

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11116, Lincoln County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND A CHANGE IN 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**

CITY OF LINCOLN CITY  
C/O DAVID HAWKER  
801 SW HWY 101  
LINCOLN CITY, OR 97367

**Findings of Fact**

***Background***

1. On August 5, 2010, THE CITY OF LINCOLN CITY filed an application for an additional point of diversion (POD) and to change the place of use under Certificate 21779. The Department assigned the application number T-11116.
2. On September 8, 2010, the applicant's agent provided clarification that the proposed transfer was to affect the entire right included in Certificate 21779, that the proposed additional POD would be limited to no more than 0.5 cfs and would be tied to a certain portion of the existing and the added lands, and that the two original PODs would continue to serve the existing place of use. The total of 1.5 cfs could be taken from the combination of any one or more of the PODs, with the limitation that no more than 0.5 cfs would be appropriated from the additional POD. Water from the proposed POD would be delivered only to the designated lands.
3. On September 13, 2010, the applicant's agent provided further clarification that the priority date of April 22, 1947 would apply to the proposed additional POD.

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.
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4. The right to be transferred is as follows:

**Certificate:** 21779 in the name of CITY OF OCEANLAKE (perfected under Permit S-20179)

**Use:** MUNICIPAL USE

**Priority Date:** APRIL 22, 1947 for 0.75 cfs and JULY 18, 1949 for 0.75 cfs

**Rate:** 1.50 CUBIC FEET PER SECOND

**Source:** ROCK CREEK, tributary of DEVILS LAKE

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	POD #
7 S	10 W	WM	7	NE SE	1
7 S	11 W	WM	12	SW NE	2

**Authorized Place of Use:**

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	GLot
6 S	11 W	WM	34	SE SE	31
6 S	11 W	WM	34	SE SE	32
6 S	11 W	WM	35	SW SW	25
6 S	11 W	WM	35	SW SW	26
6 S	11 W	WM	35	SE SE	31
6 S	11 W	WM	35	SE SE	32
6 S	11 W	WM	36	NE SW	
6 S	11 W	WM	36	NW SW	
6 S	11 W	WM	36	SW SW	
6 S	11 W	WM	36	SE SW	
6 S	11 W	WM	36	NW SE	
6 S	11 W	WM	36	SW SE	
7 S	11 W	WM	1	NW NE	
7 S	11 W	WM	1	SW NE	
7 S	11 W	WM	1	NE NW	
7 S	11 W	WM	1	NW NW	
7 S	11 W	WM	1	SW NW	
7 S	11 W	WM	1	SE NW	
7 S	11 W	WM	1	NE SW	
7 S	11 W	WM	1	NW SW	
7 S	11 W	WM	1	SW SW	
7 S	11 W	WM	1	SE SW	
7 S	11 W	WM	1	NW SE	
7 S	11 W	WM	1	SW SE	
7 S	11 W	WM	2	NE NE	
7 S	11 W	WM	2	NW NE	
7 S	11 W	WM	2	SW NE	
7 S	11 W	WM	2	SE NE	
7 S	11 W	WM	2	NE NW	
7 S	11 W	WM	2	NW NW	
7 S	11 W	WM	2	SW NW	
7 S	11 W	WM	2	SE NW	
7 S	11 W	WM	2	NE SW	
7 S	11 W	WM	2	NW SW	

