



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904
www.wrd.state.or.us

March 6, 2013

Applicant

CITY OF TOLEDO
C/O ADAM DENLINGER
PO BOX 220
TOLEDO, OR 97391

SUBJECT: Transfer Application T-11451

Please find enclosed the public notice of the recommendations of the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Parks and Recreation Department (Parks), to consent to injury of instream water rights.

Copies of ODFW's and Park's recommendations are available for viewing at the Salem office of the Water Resources Department. Any person may review the recommendations and submit written comments or may submit a written request for a public meeting to review the recommendations. The comments or request for a meeting must be received by WRD on or before April 4, 2013.

WRD will provide copies of any comments submitted in response to this notice to ODFW and Parks. If a meeting is requested, WRD will schedule a joint public meeting with ODFW and Parks to review the recommendation.

To review the recommendation, contact Dorothy Pedersen at 503-986-0890 or e-mail Dorothy.L.Pedersen@wrд.state.or.us. Written comments and requests for a public meeting should be mailed to Attn: Dorothy Pedersen, Water Resources Department, 725 Summer St NE, Suite A, Salem, OR 97301-1271 or faxed to 503-986-0903.

If no comments or requests are received by the Department in response to the notice or if, after consideration of any written comments or the discussion during the meeting, the recommending agencies notify the Department that they will not withdraw their recommendations to consent to injury, the Department shall issue an order approving the transfer and consenting to the injury to the instream water rights. The order shall include any conditions necessary to ensure that the change will be consistent with the findings and will result in a continued net benefit to the resource.

Please do not hesitate to contact me at the phone number or email address above if you have any questions.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

enclosures

cc: Greg Beaman, District 1 Watermaster (*via e-mail*)
Adam Sussman, applicant's agent (*via e-mail: asussman@gsiws.com*)
Derek Wilson, ODFW Assistant District Fisheries Biologist – Newport (*via e-mail: Derek.R.Wilson@state.or.us*)
Danette Faucera, ODFW Water Policy Coordinator – Salem (*via e-mail: Danette.L.Faucera@state.or.us*)
Jim Morgan, Parks (*via e-mail: jim.morgan@state.or.us*)





Oregon

John A. Kitzhaber, MD, Governor

Department of Fish and Wildlife

Wildlife Division
3406 Cherry Ave NE
Salem, OR 97303-4924
(503) 947-6300
Fax (503) 947-6330
www.dfw.state.or.us



February 19, 2013

Dwight French
Oregon Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301

REFERENCE: Transfer T-11451

The Department has received notification of your finding that transfer application T-11451 cannot be made without injury to two existing instream water rights. You also indicated that the applicant intends to seek approval under ORS 540.530(1)(b) – (e). Based on this, you have requested ODFW make a recommendation on whether OWRD should consent to injury of the instream water rights. For the ODFW to consent to injury of the instream water rights, ODFW must find that the transfer will provide a net benefit to the resource consistent with the purposes of the instream water rights, which in this case, is aquatic life.

The ODFW has evaluated the proposed transfer and finds that the overall benefits of the transfer provide a net benefit, which offsets the injury to the instream water rights caused by the transfer. The attached analysis provides ODFW's reasoning for recommending the consent to injury of the instream water rights.

If you have any questions please contact Derek Wilson in our Newport office (541-265-8306 x 236) or Rick Kepler in our Salem office (503-947-6084).

