



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
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May 17, 2013

VIA E-MAIL

CITY OF ALBANY  
MARK YEAGER, UTILITY SERVICES MANAGER  
P.O. BOX 490  
ALBANY, OR 97321

SUBJECT: Water Right Transfer Application T-11362

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11362. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or [Dorothy.I.Pedersen@wrp.state.or.us](mailto:Dorothy.I.Pedersen@wrp.state.or.us) if I may be of assistance.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy I. Pedersen".

Dorothy Pedersen  
Transfer Coordinator

cc: T-11362  
Michael Mattick, District 2 Watermaster (via e-mail)

encs



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

In the Matter of Transfer Application        )  
T-11362, Linn County                        )  
  )  
  )    **PRELIMINARY DETERMINATION  
  )    PROPOSING APPROVAL OF 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 ALBANY  
MARK YEAGER, UTILITY SERVICES MANAGER  
P.O. BOX 490  
ALBANY, OR 97321

**Findings of Fact**

**Background**

1. On February 29, 2012, CITY OF ALBANY filed an application to change the place of use under Certificate 86470. The Department assigned the application number T-11362.
2. Notice of the application for transfer was published on March 6, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 8, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11362 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 8, 2013, for the applicant to respond. On March 19, 2013, Mark Yeager, Agent and engineer for the City of Albany requested via e-mail, for the Department to allow them time to consult with the Watermaster on the installation of measurement devices and asked that their transfer be placed on a 30-day administrative hold. The Department approved the time needed.
4. On May 1, 2013, the Department received a phone call from Mark Yeager, City of Albany, voicing concerns over the language contained in Findings of Fact #8 and portions of Conditions #4 and #9 of the draft Preliminary Determination. The Department concurs that the language contained within Finding of Fact #8 was intended to protect these flows in the sense of an instream water right, but since this transfer does not create an instream water

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.

right, the Department agrees to eliminate this finding. In addition, the Department agrees that portions of Conditions #4 and #9 greatly extend the requirements requiring the City to agree to future improvements or modifications. The Department has eliminated these portions of the draft conditions as well, but will require measuring devices be approved by the Director before use of water at the new augmentation points.

5. The Agent for the City of Albany indicated that if the provisions of the draft Preliminary Determination could be modified to address the issues noted above in Finding of Fact #8 (of the draft), the applicant requested to move forward with issuance of a Preliminary Determination.

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

**Certificate:** 86470 in the name of CITY OF ALBANY (confirmed by Santiam and South Santiam Rivers (F) decrees of the Circuit Court of the State of Oregon for Linn County)

**Use:** FLOW AUGMENTATION

**Priority Date:** 1874

**Rate:** 85.0 CUBIC FEET PER SECOND (CFS)

**Source:** SOUTH SANTIAM RIVER, a tributary of the SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
12 S	1 W	WM	19	NW NW	CHEADLE 55	ALBANY SANTIAM CANAL – 1430 FEET NORTH AND 1050 FEET EAST FROM THE W¼ CORNER OF SECTION 19

**A description of the points of re-diversion, places of use to which this right is appurtenant, and associated rates are as follows:**

Re-Diversion POD # and Stream Name	Beginning of Reach Where Water is Re-diverted from Albany-Santiam Canal						CFS	End of Reach
	Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates		
POD #1 BURKHART CREEK	11 S	2 W	WM	32	NE SE	1,570 FEET NORTH AND 765 FEET WEST FROM THE SE CORNER OF SECTION 32	15.0	MOUTH OF BURKHART CREEK
POD #2 COX CREEK	11 S	2 W	WM	30	SW NW	2,350 FEET SOUTH AND 645 FEET EAST FROM THE NW CORNER OF SECTION 30	20.0	MOUTH OF COX CREEK
POD #3 PERIWINKLE CR	11 S	3 W	WM	21	NW NE	150 FEET SOUTH AND 1,635 FEET WEST FROM THE NE CORNER OF SECTION 21	20.0	MOUTH OF PERIWINKLE CREEK
POD #4 UNNAMED CANAL TO OAK CR	11 S	3 W	WM	19	NE NE	100 FEET SOUTH AND 820 FEET WEST FROM THE NE CORNER OF SECTION 19	15.0	TO CALAPOOIA RIVER AND THEN TO MOUTH OF CALAPOOIA RIVER
POD #5 CATHEY CANAL / CREEK	11 S	3 W	WM	7	SW SW	680 FEET NORTH AND 60 FEET EAST FROM THE SW CORNER OF SECTION 7	13.0	TO OAK CR, THEN TO CALAPOOIA RIVER AND THEN TO MOUTH OF CALAPOOIA RIVER
POD #6 8 <sup>TH</sup> STREET CANAL	11 S	4 W	WM	12	SE NE	1,725 FEET SOUTH AND 415 FEET WEST FROM THE NE CORNER OF SECTION 12	2.0	MOUTH OF 8 <sup>TH</sup> STREET CANAL
Total							85.0	