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	GLot
7 S	11 W	WM	2	SW SW	
7 S	11 W	WM	2	SE SW	
7 S	11 W	WM	2	NE SE	
7 S	11 W	WM	2	NW SE	
7 S	11 W	WM	2	SW SE	
7 S	11 W	WM	2	SE SE	
7 S	11 W	WM	3	NE NE	
7 S	11 W	WM	3	NW NE	
7 S	11 W	WM	3	SW NE	
7 S	11 W	WM	3	SE NE	
7 S	11 W	WM	3	NE NW	
7 S	11 W	WM	3	NW NW	
7 S	11 W	WM	3	SW NW	
7 S	11 W	WM	3	SE NW	
7 S	11 W	WM	3	NE SW	
7 S	11 W	WM	3	NW SW	
7 S	11 W	WM	3	SW SW	
7 S	11 W	WM	3	SE SW	
7 S	11 W	WM	3	NE SE	
7 S	11 W	WM	3	NW SE	
7 S	11 W	WM	3	SW SE	
7 S	11 W	WM	3	SE SE	
7 S	11 W	WM	10	NE NE	
7 S	11 W	WM	10	NW NE	
7 S	11 W	WM	10	SW NE	
7 S	11 W	WM	10	SE NE	
7 S	11 W	WM	10	NE NW	
7 S	11 W	WM	10	NW NW	
7 S	11 W	WM	10	SW NW	
7 S	11 W	WM	10	SE NW	
7 S	11 W	WM	10	NE SW	
7 S	11 W	WM	10	NW SW	
7 S	11 W	WM	10	SW SW	
7 S	11 W	WM	10	SE SW	
7 S	11 W	WM	10	NE SE	
7 S	11 W	WM	10	NW SE	
7 S	11 W	WM	10	SW SE	
7 S	11 W	WM	10	SE SE	
7 S	11 W	WM	11	NE NE	
7 S	11 W	WM	11	NW NE	
7 S	11 W	WM	11	SW NE	
7 S	11 W	WM	11	SE NE	
7 S	11 W	WM	11	NE NW	
7 S	11 W	WM	11	NW NW	
7 S	11 W	WM	11	SW NW	
7 S	11 W	WM	11	SE NW	
7 S	11 W	WM	11	NE SW	
7 S	11 W	WM	11	NW SW	
7 S	11 W	WM	11	SW SW	
7 S	11 W	WM	11	SE SW	

MUNICIPAL USES					
Twp	Rng	Mer	Sec	Q-Q	GLot
7 S	11 W	WM	11	NW SE	
7 S	11 W	WM	11	SW SE	

5. Transfer Application T-11116 proposes an additional point of diversion (sometimes referred to as the “Siletz POD”) for 0.5 cfs of the right (priority date April 22, 1947), approximately 2.9 miles downstream past the mouth of Rock Creek to a point in Devil’s Lake, located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
7 S	11 W	WM	2	SW NE	14	PROPOSED POD: 1,760 FEET SOUTH AND 1,710 FEET WEST FROM THE NE CORNER OF SECTION 2

6. Application T-11116 also proposes to change the place of use of the right so that the proposed POD will serve the following lands (some of which are included within the current place of use and some of which will be added to the place of use for the right):

MUNICIPAL USES						
Twp	Rng	Mer	Sec	Q-Q	GLot	Relation to current Place of Use
6 S	11 W	WM	35	NE SE	17	To be Added
6 S	11 W	WM	35	NE SE	18	To be Added
6 S	11 W	WM	35	NW SE	19	To be Added
6 S	11 W	WM	35	NW SE	20	To be Added
6 S	11 W	WM	35	SW SE	29	To be Added
6 S	11 W	WM	35	SW SE	30	To be Added
6 S	11 W	WM	35	SE SE	31	Currently Included
6 S	11 W	WM	35	SE SE	32	Currently Included
6 S	11 W	WM	36	NW SW	23	Currently Included
6 S	11 W	WM	36	NW SW	24	Currently Included
6 S	11 W	WM	36	SW SW	25	Currently Included
6 S	11 W	WM	36	SW SW	26	Currently Included
7 S	11 W	WM	2	NE NE	1	Currently Included
7 S	11 W	WM	2	NE NE	2	Currently Included
7 S	11 W	WM	2	NW NE	3	Currently Included
7 S	11 W	WM	2	NW NE	4	Currently Included
7 S	11 W	WM	2	SW NE	13	Currently Included
7 S	11 W	WM	2	SW NE	14	Currently Included
7 S	11 W	WM	2	SE NE	15	Currently Included
7 S	11 W	WM	2	SE NE	16	Currently Included