Bruce McIntosh
Acting Fish Division Administrator
Fish Division

RECEIVED BY OWRD

FEB 26 2013

SALEM, OR

Cc: Derek Wilson, ODFW Newport (via e-mail)
Rick Kepler, ODFW Salem (via e-mail)
Greg Beaman, WRD Tillamook (via e-mail)
Dorothy Pedersen, WRD Salem (via e-mail)
Adam Sussman, applicant's agent (via e-mail)

Attachment: ODFW's Discussion and Analysis of Transfer T-11451 (February 19, 2013)





Oregon

John A. Kitzhaber, MD, Governor

December 21, 2012

Ed Bowles, Administrator
Fish Division
Department of Fish and Wildlife
3406 Cherry Ave. NE
Salem, Oregon 97303

Water Resources Department

North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904
www.wrd.state.or.us

REFERENCE: Transfer T-11451

Dear Ed:

The Water Resources Department has determined that approval of water right transfer T-11451 would result in injury to instream water right Certificates 67712 and 67713 on the Siletz River, due to reduction of flow within the reach between the authorized POD and the upstream POD, unless the transfer were conditioned so as to avoid or mitigate for injury. The transfer proposes to move the point of diversion on the Siletz River upstream approximately 520 feet from the authorized diversion point in the NW¼ of the SW¼ of Section 9, T10S, R10W, W.M. to the NW¼ of the SW¼ of Section 9, T10S, R10W, W.M.

The Department's streamflow model predicts that natural flow in the Siletz River is insufficient to meet the requirements of the instream right. The "Transfer Comment Form" submitted on August 28, 2012 by ODFW's Assistant District Fish Biologist Derek Wilson identified that the proposed upstream POD movement on the Siletz River would result in an impact on the available water and thereby on the available habitat for the native salmonid species that inhabit this part of the Siletz River. Based on potential impacts on the instream water rights, we issued a Preliminary Determination on December 19, 2012, proposing to deny the transfer unless the ODFW and Oregon Parks and Recreation Department (Parks) recommend that the Water Resources Department consent to injury of the instream water right as per OAR 690-380-5050.

The applicant has requested that we pursue ODFW's recommendations on whether we should consent to the injury of the instream water right pursuant to ORS 540.530(c) because of net benefits to aquatic life.

We hereby request a recommendation on whether we should consent to the injury to the instream water right that would result if water right transfer T-11451 were to be approved. We are enclosing a copy of the transfer application, our Preliminary Determination, and other supporting information to assist you in determining if the project would result in net benefits to the resource and in preparing a recommendation. Please send your recommendation c/o Dorothy Pedersen at the address above. Do not hesitate to contact Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrds.state.or.us if you have questions or need additional information about the proposed transfer.

Sincerely,

Dwight French
Water Right Services Administrator

enclosures

cc: T-11451
City of Toledo, c/o Adam Denlinger, transfer applicant (*via e-mail*)
Adam Sussman, applicant's agent (*via e-mail*)
Greg Beaman, District 1 Watermaster (*via e-mail*)
Derek Wilson, Oregon Department of Fish and Wildlife - Newport

RECEIVED BY OWRD

FEB 26 2013

SALEM, OR



ODFW's Discussion and Analysis of Transfer T-11451

February 19, 2013

RECEIVED BY OWRD

FEB 26 2013

Action

SALEM, OR

This proposal involves moving the Points of Diversion (PODs) for Certificates 87645 and 14396 upstream on the Siletz River approximately 520 feet. The size of the water rights from both Certificates combined is 3.09 cfs. The Water Resources Department (WRD) has determined that transferring this water right upstream will injure at least one instream water right (ISWR). ORS 540.530 (1)(c) allows the WRD to consent to injury of an ISWR only if the agency who applied for the instream water right recommends that WRD consent to the injury. For the recommendation and consent to injury to occur, the agency that requested the instream water right must find that the transfer will result in a net benefit to the resource. This is the Oregon Department of Fish and Wildlife's (ODFW) analysis of the transfer and determination of whether a net benefit to the resource will occur.

Background

The City of Toledo holds Certificates 87645 (priority date October 24, 1929) and 14396 (priority date February 12, 1937) for municipal water supply from the Siletz River. This transfer is necessitated by the unstable bank near the current PODs, which was jeopardized during a slide in January 2012. The upstream transfer will enable the City of Toledo to utilize a more stable area, thereby better safeguarding delivery of water to their service area.

