

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

In the Matter of Transfer Application)
T-10080, Clackamas County)
)

FINAL ORDER APPROVING AN
ADDITIONAL POINT OF DIVERSION
AND CHANGE IN 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

NORTH CLACKAMAS COUNTY WATER COMMISSION
11496 SE RIVER RD
MILWAUKIE OR 97267-1199

Findings of Fact

1. On January 27, 2006, North Clackamas County Water Commission filed a transfer application to change the place of use and add an additional point of diversion under Certificate 79828. The Department assigned the application number T-10080.

2. The right to be transferred is as follows:

Certificate: 79828 in the name of CITY OF GLADSTONE (perfected under Permit S-20145)

Use: MUNICIPAL USE

Priority Date: MARCH 15, 1951

Rate: 4.0 CUBIC FEET PER SECOND if available at the original point of diversion

Limit/Duty: Not Applicable

Source: CLACKAMAS RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
2 S	2 E	WM	16	SE NE	49	2080 FEET SOUTH & 100 FEET WEST FROM NE CORNER OF SECTION 16

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.

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	2 E	WM	30	NE NE	650 FEET SOUTH & 200 FEET WEST FROM NE CORNER OF SECTION 30

Authorized Place of Use:

MUNICIPAL USES

Twp	Rng	Mer	Sec	Q-Q
2 S	2 E	WM	8	SW SW
2 S	2 E	WM	16	SW NW
2 S	2 E	WM	16	NW SW
2 S	2 E	WM	16	SW SW
2 S	2 E	WM	16	SE SW
2 S	2 E	WM	17	NW NE
2 S	2 E	WM	17	SW NE
2 S	2 E	WM	17	SE NE
2 S	2 E	WM	17	ALL NW
2 S	2 E	WM	17	ALL SW
2 S	2 E	WM	17	ALL SE
2 S	2 E	WM	18	NE NE
2 S	2 E	WM	18	SE NE
2 S	2 E	WM	18	NE SE
2 S	2 E	WM	18	SE SE
2 S	2 E	WM	19	ALL NE
2 S	2 E	WM	19	ALL SW
2 S	2 E	WM	19	ALL SE
2 S	2 E	WM	20	ALL NE
2 S	2 E	WM	20	ALL NW
2 S	2 E	WM	20	ALL SW
2 S	2 E	WM	20	NE SE
2 S	2 E	WM	20	NW SE
2 S	2 E	WM	21	NW NW
2 S	2 E	WM	21	SW NW
2 S	2 E	WM	21	NW SW
2 S	2 E	WM	30	NE NE
2 S	2 E	WM	30	NW NE
2 S	2 E	WM	30	NE NW

3. Application T-10080 proposes to add a point of diversion approximately 0.8 mile downstream located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2S	2E	WM	16	SE SW	890 feet N and 210 feet W from the S ¼ corner of S 16

4. Application T-10080 also proposes to change the place of use of the right to within the service area of the North Clackamas County Water Commission, being:

MUNICIPAL USES

Twp	Rng	Mer	Sec	Q-Q
1S	1E	WM	35	SW SE
1S	1E	WM	35	SE SE
1S	1E	WM	36	SW SW
1S	1E	WM	36	SE SW
1S	1E	WM	36	SW SE
1S	2E	WM	21	SW SE
1S	2E	WM	21	SE SE
1S	2E	WM	22	SW SW
1S	2E	WM	22	SE SW
1S	2E	WM	22	SW SE
1S	2E	WM	23	SE SW
1S	2E	WM	23	SW SE
1S	2E	WM	23	SE SE
1S	2E	WM	24	SW NE
1S	2E	WM	24	SE NE
1S	2E	WM	24	NE SW
1S	2E	WM	24	SW SW
1S	2E	WM	24	SE SW
1S	2E	WM	24	ALL SE
1S	2E	WM	25	ALL NE
1S	2E	WM	25	ALL NW
1S	2E	WM	25	ALL SW
1S	2E	WM	25	NW SE
1S	2E	WM	25	SW SE
1S	2E	WM	25	SE SE
1S	2E	WM	26	ALL
1S	2E	WM	27	ALL
1S	2E	WM	28	ALL NE
1S	2E	WM	28	NE SW
1S	2E	WM	28	SE SW
1S	2E	WM	28	ALL SE
1S	2E	WM	33	ALL NE
1S	2E	WM	33	ALL SE
1S	2E	WM	34	ALL
1S	2E	WM	35	ALL
1S	2E	WM	36	ALL
1S	3E	WM	19	SW NW
1S	3E	WM	19	NW SW
1S	3E	WM	19	SW SW
1S	3E	WM	30	NW NW
1S	3E	WM	30	SW SW
1S	3E	WM	31	ALL NE
1S	3E	WM	31	ALL NW
1S	3E	WM	31	ALL SW
1S	3E	WM	31	NE SE
1S	3E	WM	31	NW SE