7. The original two PODs will continue to serve the current place of use. If T-11116 is approved, the description of the right will be altered as follows, to integrate the proposed changes, specify the points of diversion serving various lands and to include Government Lot numbers wherever applicable:

MUNICIPAL USES						
Twp	Rng	Mer	Sec	Q-Q	GLot	PODs Serving the Land
6 S	11 W	WM	34	SE SE	31	1 & 2
6 S	11 W	WM	34	SE SE	32	1 & 2
6 S	11 W	WM	35	SW SW	25	1 & 2
6 S	11 W	WM	35	SW SW	26	1 & 2
6 S	11 W	WM	35	NE SE	17	Proposed
6 S	11 W	WM	35	NE SE	18	Proposed
6 S	11 W	WM	35	NW SE	19	Proposed
6 S	11 W	WM	35	NW SE	20	Proposed
6 S	11 W	WM	35	SW SE	29	Proposed
6 S	11 W	WM	35	SW SE	30	Proposed
6 S	11 W	WM	35	SE SE	31	1 & 2 & Proposed
6 S	11 W	WM	35	SE SE	32	1 & 2 & Proposed
6 S	11 W	WM	36	NE SW	21	1 & 2
6 S	11 W	WM	36	NE SW	22	1 & 2
6 S	11 W	WM	36	NW SW	23	1 & 2 & Proposed
6 S	11 W	WM	36	NW SW	24	1 & 2 & Proposed
6 S	11 W	WM	36	SW SW	25	1 & 2 & Proposed
6 S	11 W	WM	36	SW SW	26	1 & 2 & Proposed
6 S	11 W	WM	36	SE SW	27	1 & 2
6 S	11 W	WM	36	SE SW	28	1 & 2
6 S	11 W	WM	36	NW SE	19	1 & 2
6 S	11 W	WM	36	NW SE	20	1 & 2
6 S	11 W	WM	36	SW SE	29	1 & 2
6 S	11 W	WM	36	SW SE	30	1 & 2
7 S	11 W	WM	1	NW NE		1 & 2
7 S	11 W	WM	1	SW NE		1 & 2
7 S	11 W	WM	1	NE NW	5	1 & 2
7 S	11 W	WM	1	NE NW	6	1 & 2
7 S	11 W	WM	1	NW NW	7	1 & 2
7 S	11 W	WM	1	NW NW	8	1 & 2
7 S	11 W	WM	1	SW NW	9	1 & 2
7 S	11 W	WM	1	SW NW	10	1 & 2
7 S	11 W	WM	1	SE NW	11	1 & 2
7 S	11 W	WM	1	NE SW		1 & 2
7 S	11 W	WM	1	NW SW	12	1 & 2
7 S	11 W	WM	1	SW SW	13	1 & 2
7 S	11 W	WM	1	SE SW		1 & 2
7 S	11 W	WM	1	NW SE		1 & 2
7 S	11 W	WM	1	SW SE		1 & 2
7 S	11 W	WM	2	NE NE	1	1 & 2 & Proposed
7 S	11 W	WM	2	NE NE	2	1 & 2 & Proposed
7 S	11 W	WM	2	NW NE	3	1 & 2 & Proposed
7 S	11 W	WM	2	NW NE	4	1 & 2 & Proposed
7 S	11 W	WM	2	SW NE	13	1 & 2 & Proposed

