

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

In the Matter of Transfer Application            )  
T-10955, Columbia County                    )  
  )  
  )     **FINAL ORDER APPROVING**  
  )     **CHANGES IN POINT OF DIVERSION,**  
  )     **PLACE OF USE, AND CHARACTER**  
  )     **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**

PORTLAND GENERAL ELECTRIC CO.  
121 SW SALMON STREET  
PORTLAND OR 97204

**Findings of Fact**

**Background**

1. On September 24, 2009, Portland General Electric Co. filed an application for an additional point of diversion, and to change the place of use and the character of use under Certificate 81969. The Department assigned the application number T-10955.
2. On December 4, 2009, the applicant submitted a revised transfer map and on December 7, 2009, submitted a revised Supplemental Form A, and additional information that further defined the proposed place of use and the intent of T-10955 as a change in point of diversion (rather than an additional point of diversion).
3. The portion of the right to be transferred is as follows:

**Certificate:** 81969 in the name of PORTLAND GENERAL ELECTRIC CO. (perfected under Permit S-34940)

**Use:** NUCLEAR PLANT COOLING AND FIRE SUPPRESSION SYSTEM

**Priority Date:** AUGUST 3, 1970

**Rate:** 3.0 CUBIC FEET PER SECOND

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.

**Source:** COLUMBIA RIVER, tributary to PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
7 N	2 W	WM	36	SW SW	3	150 FEET NORTH AND 920 FEET EAST FROM THE SW CORNER OF SECTION 36

**Authorized Place of Use:**

NUCLEAR PLANT COOLING & FIRE SUPPRESSION SYSTEM						
Twp	Rng	Mer	Sec	Q-Q	GLot	
6 N	2 W	WM	1	NW NW	1	
6 N	2 W	WM	2	NE NE		
7 N	2 W	WM	35	SE SE		
7 N	2 W	WM	36	SW SW	3	

4. On September 2, 2004, the applicant submitted notification of a specific to general industrial use change (Nuclear Plant Cooling to General Industrial use) for 89.1 cfs under the right evidenced by Certificate 73396, as allowed under OAR 690-380-2340. The notice meets the requirements of OAR 690-380-2340, thereby allowing the exercise of the right for general industrial use at the authorized place of use. However, the notification does not result in issuance of a superseding certificate to document a permanent change in the right of record.
5. On July 14, 2006, Certificate 73396 was cancelled as a result of approval of previous transfer application T-10010, and remaining right Certificate 81969 was issued to describe the portion of the right not modified by T-10010.
6. Transfer Application T-10955 proposes to change the character of use for 3.0 cfs of the right described above to Industrial.
7. Application T-10955 also proposes to change the place of use of this portion of the right to:

Twp	Rng	Mer	Sec	QQ	GLot	DLC
8N	4W	WM	15	SE NW		37
8N	4W	WM	15	SW NW		37
8N	4W	WM	15	NE SW		37
8N	4W	WM	15	NE SW		38
8N	4W	WM	15	NW SW		37
8N	4W	WM	15	NW SW		38
8N	4W	WM	15	NW SW	4	
8N	4W	WM	15	SW SW		38
8N	4W	WM	15	SW SW	4	
8N	4W	WM	15	SE SW		38
8N	4W	WM	15	NW SE		38
8N	4W	WM	15	SW SE		38
8N	4W	WM	15	SE SE		39
8N	4W	WM	16	SW NE		37
8N	4W	WM	16	SE NE		37
8N	4W	WM	16	SE NW		37
8N	4W	WM	16	NE SW		37

Twp	Rng	Mer	Sec	QQ	GLot	DLC
8N	4W	WM	16	NW SW		37
8N	4W	WM	16	SE SW		37
8N	4W	WM	16	NE SE		37
8N	4W	WM	16	NW SE		37
8N	4W	WM	16	SW SE		37
8N	4W	WM	16	SE SE		37
8N	4W	WM	16	SE SE	8	
8N	4W	WM	21	NE NE		
8N	4W	WM	21	NW NE		37
8N	4W	WM	21	NW NE	1	
8N	4W	WM	21	SW NE		
8N	4W	WM	21	SE NE		
8N	4W	WM	22	NE NW		38
8N	4W	WM	22	NW NW		38
8N	4W	WM	22	NW NW	1	
8N	4W	WM	22	SW NW		38
8N	4W	WM	22	SW NW	2	
8N	4W	WM	22	SE NW		38

