	2140.00	640	640	85.70
February	2350.00	640	640	260.00
March	2250.00	640	640	189.00
April	2440.00	640	640	311.00
May	2240.00	640	640	118.00
June	1390.00	640	640	314.00
July	855.00	400	400	-212.00
August	773.00	400	400	-173.00
September	781.00	400	640	-165.00
October	890.00	640	640	-164.00
November	1580.00	640	640	-474.00
December	2170.00	640	640	114.00

### Conclusion of Law

Based on the recommendation of the Oregon Department of Fish and Wildlife, the Department consents to injury of the instream water right evidenced by Certificate 59491. The additional point of diversion proposed in Transfer Application T-12160 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, 690-380-5030 and 690-380-5050.

### Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-12160 is 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 53427 and 82966 and any related decree.
3. Water right Certificates 53427 and 82966 are cancelled.
4. The quantity of water diverted at the proposed additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point 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 each point of diversion (new and existing).
  - 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 is located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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 and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 18 day of July, 2016.

  
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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: JUL 20 2016  
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