MUNICIPAL USES						
Twp	Rng	Mer	Sec	Q-Q	GLot	PODs Serving the Land
7 S	11 W	WM	2	SW NE	14	1 & 2 & Proposed
7 S	11 W	WM	2	SE NE	15	1 & 2 & Proposed
7 S	11 W	WM	2	SE NE	16	1 & 2 & Proposed
7 S	11 W	WM	2	NE NW	5	1 & 2
7 S	11 W	WM	2	NE NW	6	1 & 2
7 S	11 W	WM	2	NW NW	7	1 & 2
7 S	11 W	WM	2	NW NW	8	1 & 2
7 S	11 W	WM	2	SW NW	9	1 & 2
7 S	11 W	WM	2	SW NW	10	1 & 2
7 S	11 W	WM	2	SE NW	11	1 & 2
7 S	11 W	WM	2	SE NW	12	1 & 2
7 S	11 W	WM	2	NE SW	21	1 & 2
7 S	11 W	WM	2	NE SW	22	1 & 2
7 S	11 W	WM	2	NW SW	23	1 & 2
7 S	11 W	WM	2	NW SW	24	1 & 2
7 S	11 W	WM	2	SW SW	25	1 & 2
7 S	11 W	WM	2	SW SW	26	1 & 2
7 S	11 W	WM	2	SE SW	27	1 & 2
7 S	11 W	WM	2	SE SW	28	1 & 2
7 S	11 W	WM	2	NE SE	17	1 & 2
7 S	11 W	WM	2	NE SE	18	1 & 2
7 S	11 W	WM	2	NW SE	19	1 & 2
7 S	11 W	WM	2	NW SE	20	1 & 2
7 S	11 W	WM	2	SW SE	29	1 & 2
7 S	11 W	WM	2	SW SE	30	1 & 2
7 S	11 W	WM	2	SE SE	31	1 & 2
7 S	11 W	WM	2	SE SE	32	1 & 2
7 S	11 W	WM	3	NE NE	1	1 & 2
7 S	11 W	WM	3	NE NE	2	1 & 2
7 S	11 W	WM	3	SE NE	15	1 & 2
7 S	11 W	WM	3	SE NE	16	1 & 2
7 S	11 W	WM	3	NE SE	17	1 & 2
7 S	11 W	WM	3	NE SE	18	1 & 2
7 S	11 W	WM	3	SW SE	30	1 & 2
7 S	11 W	WM	3	SE SE	31	1 & 2
7 S	11 W	WM	3	SE SE	32	1 & 2
7 S	11 W	WM	10	NE NE	1	1 & 2
7 S	11 W	WM	10	NE NE	2	1 & 2
7 S	11 W	WM	10	NW NE	3	1 & 2
7 S	11 W	WM	10	SW NE	13	1 & 2
7 S	11 W	WM	10	SW NE	14	1 & 2
7 S	11 W	WM	10	SE NE	15	1 & 2
7 S	11 W	WM	10	SE NE	16	1 & 2
7 S	11 W	WM	10	NE SE	17	1 & 2
7 S	11 W	WM	10	NE SE	18	1 & 2
7 S	11 W	WM	10	NW SE	19	1 & 2
7 S	11 W	WM	10	NW SE	20	1 & 2
7 S	11 W	WM	10	SW SE	29	1 & 2
7 S	11 W	WM	10	SW SE	30	1 & 2

MUNICIPAL USES						
Twp	Rng	Mer	Sec	Q-Q	GLot	PODs Serving the Land
7 S	11 W	WM	10	SE SE	31	1 & 2
7 S	11 W	WM	10	SE SE	32	1 & 2
7 S	11 W	WM	11	NE NE	1	1 & 2
7 S	11 W	WM	11	NE NE	2	1 & 2
7 S	11 W	WM	11	NW NE	3	1 & 2
7 S	11 W	WM	11	NW NE	4	1 & 2
7 S	11 W	WM	11	SW NE	13	1 & 2
7 S	11 W	WM	11	SW NE	14	1 & 2
7 S	11 W	WM	11	SE NE	15	1 & 2
7 S	11 W	WM	11	SE NE	16	1 & 2
7 S	11 W	WM	11	NE NW	5	1 & 2
7 S	11 W	WM	11	NE NW	6	1 & 2
7 S	11 W	WM	11	NW NW	7	1 & 2
7 S	11 W	WM	11	NW NW	8	1 & 2
7 S	11 W	WM	11	SW NW	9	1 & 2
7 S	11 W	WM	11	SW NW	10	1 & 2
7 S	11 W	WM	11	SE NW	11	1 & 2
7 S	11 W	WM	11	SE NW	12	1 & 2
7 S	11 W	WM	11	NE SW	21	1 & 2
7 S	11 W	WM	11	NE SW	22	1 & 2
7 S	11 W	WM	11	NW SW	23	1 & 2
7 S	11 W	WM	11	NW SW	24	1 & 2
7 S	11 W	WM	11	SW SW	25	1 & 2
7 S	11 W	WM	11	SW SW	26	1 & 2
7 S	11 W	WM	11	SE SW	27	1 & 2
7 S	11 W	WM	11	SE SW	28	1 & 2
7 S	11 W	WM	11	NW SE	19	1 & 2
7 S	11 W	WM	11	NW SE	20	1 & 2
7 S	11 W	WM	11	SW SE	29	1 & 2
7 S	11 W	WM	11	SW SE	30	1 & 2