The Siletz River basin encompasses 373 square miles (970 km²). From the confluence of the north and south forks, the river flows about 67 miles (108 km) and empties into Siletz Bay south of Lincoln City. The Siletz River supports populations of Chinook salmon, coho salmon, chum salmon, summer and winter steelhead, cutthroat trout, Pacific lamprey, and other native fish. The river is unique in that it has the only native summer steelhead run originating in the Oregon Coast Range.

Instream Water Right

T-11451 is proposing an upstream transfer within a stream reach that has two established instream water rights, C67712 and C 67713, with priority dates of 1966 and 1974, respectively. The instream rights have recommended minimum flows for aquatic life and recreation that vary by month from 100 to 220 cfs. According to WRD, stream flows within the reach are frequently below the flows to be protected under the ISWRs. Comparison of the ISWR flows to WRD's Expected Average Natural Flow (EANF) shows there is likely to be injury to both C 67712 and C 67713 if the point of diversion is moved (transferred) upstream. Because WRD has determined that transferring this water right upstream 520 feet will injure these instream water rights, ODFW may consent to the injury if we find that the transfer will result in a net benefit to

the resource (aquatic life). It is ODFW's understanding that C 67712 and C 67713 may have been jointly sought by ODFW and Oregon Parks and Recreation Department, so OWRD is asking both agencies to consent to the injury. The following is ODFW's analysis and evaluation of whether the transfer will result in a net benefit to aquatic life. We understand that Oregon Parks and Recreation Department will provide their recommendations regarding recreation separately and that they concur with ODFW's recommendations.

Injury

Potential injury to C67712 and C 67713 would most likely occur during the late summer low flow periods. The Water Availability Tables show a deficiency in net water available in September and October.

Habitat within the affected reach is utilized during the period of expected impact to the ISWR by both juvenile and adult salmonids. The greatest potential for negative impact to the instream water right would be on migrating adult summer steelhead and Chinook salmon and rearing juvenile cutthroat trout, coho and Chinook salmon.

Potential impacts include reduced water depth and migration ability, availability of foraging and edge habitat (hiding cover offered by the stream bank), and any effects that less water in the channel would have on water quality, such as increased water temperature. The existing habitat in this section can be described as a representative "glide" in the mid to lower Siletz River of low to moderate habitat quality. The glide in this section is a long, slow moving section of river with a mixture of bedrock, sand/silt, and gravel substrate with minimal large woody debris along the edges. The same or better quality of habitat being impacted by this transfer is fairly common within the watershed, therefore, ODFW has determined that under ODFW's Mitigation Policy (OAR 635-415), the habitat is classified as Category 4. Category 4 habitat is important habitat for fish and wildlife species. If impacts are unavoidable, ODFW requires in-kind or out-of-kind and in-proximity or off-proximity mitigation to achieve no net loss of habitat quantity or quality. Although mitigation rules do not require a net benefit for this category, the transfer statute does require an additional net benefit.

Mitigating Measures

With appropriate mitigation, ODFW is comfortable with the proposed upstream transfer on the Siletz River. The proposed new POD will be located near the shore in a slow, deep water section of the river and will likely not appreciably interfere with salmonid migration, spawning, or rearing. In addition, the proposed POD will be adjacent to two existing PODs held by other entities and will not greatly further impact this section of river.

ODFW has met with the City of Toledo to discuss possible mitigation opportunities. One option is for the City to mitigate for the injury to the instream water rights at the location of the injury. A net benefit could be obtained by putting protected flow in-stream from the new POD down to

RECEIVED BY OWRD

FEB 26 2013

SALEM, OR

head of tide. However, because of the Category 4 designation at the POD in the Siletz River and the availability of other opportunities, ODFW would like to pursue off-proximity mitigation in the Yaquina River basin at the Mill Creek Reservoir.

