

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11097, Yamhill County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION
	)	AND CHANGES IN 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

City of Yamhill
Attn: Richard Howard Sr.
450 South Maple Street
Yamhill, OR 97148

Findings of Fact

Background

1. On June 25, 2010, the City of Yamhill filed an application for an additional point of diversion and to change the place of use under Certificates 15427 and 10846. The Department assigned the application number T-11097.
2. On January 28, 2011, the City of Yamhill submitted a request to amend the application to add a change in the character of use under Certificate 10846 from Domestic to Municipal.

3. The first right to be transferred is as follows:

Certificate:	10846 in the name of City of Yamhill (perfected under Permit S-4001)
Use:	DOMESTIC USE
Priority Date:	FEBRUARY 12, 1919
Rate:	0.65 CUBIC FOOT PER SECOND
Limit/Duty:	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion

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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of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated.

Source: TURNER CREEK, tributary to the NORTH FORK OF THE YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	5 W	WM	10	SW NW

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
3 S	4 W	WM	4	NE NE
3 S	4 W	WM	4	NW NE
3 S	4 W	WM	4	SW NE
3 S	4 W	WM	4	SE NE
3 S	4 W	WM	4	NE NW
3 S	4 W	WM	4	SE NW
3 S	4 W	WM	4	NE SW
3 S	4 W	WM	4	SE SW
3 S	4 W	WM	4	NE SE
3 S	4 W	WM	4	NW SE
3 S	4 W	WM	4	SW SE

Being within the City of Yamhill

- Certificate 10846 does not describe the location of the point of diversion, however information is available from the transfer application and map which indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	5 W	WM	10	SW NW	300	400 FEET EAST AND 670 FEET NORTH FROM THE SW CORNER OF THE SW¼ NW¼ OF SECTION 10

- Transfer Application T-11097 proposes an additional point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	5 W	WM	10	SW NW	401	660 FEET EAST AND 0 FEET NORTH FROM THE SW CORNER OF THE SW¼ NW¼ CORNER OF SECTION 10

- Transfer Application T-11097 proposes to change the character of use to Municipal Uses.

7. Application T-11097 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
2 S	4 W	WM	27	SE SE
2 S	4 W	WM	30	NE SW
2 S	4 W	WM	30	NW SW
2 S	4 W	WM	30	SW SW
2 S	4 W	WM	30	SE SW
2 S	4 W	WM	30	SW SE
2 S	4 W	WM	31	NW NE
2 S	4 W	WM	31	SW NE
2 S	4 W	WM	31	NE NW
2 S	4 W	WM	31	NW NW
2 S	4 W	WM	31	SW NW
2 S	4 W	WM	31	SE NW
2 S	4 W	WM	31	NE SE
2 S	4 W	WM	32	SW NE
2 S	4 W	WM	32	SW NW
2 S	4 W	WM	32	SE NW
2 S	4 W	WM	32	NE SW
2 S	4 W	WM	32	NW SW
2 S	4 W	WM	32	SE SW
2 S	4 W	WM	32	NW SE
2 S	4 W	WM	32	SE SE
2 S	4 W	WM	33	NE SW
2 S	4 W	WM	33	NW SW
2 S	4 W	WM	33	SW SW
2 S	4 W	WM	33	SE SW
2 S	4 W	WM	33	NE SE
2 S	4 W	WM	33	NW SE
2 S	4 W	WM	33	SE SE
2 S	4 W	WM	34	NE SW
2 S	4 W	WM	34	NW SW
2 S	5 W	WM	10	NW SW
2 S	5 W	WM	10	SE SW
2 S	5 W	WM	14	NW NW
2 S	5 W	WM	14	SW NW
2 S	5 W	WM	14	SE SW
2 S	5 W	WM	15	NE NE
2 S	5 W	WM	15	NW NE
2 S	5 W	WM	15	SW NE
2 S	5 W	WM	15	SE NE
2 S	5 W	WM	15	NE NW
2 S	5 W	WM	15	NE SE
2 S	5 W	WM	15	SE SE
2 S	5 W	WM	23	NE NE
2 S	5 W	WM	23	NW NE
2 S	5 W	WM	23	NE NW
2 S	5 W	WM	24	SW NW
2 S	5 W	WM	24	NE SW
2 S	5 W	WM	24	SW SE

