

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10102, Multnomah County) CHANGE IN POINT OF DIVERSION
) AND PLACE OF USE

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 PORTLAND, PARKS AND RECREATION
C/O DAN BUTTS
6437 SE DIVISION ST
PORTLAND OR 97206

Findings of Fact

1. On February 28, 2006, the City of Portland filed a transfer application to change the place of use, and point of diversion for a portion of the right under Certificate 56757. The Department assigned the application number T-10102.
2. On May 1, 2006 the applicant submitted amendments to the application and a revised map.
3. The portion of the right to be transferred is as follows:

Certificate: 56757 in the name of the CITY OF PORTLAND (perfected under Permit S-30829)

Use: IRRIGATION of 32.35 ACRES

Priority Date: AUGUST 26, 1965

Rate: 0.40 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: CRYSTAL SPRINGS CREEK, tributary to JOHNSON CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 S	1 E	WM	13	SE SW	49	5400 FEET NORTH & 1550 FEET EAST FROM NW CORNER OF G. WILLIS DLC #58

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a 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.

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 S	1 E	WM	24	NW NW	49	4500 FEET NORTH & 1370 FEET EAST FROM NW CORNER OF G. WILLIS DLC #58

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	1 E	WM	13	NE SW	49	0.009
1 S	1 E	WM	13	NW SW	49	5.635
1 S	1 E	WM	13	SW SW	49	8.309
1 S	1 E	WM	13	SE SW	49	1.333
1 S	1 E	WM	14	NE SE	49	0.186
1 S	1 E	WM	24	NE NW	49	0.622
1 S	1 E	WM	24	NW NW	49	0.892
1 S	1 E	WM	24	NW NW	57	3.150
1 S	1 E	WM	24	SW NW	57	4.647
1 S	1 E	WM	24	NE SW	57	3.154
1 S	1 E	WM	24	NW SW	57	3.376
1 S	1 E	WM	24	SE SW	57	1.037

4. Application T-10102 proposes to change the point of diversion for the transferred portion of the right approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1S	1E	WM	23	SE NE	57	2376 feet South and 333 feet West from the NE Corner of Section 23

5. Application T-10102 also proposes to change the place of use of the right to:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	1 E	WM	23	NE NE	5.010
1 S	1 E	WM	23	SE NE	6.430
1 S	1 E	WM	23	NE SE	2.950
1 S	1 E	WM	24	NW NW	1.188
1 S	1 E	WM	24	SW NW	6.452
1 S	1 E	WM	24	NW SW	10.320

6. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion is eligible for screening cost share funds. However, funds may not be currently available. ODFW has indicated a grace period is appropriate until such time as cost share funds become available to assist in the construction of a fish

screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of cost share funding availability.

8. The applicant requested the transfer to be conditioned to state in times of reduced water availability, the share of the water under the right for Westmoreland Park will instead be used at the Eastmoreland Golf Course site up to the limits of the golf course's water right.
9. Both Eastmoreland Golf Course and Westmoreland Park are currently under the right evidenced by Certificate 56757 and are under the ownership of the City as Portland. It is within the prerogative of the City of Portland to determine which of the lands under the right will receive irrigation water, up to the limits of the right, in a time of shortage. However, following approval of T-10102, Certificate 56757 will be cancelled and superseded by a remaining right certificate that includes Eastmoreland Golf Course lands. Upon perfection of the place of use change, a confirming certificate will be issued to describe the portion of the right transferred to Westmoreland Park.
10. The applicant has requested that the transferred portion of the right be subordinate to the portion of the right not affected by application T-10102. The subordination shall not affect the relative priority of the right with respect to any other right.
11. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. On June 1, 2006, the Department issued a preliminary determination proposing to approve Transfer T-10102 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 June 6, 2006, and in The Oregonian newspaper June 16, 23 and 30, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

The proposed changes in place of use and point of diversion in application T-10102, are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of appropriation and place of use proposed in application T-10162 are approved.

2. Water right certificate 56757 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
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 Certificate 56757 and any related decree, except that the right shall be subordinate to the portion of the right evidenced by Certificate 56757 that is unaffected by the transfer..
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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 changes and full beneficial use of the water.
5. The quantity of water diverted at the additional point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
6. The former place of use of the transferred water shall no longer receive water as part of this right.
7. Prior to diverting water, the water user shall install and maintain an in-line flow meter measuring instantaneous flow and also totalizing flow at the new point of diversion and the two existing points of diversion. 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.
8. Within **two** years after the date of this order, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without screening or by-pass devices until **two** years after the date of this order. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 9th day of August 2006.


Phillip C. Ward, Director *For*

Mailing date: Aug 11, 2006