8. Transfer Application T-10955 proposes a change in point of diversion for the portion transferred to a new point approximately 17 miles downstream in the source at the following location:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8N	4W	WM	15	SE SE	39	2800 FEET NORTH AND 560 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 22

9. This transfer application was submitted concurrently with a request for amendment of the Site Certificate for the Port Westward Generating Project that is being processed by the Oregon Energy Facility Siting Council. Processing of the two applications has been coordinated by the agencies.
10. Notice of the application for transfer was published on October 6, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. On December 12, 2009, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10955 to Adam Bless of the Oregon Department of Energy, coordinator for the agencies, with copies e-mailed to the applicant and agent. The applicant requested that the Department proceed, but asked that the date for completion of the changes and beneficial use be changed from October 1, 2011, to December 1, 2013. Additional time is needed to meet anticipated timelines of the PGE Integrated Resource Plan which was submitted to the Oregon PUC, competitive bidding, construction and development of the commercial operation. Since completion dates are set to coincide with the beginning of the Water Year on the 1<sup>st</sup> of October, the applicant changed the request to October 1, 2014. The Department hereby grants an extension of the completion deadline to October 1, 2014.

12. On December 23, 2009, Adam Bless e-mailed to the Water Resources Department, the applicant and agent a draft of the section of the Oregon Department of Energy's proposed order that incorporated the draft Preliminary Determination for Transfer Application T-10955 for review. Several minor changes were suggested by the interested parties and were incorporated into the Proposed Order.
13. On January 13, 2010, the Department of Energy issued its Proposed Order recommending approval of Amendment 7 to the Port Westward Energy Facility Site Certificate. The Water Resources Department's draft Preliminary Determination proposing to approve Transfer Application T-10955 was included in the document. Notice of the Proposed Order was published through DOE channels and was also sent on January 14, 2010 to the list of subscribers to the WRD public notice. A few supportive comments were sent to the DOE, but no protests were filed in response to the notice.
14. On March 12, 2010 the Energy Facility Siting Council (EFSC) voted to approve the site certificate amendment and issued a Final Order of approval. The EFSC Final Order included a requirement for the applicant to obtain approval of the water right transfer from the Water Resources Department, evidenced by issuance of a Final Order by the Oregon Water Resources Department approving Transfer Application T-10955. Provisions of the T-10955 draft Preliminary Determination were incorporated into the EFSC Final Order, including the requirement for the applicant to submit a report of land ownership to WRD within three months of the EFSC Final Order, and to complete the changes to the water right under the terms of T-10955 by October 1, 2014.
15. On April 26, 2010, the applicant submitted a satisfactory report of land ownership.
16. The Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens. The proposed point of diversion is equipped with a fish screen that was previously approved by the Oregon Department of Fish and Wildlife and the Marine Fisheries (US Army Corps of Engineers Permit #200200448).

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

17. Water has been used within the last five years for industrial uses according to the terms and conditions of the right and the Specific to General Industrial Use notification pursuant to OAR 690-380-2340. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A diversion structure and equipment sufficient to use the full amount of water allowed under the existing right have been present within the five-year period prior to submittal of Transfer Application T-10955, including pumps and distribution piping.
19. The proposed changes would not result in enlargement of the right.
20. The proposed changes would not result in injury to other water rights.


**Conclusions of Law**

The changes in point of diversion, place of use and character of use proposed in Transfer Application T-10955 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

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

1. The changes in point of diversion, place of use and character of use proposed in Transfer Application T-10955 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 Certificate 81969 and any related decree.
3. Water right certificate 81969 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water (3.0 cfs) lawfully available at the original point of diversion.
5. The Director may require the water user to install a headgate, a totalizing flow meter, or other suitable measuring devices at the point of diversion. If the Director notifies the water user to install a headgate, a totalizing flow meter, or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
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, 2014**. 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 changes and full beneficial use of the water.
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 27 day of April 2010.

  
Phillip C. Ward, Director

Mailing date: APR 28 2010