8. The Applicant has requested 15 years from issuance of the Final Order to complete the proposed changes because the proposal will require the construction of a new point of diversion, the development and expansion of a water distribution system from the new point of diversion to the proposed place of use and the completion of modifications to the Chinook Winds Casino Golf Resort.
  
9. Notice of the application for transfer was published on August 10, 2010, pursuant to OAR 690-380-4000. Several comments were filed in response to the notice. Comments were provided by William G. and Donna F. Elsasser; Jerry Bottemiller; The Shores Club Condominium Association (Arthur A. Bettger, Chairman); Mitchell Moore; and Brian Green, Chairman of the Devils Lake Water Improvement District (DLWID). Derek Wilson of the Oregon Department of Fish and Wildlife (ODFW) submitted comments in addition to his routine fish screen and by-pass review. Lakeshore property owner Larry Brown also visited the Department office in Salem to discuss the application and communicated his concerns.

10. Issues raised in the comments included the following:

- a) Certificate 21779 may not have been used in the past five years and therefore might be subject to forfeiture;
- b) The requested transfer may not comply with statewide planning goals and comprehensive plans, particularly pertaining to Coho habitat planning in the Devils Lake watershed;
- c) Concern that if T-11116 is approved, the existing water right might be enlarged especially during August and September, (the commenter assumes that the new use will be for agricultural use/irrigation of the Siletz Tribe's golf course) which would affect the lake water level during these two months and cause injury to other rights;
- d) The proposed POD may not be from the same source of surface water as the original water right, based on the location of the proposed POD over two miles upstream in Devils Lake from the mouth of Rock Creek;
- e) Concern that the use of water from the proposed POD will not continue to qualify as "municipal use," because the POD will not be part of the municipal distribution system for all citizens, and use of the water will be for the Chinook Winds golf course, rather than for the full spectrum of municipal uses;
- f) Expectation that the proposed change will leave at least 0.5 cfs in the reach of Rock Creek between the Oceanlake Dam and the lake (as opposed to the water potentially being diverted at the current PODs at or above the dam). This will alleviate a risk to Coho salmon in Rock Creek and also benefit other species, by providing a longer reach of natural flow and function.
- g) Concern that retaining the historic PODs under Certificate 21779 would leave an impediment to Coho salmon in Rock Creek. ODFW recommended that the water user remove one or both historic PODs prior to or concurrently with implementation of the proposed POD under T-11116. The applicant has the option of making such a modification to T-11116. However, the determination in this document is based on the T-11116 proposal to add a POD, while retaining PODs 1 and 2.
- h) Both concerns and supportive comments regarding the current high E-coli levels in Rock Creek, how the golf course's current fertilization practices affect the water quality in Devils Lake and whether the proposed change will increase or decrease the nutrient load in Devils Lake; and
- i) Concerns regarding design of the pump house and sound levels from operation of the proposed POD pump, and questions whether additional water rights would be needed for expansion of the golf course and whether water would also be used for irrigation of lawns and gardens of future home sites around the golf course.