Twp	Rng	Mer	Sec	Q-Q
1S	3E	WM	31	SW SE
1S	3E	WM	32	ALL NE
1S	3E	WM	32	ALL NW
1S	3E	WM	32	NE SW
1S	3E	WM	32	NW SW
1S	3E	WM	32	SE SW
1S	3E	WM	32	NE SE
1S	3E	WM	32	NW SE
1S	3E	WM	32	SW SE
1S	3E	WM	33	SW NE
1S	3E	WM	33	SW NW
1S	3E	WM	33	SE NW
1S	3E	WM	33	ALL SW
1S	3E	WM	33	ALL SE
1S	3E	WM	34	NW SW
1S	3E	WM	34	SW SW
1S	3E	WM	34	SE SW
1S	3E	WM	34	ALL SE
1S	3E	WM	35	SW SW
1S	3E	WM	35	SE SW
2S	1E	WM	1	ALL
2S	1E	WM	2	ALL NE
2S	1E	WM	2	SE NW
2S	1E	WM	2	NE SW
2S	1E	WM	2	NW SW
2S	1E	WM	2	SE SW
2S	1E	WM	2	ALL SE
2S	1E	WM	11	ALL NE
2S	1E	WM	11	ALL NW
2S	1E	WM	11	NE SW
2S	1E	WM	11	NW SW
2S	1E	WM	11	SE SW
2S	1E	WM	11	ALL SE
2S	1E	WM	12	ALL
2S	1E	WM	13	ALL NE
2S	1E	WM	13	ALL NW
2S	1E	WM	13	NE SW
2S	1E	WM	13	ALL SE
2S	1E	WM	14	NE NE
2S	1E	WM	24	NE NE
2S	1E	WM	24	SE NE
2S	1E	WM	24	NE SE
2S	2E	WM	1	ALL
2S	2E	WM	2	ALL
2S	2E	WM	3	ALL
2S	2E	WM	6	SW NW
2S	2E	WM	6	ALL SW
2S	2E	WM	6	SW SE
2S	2E	WM	7	NW NE
2S	2E	WM	7	SW NE
2S	2E	WM	7	SE NE