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
2 S	5 W	WM	25	SE NE
2 S	5 W	WM	25	NE NW
2 S	5 W	WM	25	SE NW
2 S	5 W	WM	25	NE SE
3 S	4 W	WM	3	SE NE
3 S	4 W	WM	3	SW NW
3 S	4 W	WM	3	SE NW
3 S	4 W	WM	3	NW SW
3 S	4 W	WM	4	NE NE
3 S	4 W	WM	4	NW NE
3 S	4 W	WM	4	SW NE
3 S	4 W	WM	4	SE NE
3 S	4 W	WM	4	NE NW
3 S	4 W	WM	4	SW NW
3 S	4 W	WM	4	SE NW
3 S	4 W	WM	4	NE SW
3 S	4 W	WM	4	SE SW
3 S	4 W	WM	4	NE SE
3 S	4 W	WM	4	NW SE
3 S	4 W	WM	4	SW SE
3 S	4 W	WM	4	SE SE
3 S	4 W	WM	5	SE NE
3 S	4 W	WM	5	SW NW
3 S	4 W	WM	5	SE SW
3 S	4 W	WM	6	SW NE
3 S	4 W	WM	6	SE NE
3 S	4 W	WM	9	NW NE
3 S	4 W	WM	9	SE NE
3 S	4 W	WM	9	NE SW
3 S	4 W	WM	9	NE SE
3 S	4 W	WM	9	SW SE
3 S	4 W	WM	9	SE SE
3 S	4 W	WM	10	NE SW

8. The second right to be transferred is as follows:

Certificate: 15427 in the name of City of Yamhill (perfected under Permit S-14399)

Use: MUNICIPAL USES

Priority Date: MARCH 27, 1940

Rate: 0.63 CUBIC FOOT PER SECOND

Source: TURNER CREEK, tributary to the NORTH FORK OF THE YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	5 W	WM	10	SW NW

Authorized Place of Use:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
2 S	4 W	WM	27	SE SE
2 S	4 W	WM	30	NE SW
2 S	4 W	WM	30	NW SW
2 S	4 W	WM	30	SW SE
2 S	4 W	WM	31	NE SE
2 S	4 W	WM	32	SW NE
2 S	4 W	WM	32	SW NW
2 S	4 W	WM	32	SE NW
2 S	4 W	WM	32	NE SW
2 S	4 W	WM	32	NW SW
2 S	4 W	WM	32	SE SW
2 S	4 W	WM	32	NW SE
2 S	4 W	WM	32	SE SE
2 S	4 W	WM	33	NE SW
2 S	4 W	WM	33	NW SW
2 S	4 W	WM	33	SW SW
2 S	4 W	WM	33	SE SW
2 S	4 W	WM	33	NE SE
2 S	4 W	WM	33	NW SE
2 S	4 W	WM	33	SE SE
2 S	4 W	WM	34	NE SW
2 S	4 W	WM	34	NW SW
2 S	5 W	WM	10	NW SW
2 S	5 W	WM	14	SW NW
2 S	5 W	WM	14	SE SW
2 S	5 W	WM	15	NE NE
2 S	5 W	WM	15	NW NE
2 S	5 W	WM	15	SW NE
2 S	5 W	WM	15	SE NE
2 S	5 W	WM	23	NW NE
2 S	5 W	WM	23	NE NW
2 S	5 W	WM	24	SW NW
2 S	5 W	WM	24	NE SW
2 S	5 W	WM	24	SW SE
3 S	4 W	WM	3	SE NE
3 S	4 W	WM	3	SW NW
3 S	4 W	WM	3	SE NW
3 S	4 W	WM	4	NE SW
3 S	4 W	WM	4	SE SW
3 S	4 W	WM	4	NE SE
3 S	4 W	WM	4	NW SE
3 S	4 W	WM	4	SW SE
3 S	4 W	WM	4	SE SE
3 S	4 W	WM	5	SE NE
3 S	4 W	WM	5	SW NW
3 S	4 W	WM	5	SE SW
3 S	4 W	WM	6	SW NE
3 S	4 W	WM	6	SE NE
3 S	4 W	WM	9	NW NE

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
3 S	4 W	WM	9	SE NE
3 S	4 W	WM	9	NE SW
3 S	4 W	WM	9	NE SE
3 S	4 W	WM	9	SW SE
3 S	4 W	WM	9	SE SE
3 S	4 W	WM	10	NE SW

9. Transfer Application T-11097 proposes an additional point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
2 S	5 W	WM	10	SW NW	401	660 FEET EAST AND 0 FEET NORTH FROM THE SW CORNER OF THE SW¼ NW¼ CORNER OF SECTION 10