11. Not all of the issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and OAR 690-380-5100. Of the issues noted in Finding of Fact #10, (f) through (i), though important to the residents and water resources of the area, do not directly relate to the transfer review criteria.



12. Certificate 21779 is for municipal use and water rights held by cities for reasonable and usual municipal purposes are not subject to forfeiture under ORS 540.610(2)(a).
13. Following the requirements for water right transfer applications in the Department's Land Use Planning Procedures Guide, the applicant supplied the standard Land Use Information Form signed by a City of Lincoln City Senior Planner, indicating that the golf course use is permitted and the owner has received approval to expand the course. The Department is not currently aware of any conflicts with acknowledged comprehensive plans.
14. If approved, the Final Order for T-11116 will contain conditions retaining the current rate limit of the right and requiring a measurement device at the proposed POD to ensure that enlargement of the right does not occur.
15. Rock Creek flows into Devils Lake downstream from the original PODs. Water not diverted at the original PODs on Rock Creek flows into Devils Lake and enters the lake "pool." The proposed POD is on Devils Lake. The diversion rate at the proposed POD cannot exceed the amount of water available for diversion at the original PODs. As a result, water not diverted at the original PODs could be appropriated at the proposed POD. Therefore, the proposal to access 0.5 cfs from the lake "pool" via the proposed POD (if the flow available at the original authorized points of diversion is equal to 0.5 cfs or greater) can be allowed as coming from the same source as that authorized by the water right.
16. Transfer T-11116 proposes to retain the character of use as "municipal." The Department's definition of "municipal water use" in Division 300 defines the term to mean the delivery of water through the water system of a municipal corporation for all water uses usual and ordinary to such systems. The irrigation of parks and recreation facilities are included as examples of "municipal water use." Moreover, the applicant has provided a draft license agreement between the Applicant and the Siletz Tribe documenting that the proposed diversion works will be operated as part of the Applicant's municipal water service system.
17. If approved, calculation of inflow and outflow in Devils Lake in relation to a condition of Water Right Permit S-52672, will consider water that is being diverted from the proposed "Siletz POD" as a diversion from Rock Creek, rather than from Devils Lake. Thus, the change will not adversely affect the Devils Lake Water Improvement District's water rights under Certificate 69267 and Permits S-52672 and S-11968.
18. 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.
19. ODFW expressed concern that future use of the right will diminish flows through the D River, which exits Devils Lake, which could exacerbate the existing fish passage concerns and/or necessitate lowering lake levels, and could impact the DLWID's storage right. However, there is no instream right on D River which could be injured. Impact to the

DLWID's water rights is not expected to result in an "existing water right not receiving previously available water to which it is legally entitled", which is the OAR 690-380-0100(3) definition of "injury."

20. On October 12, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11116 to the applicant. The draft Preliminary Determination set forth a deadline of November 15, 2010, for the applicant to respond. The applicant provided comments on the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

21. Certificate 21779 is for municipal use and water rights held by cities for reasonable and usual municipal purposes are not subject to forfeiture under ORS 540.610.
22. A diversion dam, pump station, stilling basin, reservoir and municipal distribution system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11116.
23. The proposed changes would not result in enlargement of the right.
24. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**


The additional point of diversion and change in place of use proposed in Transfer Application T-11116 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-11116 is approved, the final order will include the following:*

1. *The additional point of diversion and change in place of use proposed in Transfer Application T-11116 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 21779 and any related decree.*
3. *Water right certificate 21779 is cancelled.*
4. *The quantity of water diverted at the additional point of diversion is limited to no more than 0.5 cfs and, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points 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 the new point of diversion.*
  - 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 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 bypass 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 bypass 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.*
  7. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2026**. 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 13 day of December 2010.

  
Dwight French for  
PHILLIP 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 Kara Morris at 503-986-0898 or [Kara.B.Morris@wrd.state.or.us](mailto:Kara.B.Morris@wrd.state.or.us).

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