7. Transfer Application T-11362 proposes to:

- a) eliminate the Oak Creek Re-diversion (POD #4) for 15.0 CFS,
- b) modify the flow at re-diversion POD #1 (Burkhart Creek) from 15.0 cfs to 20.0 cfs with 5.0 cfs of what had formerly been re-diverted at POD #4, and
- c) change the place of use for the remaining 10.0 cfs from former POD #4 and add two additional points of re-diversion located with appurtenant quantities of water described as follows:

PROPOSED Re-Diversion POD # and Stream Name	Beginning of Reach Where Water is Re-diverted from Albany-Santiam Canal					Proposed CFS	End of Reach	
	Twp	Rng	Mer	Sec	Q - Q			Survey Coordinates
POD #7 HOSPITAL SLOUGH	12 S	2 W	WM	2	SW SW	840 FEET NORTH AND 525 FEET EAST OF THE SW CORNER OF SECTION 2	6.0	MOUTH OF HOSPITAL SLOUGH
POD #8 MARK'S SLOUGH	12 S	2 W	WM	11	NE NW	570 FEET SOUTH AND 1695 FEET EAST OF THE NW CORNER OF SECTION 11	4.0	MOUTH OF MARK'S SLOUGH

8. The file contains a letter of support from the Oregon Department of Fish & Wildlife indicating that the transfer will provide flows for Oregon Chub in the Hospital and Mark's sloughs. As part of an operational control plan, the applicant consulted with ODFW and others to provide historical flows in these sloughs and to come into compliance with its Federal Energy Regulatory Commission hydropower license. The ODFW has determined that these flows will provide a net benefit to fish and wildlife habitat, and endorses the transfer request particularly for the Oregon Chub.
9. The applicant has requested the Department issue one certificate that would include both the transferred portion and the portion NOT modified, superseding a remaining right certificate. The combined certificate would facilitate efficiency in tracking and record keeping.
10. The applicant has affirmed [OAR 690-380-3000(13)(b)] that they are a municipality as defined ORS 540.510 (3) (b) and that the right is in the name of the municipality. Therefore no report of ownership information for the land where the right is proposed to be moved from and/or other documentation to demonstrate that the applicant is authorized to pursue the transfer is required by OAR 690-380-4010(5).

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

11. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A diversion structure and canal 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-11362.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

## **Determination and Proposed Action**


The change in place of use proposed in Transfer Application T-11362 appears 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-11362 is approved, the final order will include the following:*

- 1. The change in place of use proposed in Transfer Application T-11362 is 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 86470 and any related decree.*
- 3. Water right certificate 86470 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The water user shall maintain and operate the existing measuring devices.*
- 5. The City of Albany shall continue to measure and report the augmentation flows entering the Calapooia River from Oak Creek and Cathey Creeks. For purposes of measurement and reporting, the augmentation flows shall be measured at a location acceptable to the Department, as described below. The measurement and reporting shall be done on a weekly basis from July 15 through September 30, or as necessary to ensure continued protection of the instream water right established by Water Right Certificate 66857. The Director may modify or waive the time period and frequency when flows need to be measured and reported in order to ensure that the instream water right established by Water Right Certificate 66857 is not injured.*
- 6. Cathey Creek augmentation flows shall be measured downstream of re-diversion point #5 and as close to the confluence of Cathey Creek and Oak Creek as possible. The Department has determined that measuring at Park Terrace SW Road is acceptable. Any change in location of this downstream measuring point must receive prior approval by the Department.*
- 7. The City of Albany shall install a measuring device on Marks Slough for purposes of measurement and reporting. The device and its location must be approved by the Watermaster.*
- 8. The City of Albany shall install a measuring device on Hospital Slough for purposes of measurement and reporting. The device and its location must be approved by the Watermaster.*
- 9. Within the specified flow augmentation stream reaches for Burkhart Creek, Marks Slough and Hospital Slough, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of re-diversion, located 100 feet South and 820 feet West from the NE Corner of Section 19, T 11 S, R 3 W, W.M.*

10. *The augmentation flows established by this right shall be in addition to augmentation flows previously established in Burkhart Creek under Certificate 86470.*
11. *The former place of use of the transferred right (POD #4 - re-diversion of flows in Unnamed Canal to Oak Creek) shall no longer receive water under the right.*
12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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 change and full beneficial use of the water.*
13. *After satisfactory proof of beneficial use is received, the Department shall consider issuing a new single certificate confirming this portion of the right transferred, modified herein, and combining it with the remaining right Certificate \_\_\_\_\_ issued \_\_\_\_\_, 2013.*

Dated at Salem, Oregon this 17 day of May, 2013.



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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wrd.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.*