

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11126, Tillamook County) PROPOSING APPROVAL OF A
) CHANGE IN POINT OF DIVERSION
) AND PLACE 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

PACIFIC CITY JOINT WATER SANITARY AUTHORITY
TONY OWEN
PO BOX 520
PACIFIC CITY, OR 97135-0520

Findings of Fact

Background

1. On September 1, 2010, PACIFIC CITY JOINT WATER SANITARY AUTHORITY filed an application for a change in point of diversion and to change the place of use under Certificates 32238 and 44554. The Department assigned the application number T-11126.
2. The portion of the first right to be transferred is as follows:

Certificate: 32238 in the name of PACIFIC CITY WATER DISTRICT (perfected under Permit S-26793)

Use: MUNICIPAL

Priority Date: AUGUST 3, 1959

Rate: 0.19 CUBIC FOOT PER SECOND

Source: HORN CREEK, tributary to the NESTUCCA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	8	SE SE

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

Authorized Place of Use:

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	GLot
4 S	10 W	WM	19	NE SW	
4 S	10 W	WM	19	NW SW	
4 S	10 W	WM	19	SW SW	
4 S	10 W	WM	19	SE SW	
4 S	10 W	WM	30	NE NW	
4 S	10 W	WM	30	NW NW	
4 S	10 W	WM	30	SW NW	
4 S	10 W	WM	30	SE NW	
4 S	11 W	WM	24	NE NE	1
4 S	11 W	WM	24	SE NE	2
4 S	11 W	WM	24	NE SE	3
4 S	11 W	WM	24	SE SE	4
4 S	11 W	WM	25	NE NE	1
4 S	11 W	WM	25	SE NE	2

3. Transfer Application T-11126 proposes to move the authorized point of diversion approximately 1.8 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 W	WM	20	NE SW	2450 FEET NORTH AND 2575 FEET EAST FROM THE SW CORNER OF SECTION 20

4. Transfer Application T-11126 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	SW NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE
4 S	10 W	WM	19	SE SE
4 S	10 W	WM	30	NE NE
4 S	10 W	WM	30	NWNE
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	30	NW SW
4 S	10 W	WM	30	NE SE
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	10 W	WM	30	SE SE
4 S	10 W	WM	31	NW NE
4 S	10 W	WM	31	SW NE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	13	SW SE
4 S	11 W	WM	24	NE NE
4 S	11 W	WM	24	NW NE
4 S	11 W	WM	24	SW NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NW SE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE
4 S	11 W	WM	25	NE SE

5. The portion of the second right to be transferred is as follows:

Certificate: 44554 in the name of PACIFIC CITY WATER DISTRICT (perfected under Permit S-30792)

Use: MUNICIPAL USE

Priority Date: JULY 8, 1965

Rate: 0.49 CUBIC FOOT PER SECOND

Source: UNNAMED STREAM, tributary to the HORN CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 W	WM	16	SW NW	330 FEET NORTH AND 50 FEET EAST FROM THE W1/4 CORNER OF SECTION 16

Authorized Place of Use:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	NW SE
4 S	11 W	WM	24	SW SE
4 S	11 W	WM	24	SE SE

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	NW NE
4 S	11 W	WM	25	SW NE
4 S	11 W	WM	25	SE NE

6. Transfer Application T-11126 proposes to move the authorized point of diversion approximately 1.25 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	10 W	WM	20	NE SW	2450 FEET NORTH AND 2575 FEET EAST FROM THE SW CORNER OF SECTION 20

7. Transfer Application T-11126 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	10 W	WM	18	SE SW
4 S	10 W	WM	19	NW NE
4 S	10 W	WM	19	SW NE
4 S	10 W	WM	19	SE NE
4 S	10 W	WM	19	NE NW
4 S	10 W	WM	19	SE NW
4 S	10 W	WM	19	SW NW
4 S	10 W	WM	19	NE SW
4 S	10 W	WM	19	NW SW
4 S	10 W	WM	19	SW SW
4 S	10 W	WM	19	SE SW
4 S	10 W	WM	19	NE SE
4 S	10 W	WM	19	NW SE
4 S	10 W	WM	19	SW SE
4 S	10 W	WM	19	SE SE
4 S	10 W	WM	30	NE NE
4 S	10 W	WM	30	NW NE
4 S	10 W	WM	30	SW NE
4 S	10 W	WM	30	SE NE
4 S	10 W	WM	30	NE NW
4 S	10 W	WM	30	NW NW
4 S	10 W	WM	30	SW NW
4 S	10 W	WM	30	SE NW
4 S	10 W	WM	30	NE SW
4 S	10 W	WM	30	NW SW
4 S	10 W	WM	30	NE SE
4 S	10 W	WM	30	NW SE
4 S	10 W	WM	30	SW SE
4 S	10 W	WM	30	SE SE
4 S	10 W	WM	31	NW NE
4 S	10 W	WM	31	SW NE
4 S	11 W	WM	13	NE SE
4 S	11 W	WM	13	SE SE
4 S	11 W	WM	13	SW SE
4 S	11 W	WM	24	NE NE

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
4 S	11 W	WM	24	NW NE
4 S	11 W	WM	24	SW NE
4 S	11 W	WM	24	SE NE
4 S	11 W	WM	24	NW SE
4 S	11 W	WM	24	NE SE
4 S	11 W	WM	24	SE SE
4 S	11 W	WM	25	NE NE
4 S	11 W	WM	25	SE NE
4 S	11 W	WM	25	NE SE

8. Notice of the application for transfer was published on September 7, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. 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 may be eligible for screening cost share funds.
10. On November 22, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11126 to the applicant. The draft Preliminary Determination set forth a deadline of December 22, 2010, for the applicant to respond. The applicant requested that the Department make a few corrections and proceed with issuance of a Preliminary Determination.

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

11. Certificates 32238 and 44554 are for municipal use. Therefore, they are not subject to forfeiture under ORS 540.610.
12. A diversion structure and pipelines 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-11126.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.

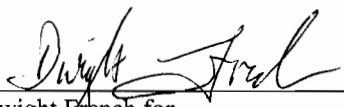
Determination and Proposed Action

The change in point of diversion and change in place of use proposed in Transfer Application T-11126 appear to be 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.

If Transfer Application T-11126 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11126 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 32238 and 44554 any related decree.*
3. *Water right certificates 32238 and 44554 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
4. *The quantity of water diverted at the 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. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
6. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
7. *Prior to diverting water, 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. 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. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2020**. 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.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 6 day of December 2010.



Dwight French for
PHILIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.