The City of Toledo holds a water right (C 42193) for the Mill Creek Reservoir in the Yaquina River basin. Operations of the Mill Creek Reservoir have the potential to greatly aid in fish passage, spawning, and survival. A potential delay in adult upstream migration or smolt out-migration could have detrimental impacts on Mill Creek salmon resources. Mill Creek contains the southernmost chum population in North America. The creek is important for chum, with annual spawning counts ranging from 300 to 1,300 adults over the last 10 years below the reservoir. Coho salmon, Chinook salmon, winter steelhead and cutthroat trout also have a consistently strong presence in Mill Creek and spawn above and below the reservoir.

Mill Creek Reservoir is the location of a key ODFW life cycle monitoring (LCM) site. The importance of this LCM site is that it plays a significant role in monitoring ESA-listed coho salmon adult returns, smolt production, and fresh water and ocean survival rates. This site has also recently become a significant predictor of Oregon Coastal (OC) coho adult spawner returns and plays a vital role in determining harvest impacts to OC coho for ocean and inland fisheries.

Maintaining adequate flows and habitat quality are key aspects in the long term stability of Mill Creek salmonid populations. The operation of the municipal water supply can play an important part in protecting juvenile salmonid habitat in and below the reservoir, preventing spawning redds from being dewatered, and allowing upstream and downstream fish passage. The annual and long term management of the Mill Creek reservoir is very important to ODFW management of the local and coastal fisheries resources.

As mitigation for the injury to instream water rights in the Siletz River, ODFW proposes to have an annual meeting with the City of Toledo staff each September concerning the operations of the Mill Creek Reservoir, including timing and volume of flow releases. This discussion will include available options and ODFW's recommendation of which option(s) might best benefit fish while still meeting the City's needs. The City would be under no obligation to accept ODFW's recommendations, but regular discussions on reservoir management will potentially help avoid problems encountered by a wide variety of adult and juvenile fish and improve habitat conditions.

Therefore, ODFW proposes two options for the City to address the potential injury and provide a net benefit to the aquatic resource from the proposed upstream transfer in T-11451:

- 1) The City would put approximately 0.015 cfs (20 miles of benefit/520ft = 202 units of benefit. $3.09 \text{ cfs of potential injury} / 202 \text{ units} = 0.015 \text{ cfs}$) instream to offset the injury and at least an additional 0.001 cfs instream to provide a net benefit to the resource. A minimum of 0.016 cfs would be required to provide a net benefit to the resource.

RECEIVED BY OWRD

FEB 26 2013

SALEM, OR

0.016 cfs of water would need to be protected instream from the new POD down to head of tide.

or

- 2) The City would commit to meeting annually with ODFW to discuss options for water management on Mill Creek. Prior to water use under this transfer, the City of Toledo shall adopt a resolution committing to meet with ODFW in September on an annual basis to discuss options for water management on Mill Creek.

Conclusion

Transferring C 87645 and C 14396 upstream approximately 520 feet has the potential to injure the instream water rights C C67712 and C 67713 by potentially reducing flows by 3.09 cfs within the affected reach. This has the potential to limit fish migration, make escape cover and forage opportunities less accessible, and diminish water quality. In considering this water right transfer, ODFW concludes that the proposed mitigation will offset the injury and result in a net benefit to aquatic life with these additional conditions:

- 1) The City of Toledo will select one of the above mitigating measures.
- 2) The new POD is required to have an ODFW-approved fish screen prior to diversion of water.
- 3) The new POD will be constructed during the appropriate in-water work period and/or under an approved variance to the in-water work period.