10. Application T-11097 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
2 S	4 W	WM	27	SE SE
2 S	4 W	WM	30	NE SW
2 S	4 W	WM	30	NW SW
2 S	4 W	WM	30	SW SW
2 S	4 W	WM	30	SE SW
2 S	4 W	WM	30	SW SE
2 S	4 W	WM	31	NW NE
2 S	4 W	WM	31	SW NE
2 S	4 W	WM	31	NE NW
2 S	4 W	WM	31	NW NW
2 S	4 W	WM	31	SW NW
2 S	4 W	WM	31	SE NW
2 S	4 W	WM	31	NE SE
2 S	4 W	WM	32	SW NE
2 S	4 W	WM	32	SW NW
2 S	4 W	WM	32	SE NW
2 S	4 W	WM	32	NE SW
2 S	4 W	WM	32	NW SW
2 S	4 W	WM	32	SE SW
2 S	4 W	WM	32	NW SE
2 S	4 W	WM	32	SE SE
2 S	4 W	WM	33	NE SW
2 S	4 W	WM	33	NW SW
2 S	4 W	WM	33	SW SW
2 S	4 W	WM	33	SE SW
2 S	4 W	WM	33	NE SE
2 S	4 W	WM	33	NW SE
2 S	4 W	WM	33	SE SE
2 S	4 W	WM	34	NE SW
2 S	4 W	WM	34	NW SW
2 S	5 W	WM	10	NW SW

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
2 S	5 W	WM	10	SE SW
2 S	5 W	WM	14	NW NW
2 S	5 W	WM	14	SW NW
2 S	5 W	WM	14	SE SW
2 S	5 W	WM	15	NE NE
2 S	5 W	WM	15	NW NE
2 S	5 W	WM	15	SW NE
2 S	5 W	WM	15	SE NE
2 S	5 W	WM	15	NE NW
2 S	5 W	WM	15	NE SE
2 S	5 W	WM	15	SE SE
2 S	5 W	WM	23	NE NE
2 S	5 W	WM	23	NW NE
2 S	5 W	WM	23	NE NW
2 S	5 W	WM	24	SW NW
2 S	5 W	WM	24	NE SW
2 S	5 W	WM	24	SW SE
2 S	5 W	WM	25	SE NE
2 S	5 W	WM	25	NE NW
2 S	5 W	WM	25	SE NW
2 S	5 W	WM	25	NE SE
3 S	4 W	WM	3	SE NE
3 S	4 W	WM	3	SW NW
3 S	4 W	WM	3	SE NW
3 S	4 W	WM	3	NW SW
3 S	4 W	WM	4	NE NE
3 S	4 W	WM	4	NW NE
3 S	4 W	WM	4	SW NE
3 S	4 W	WM	4	SE NE
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3 S	4 W	WM	4	NE SW
3 S	4 W	WM	4	SE SW
3 S	4 W	WM	4	NE SE
3 S	4 W	WM	4	NW SE
3 S	4 W	WM	4	SW SE
3 S	4 W	WM	4	SE SE
3 S	4 W	WM	5	SE NE
3 S	4 W	WM	5	SW NW
3 S	4 W	WM	5	SE SW
3 S	4 W	WM	6	SW NE
3 S	4 W	WM	6	SE NE
3 S	4 W	WM	9	NW NE
3 S	4 W	WM	9	SE NE
3 S	4 W	WM	9	NE SW
3 S	4 W	WM	9	NE SE
3 S	4 W	WM	9	SW SE
3 S	4 W	WM	9	SE SE
3 S	4 W	WM	10	NE SW

11. Notice of the application for transfer was published on July 6, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On December 10, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11097 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 10, 2011, for the applicant to respond.
13. On January 26, 2011, the applicant requested to modify the transfer application, to change the character of use under Certificate 10846.
14. A second notice of the application for transfer was published on February 8, 2011, pursuant to OAR 690-380-4000, listing the character of use change. No comments were filed in response to the notice.
15. Certificate 10846 authorizes Domestic use. The water right record indicates that from the time of application by the City of Yamhill, the water has always been delivered through the City's municipal water system to serve customers; however, Permit S-4001 stated that the use was limited to Domestic Supply. Transfer application T-11097 proposes to change the character of use to Municipal Uses, to include all usual and ordinary types of use by the City of Yamhill.
16. The Department may only approve a proposed change if it would not result in enlargement of the right, as per OAR 690-380-5000(1)(c). Municipal Uses will include additional uses of water besides Domestic. The use of water could potentially be enlarged if the right is not conditioned to limit the annual volume to the maximum volume that could reasonably have been used for domestic purposes at the time Certificate 10846 was issued.
17. Certificate 10846 does not state an annual duty for domestic use; however, ORS 540.610 states "beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state." The maximum that could have been diverted in a year, if diverted continuously at a rate of 0.65 cfs for 365 days of the year is 470.6 acre-feet per year ($0.65 \text{ cfs} \times 60 \text{ sec/min} \times 60 \text{ min/hr} \times 24 \text{ hr/day} \times 365 \text{ days/year} \div 43,560 \text{ square feet per acre} = 470.6 \text{ acre-feet}$). However, domestic use could not beneficially use the full rate continuously 24 hours per day, 365 days per year. Therefore, it is not reasonable to assume that 470.6 acre-feet per year could have been beneficially used for domestic purposes at the time the right was established.
18. To avoid enlarging the right in the conversion to municipal use, an annual volume limit should be added to the right based on the best available estimate of the maximum amount of water that could have been diverted and beneficially used for domestic use during a year.
19. The City of Yamhill signed a "Proof of Appropriation of Water" form on July 1, 1934 and submitted it to the Department as the basis for determining the amount of water that the City was "proving up on". The Proof form stated that domestic water was delivered to 187 families and that the capacity of the pipeline was 0.65 cfs. Accordingly, the Department

issued Certificate 10846 for 0.65 cfs (which represents a reduction from the original 2.0 cfs allowed by Permit S-4001).

20. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and Penn State Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day. Allowing for six people per household in 1934, 6 people x 70 gallons per person per day x 365 days ÷ 325,850 gallons per acre-foot = 0.47 acre-foot per household per year x 187 households = 87.9 acre-feet per year.
21. Water was diverted and delivered to the City reservoir through 40,000 feet of wood stave pipe, and from there to homes. This type of pipe has a relatively short lifetime and requires significant maintenance. Therefore, a loss factor should be added to the amount actually delivered to the homes to represent the additional amount that would need to have been diverted into the pipeline to account for losses in transit. A study of the system done by the City in 1952 indicated there may have been relatively small losses between the diversion into the pipeline and the input to the City's reservoir at the lower end of the pipeline, on the order of approximately 8%.
22. Based on the above Findings of Fact, the best available evidence suggests that placing an annual limit of 94.9 acre-feet per year (87.9 acre-feet x 1.08 loss factor = 94.9 acre-feet) to be diverted for Municipal Uses in the right perfected under Permit S-4001 would avoid enlargement of the right.
23. On February 9, 2011, the Department emailed a revised draft Preliminary Determination to the applicant proposing to approve Transfer Application T-11097 including the character of use change. The revised draft Preliminary Determination cover letter set forth a deadline of March 9, 2011, for the applicant to respond.
24. On February 25, 2011, Richard Howard, Public Works Superintendent for the City of Yamhill responded by email, agreeing to limit the annual use of water for municipal use under the right perfected under Permit S-4001 to 94.9 acre-feet per year. He requested that the Department proceed to issue a Preliminary Determination.
25. 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.

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

26. Water has been used according to the terms and conditions of the right. The rights are not subject to forfeiture under ORS 540.610 because they are rights held by a municipality.

27. A diversion works, pipeline and a distribution system 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-11097.
28. The proposed changes, if conditioned to limit the annual volume under the right evidenced by Certificate 10846, would not result in enlargement of the rights.
29. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The additional point of diversion and changes in place of use and character of use proposed in Transfer Application T-11097, if conditioned to limit the annual volume for the right evidenced by Certificate 10846 (perfected under Permit S-4001), 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.

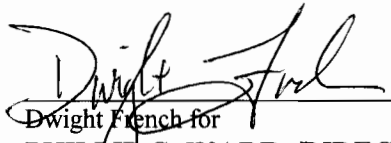
If application T-11097 is approved, the final order will include the following:

1. *The additional point of diversion and changes in place of use and character of use proposed in application T-11097 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 10846 and 15427 and any related decree.*
3. *Water right certificates 10846 and 15427 are cancelled.*
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 annual diversion of water for municipal uses for the right perfected under Permit S-4001 shall be limited to 94.9 acre-feet.*
6. *Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as 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, 2016**. 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 16 day of March, 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at (503) 986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

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

**Notice of Preliminary Determination for
Water Right Transfer T-11097**

T-11097 filed by City of Yamhill, 450 South Maple Street, Yamhill, Or 97148, proposes an additional point of diversion and change in place of use under Certificates 10846 (priority date FEBRUARY 1919) and 15427 (priority date FEBRUARY, 1919). The rights allow the use of 0.65 and 0.63 CUBIC FOOT PER SECOND respectively from TURNER CREEK, Section 10, T 2 S, R 5 W, W.M. for MUNICIPAL PURPOSE in Secs 27, 30, 31, 32, 33 & 34, T 2 S, R 4 W; Secs 10, 14, 15, 23, 24, T 2 S, R 5 W; Secs 3, 4, 5, 6, 9 & 10, T 3 S, R 4 W, W.M. including the City of Yamhill. The applicant proposes to add a point of diversion approximately 800 feet downstream to Sec. 10, T 2 S, R 5 W, W.M. and to change the place of use to Secs 27, 30, 31, 32, 33 & 34, T 2 S, R 4 W; Secs 10, 14, 15, 23, 24 & 25, T 2 S, R 5 W; Secs 3, 4, 5, 6, 9 & 10, T 3 S, R 4 W, W.M.. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is [DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.