Twp	Rng	Mer	Sec	Q-Q
2S	2E	WM	7	ALL NW
2S	2E	WM	7	ALL SW
2S	2E	WM	7	ALL SE
2 S	2 E	WM	8	SW NW
2 S	2 E	WM	8	NW SW
2 S	2 E	WM	8	SW SW
2 S	2 E	WM	10	ALL NE
2 S	2 E	WM	11	NE NE
2 S	2 E	WM	11	NW NE
2 S	2 E	WM	11	SW NE
2 S	2 E	WM	11	ALL NW
2 S	2 E	WM	12	ALL NE
2 S	2 E	WM	12	NE NW
2 S	2 E	WM	12	NW NW
2 S	2 E	WM	12	SE NW
2 S	2 E	WM	12	NE SW
2 S	2 E	WM	12	ALL SE
2 S	2 E	WM	13	NE NE
2 S	2 E	WM	13	SE NE
2 S	2 E	WM	13	NE SE
2 S	2 E	WM	16	SW NW
2S	2E	WM	16	ALL SW
2 S	2 E	WM	17	NW NE
2 S	2 E	WM	17	SW NE
2 S	2 E	WM	17	SE NE
2 S	2 E	WM	17	ALL NW
2 S	2 E	WM	17	ALL SW
2 S	2 E	WM	17	ALL SE
2 S	2 E	WM	18	ALL
2 S	2 E	WM	19	ALL
2 S	2 E	WM	20	ALL NE
2 S	2 E	WM	20	ALL NW
2 S	2 E	WM	20	ALL SW
2 S	2 E	WM	20	NE SE
2 S	2 E	WM	20	NW SE
2 S	2 E	WM	21	NW NW
2 S	2 E	WM	21	SW NW
2 S	2 E	WM	21	NW SW
2S	2E	WM	29	NW NW
2 S	2 E	WM	30	NE NE
2 S	2 E	WM	30	NW NE
2 S	2 E	WM	30	NE NW
2 S	2 E	WM	30	NW NW
2S	3E	WM	2	SW NE
2S	3E	WM	2	ALL NW
2S	3E	WM	2	NE SE
2S	3E	WM	2	NW SW
2S	3E	WM	2	SW SW
2S	3E	WM	2	SE SW
2S	3E	WM	2	NW SE
2S	3E	WM	2	SW SE

Twp	Rng	Mer	Sec	Q-Q
2S	3E	WM	3	ALL
2S	3E	WM	4	ALL
2S	3E	WM	5	ALL
2S	3E	WM	6	ALL
2S	3E	WM	7	ALL
2S	3E	WM	8	ALL
2S	3E	WM	9	ALL NE
2S	3E	WM	9	ALL NW
2S	3E	WM	9	NE SW
2S	3E	WM	9	NW SW
2S	3E	WM	9	SE SW
2S	3E	WM	9	ALL SE
2S	3E	WM	10	ALL
2S	3E	WM	11	NW NE
2S	3E	WM	11	NE NW
2S	3E	WM	11	NW NW
2S	3E	WM	11	SW NW
2S	3E	WM	15	ALL NE
2S	3E	WM	15	ALL NW
2S	3E	WM	15	NW SW
2S	3E	WM	16	ALL NE
2S	3E	WM	16	NE NW
2S	3E	WM	16	ALL SE
2S	3E	WM	17	NE NE
2S	3E	WM	17	NW NE
2S	3E	WM	17	NE NW
2S	3E	WM	17	NW NW
2S	3E	WM	17	SW NW
2S	3E	WM	18	ALL NE
2S	3E	WM	18	NE NW
2S	3E	WM	18	NW NW
2S	3E	WM	18	SW NW
2S	3E	WM	18	SE NW
2S	3E	WM	18	NE SW
2S	3E	WM	18	NW SW
2S	3E	WM	18	NE SE

5. 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.
6. 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.

7. 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.
8. A diversion structure and municipal distribution system sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. Notice of the Preliminary Determination was published pursuant to OAR 690-380-4020 on April 11, 2006 in the Department's Weekly Public Notice, and on April 26 and May 3 and May 10, 2006 in the Clackamas Review/Oregon City News . No protests were filed in response to the notice.

Conclusions of Law

The changes in place of use and addition of a point of diversion proposed in application T-10080 appear 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 changes proposed in T-10080 are approved.
2. Water right certificate 79828 is 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 Certificate 79828 and any related decree.
4. 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 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, together with that diverted at the current authorized point of diversion established by T-5791 and Certificate 79828 (described as being in the SE $\frac{1}{4}$ NE $\frac{1}{4}$, as projected within DLC 49, Section 16, T2S, R2E, W.M.; 2080 feet south and 100 feet west from the NE corner of Section 16), shall not exceed the quantity of water lawfully available at the original point of diversion, (described as being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 30, T2S, R2E, W.M; 650 feet south and 200 feet west from the NE corner of Section 30).
6. Prior to diverting water, the water user shall install and maintain a headgate, 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 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.

7. 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 screening 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.
8. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 19th day of June 2006.



Phillip C. Ward, Director

FMZ

Mailing Date JUN 21 2006