RECEIVED BY OWRD

FEB 26 2013

SALEM, OR



Oregon

John A. Kitzhaber, MD, Governor

Parks and Recreation Department
725 Summer Street NE, Suite C
Salem, OR 97301-1266
(503) 986-0980
FAX (503) 986-0792
www.oregonstateparks.org

RECEIVED BY OWRD

FEB 14 2013

February 8, 2013

SALEM, OR



Dwight French
Oregon Water Resources Department
725 Summer Street, NE, Suite A
Salem, Oregon 97301

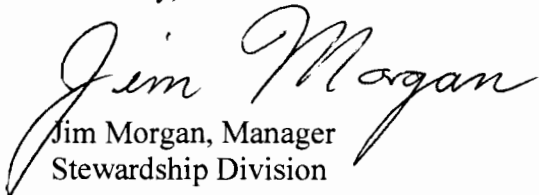
REFERENCE: Transfer T-11451

Dear Dwight:

Thank you for providing Oregon Parks and Recreation Department (OPRD) the opportunity to review information regarding the Application for Water Right Transfer submitted by the City of Toledo and the Oregon Water Resources Department's Preliminary Determination dated December 19, 2012. The Preliminary Determination proposes to deny the transfer unless the Oregon Department of Fish and Wildlife (ODFW) and OPRD recommend that Oregon Water Resources Department consent to injury of the in-stream water right as per OAR 690-380-5050.

In reviewing our records and Water Rights Certificates 67712 and 67713, both of which state an intent to "maintain an in-stream flow for the purpose of supporting aquatic life and recreation", OPRD believes the intent is to retain the in-stream flow for recreation related to boating and fishing activities. At present, OPRD does not own or maintain any boating access sites along the Siletz River in the areas affected by the Water Right Transfer Request nor has jurisdiction in regards to recreational fishing in the Siletz River. Given the predominant type of recreational boating use for this reach of river, OPRD concurs with ODFW's recommendations which are supportive of and in serve the interest of recreational fishing opportunities. In that context, OPRD supports Oregon Water Resources Department consent to injury of the in-stream water rights for Transfer T-11451.

Sincerely,


Jim Morgan, Manager
Stewardship Division

Cc: Adam Denlinger, City of Toledo

Notice of Receipt of Recommendations to Consent to Injury

T-11451 filed by City of Toledo, c/o Adam Denlinger, PO Box 220, Toledo, OR 97391, proposes changes in point of diversion and place of use under Certificates 87645 and 14396. The applicant proposes to move the point of diversion (POD) approximately 520 feet upstream in the Siletz River and to change the place of use of the rights to within the service boundaries of the City of Toledo. The Department determined that the transfer would injure instream water right Certificates 67712 and 67713, however, the Oregon Department of Fish and Wildlife (ODFW) concluded that the transfer would result in net benefits to the resource if conditioned to require the City of Toledo to: 1) construct the proposed POD during an appropriate in-water work period, 2) install an ODFW-approved fish screen at the proposed POD, and 3) choose either proximity mitigation (transfer a minimum of 0.016 cfs instream from the new POD to the head of tide), or off-proximity mitigation (adopt a resolution committing to meet with ODFW annually in September to discuss options for water management on Mill Creek in the Yaquina Basin). The Oregon State Parks and Recreation Department (Parks) concluded that the transfer would result in net benefits to the resource for recreation if conditioned as requested by ODFW.

Copies of the WRD's Preliminary Determination proposing denial of the transfer and ODFW's and Parks' recommendations are available for viewing at the Salem office of the Water Resources Department. Any person may review the recommendations and submit written comments or may submit a written request for a public meeting to review the recommendations. The comments or request for a meeting must be received by WRD on or before April 4, 2013.

WRD will provide copies of any comments submitted in response to this notice to ODFW and to Parks. If a meeting is requested, WRD will schedule a joint public meeting with ODFW and/or with Parks to review the recommendations.

To review the recommendations, contact Dorothy Pedersen at 503-986-0890 or e-mail Dorothy.I.Pedersen@wrld.state.or.us. Written comments and requests for a public meeting should be mailed to Attn: Dorothy Pedersen, Water Resources Department, 725 Summer St NE, Suite A, Salem, OR 97301-1266 or faxed to 503-986-0903.