



5. On February 6, 2024, the Department sent a copy of a revised draft Preliminary Determination proposing to deny transfer application T-13980 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 7, 2024, for the applicant to respond.
6. On February 14, 2024, the applicant requested the Department to pursue recommendations for consent to injury to Instream Water Right Certificates 59462 and 72986 from Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (ODEQ).
7. The portion of the right to be transferred is as follows:

**Certificate:** 11706 in the name of CITY OF WILLAMINA (perfected under Permit S-10476)  
**Use:** MUNICIPAL  
**Priority Date:** FEBRUARY 15, 1932  
**Rate:** 0.2 CUBIC FOOT PER SECOND  
**Source:** WILLAMINA CREEK, tributary to the SOUTH YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
6 S	7 W	WM	1	NE SE

**Authorized Place of Use:**

MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
6 S	7 W	WM	1	SW NE
6 S	7 W	WM	1	SE NE
6 S	7 W	WM	1	NE SE
6 S	7 W	WM	1	NW SE

8. The applicant's agent has provided a better description of the authorized point of diversion (POD) for Certificate 11706:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
6 S	7 W	WM	1	NE SE	635 FEET SOUTH AND 800 FEET WEST FROM THE E¼ CORNER OF SECTION 1

9. Transfer Application T-13980 proposes to move the authorized point of diversion approximately 1.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	7 W	WM	36	SW SE	775 FEET NORTH AND 2520 FEET WEST FROM THE SE CORNER OF SECTION 36



10. 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 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]***

11. Water has been used within the last five years 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 water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-13980.
13. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed point of diversion diverts water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
15. The proposed change would not result in enlargement of the right.
16. Two instream water rights, Certificate 59462 and 72986, exist for the reach of the river in which the authorized point of diversion would be moved upstream, and stream flows within the reach are frequently below the levels allocated under the instream water rights. Thus, the instream water rights would be injured as a result of the proposed change in point of diversion.
17. All other application requirements are met

**Determination and Proposed Action**

The change in point of diversion proposed in Transfer Application T-13980 appears to be not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be denied unless the Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (ODEQ) recommends that the Department consent to injury of an instream water right pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

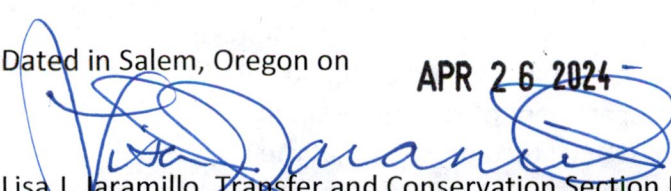
*If the transfer is approved on the recommendation of the ODFW and ODEQ to consent to injury, the change in subsequent use of water shall be subject to any conditions identified by ODFW and ODEQ as necessary to ensure that the transfer results in a net benefit to the resource and to the following conditions:*



1. *The change in point of diversion proposed in Transfer Application T-13980 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 11706 and any related decree.*
3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of diversion.*
4. *Water right Certificate 11706 is cancelled.*
5. *The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
6. *Water shall be acquired from the same source of surface water as the original point of diversion.*
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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2030**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

APR 26 2024

  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
DOUGLAS E. WOODCOCK, ACTING DIRECTOR  
Oregon Water Resources Department

This Preliminary Determination was prepared by Dante Luongo. If you have questions about the information in this document, you may reach me at 971 304-5006 or [Dante.J.Luongo@water.oregon.gov](mailto:Dante.J.Luongo@water.oregon.gov).

## **Protests**

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

## **Requests for Standing**

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly



notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental

subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.





# Oregon

Tina Kotek, Governor

## Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

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[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

April 26, 2024

VIA CERTIFIED MAIL AND E-MAIL

### Applicant

CITY OF WILLAMINA

411 NE C ST

WILLAMINA, OR 97396

SUBJECT: Water Right Transfer Application T-13980

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13980 because the change in point of diversion would injure Instream Water Right Certificates 59462 and 72986. Consistent with your request that the Department (OWRD) seek a recommendation from Oregon Department of Fish and Wildlife and Oregon Department of Environmental Quality on whether OWRD should consent to injury to the instream water rights, we are proceeding with that process concurrently with issuance of the preliminary determination. This document is an intermediate step in the transfer process; water may not be used legally as proposed in the transfer application until a Final Order to approve has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530(c), we may approve the transfer only if the agency that requested the instream water right concludes that the change proposed will result in a net benefit to the resource protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency recommendation letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

A public notice is being published in the Department's weekly publication and in the News-Register newspaper, 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 last date of newspaper publication.

After we have received a recommendation from the Oregon Department of Fish and Wildlife and Oregon Department of Environmental Quality on whether to consent to the injury, provided no requests for a hearing on the recommendations have been requested and no protests have been filed in response to the public notice of the transfer, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or



- Reaffirming our decision that the instream water rights would be injured and denying the transfer.

If a protest is filed in response to the public notice of the Preliminary Determination, 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 don't hesitate to contact me at 971 304-5006 or [Dante.J.Luongo@water.oregon.gov](mailto:Dante.J.Luongo@water.oregon.gov), if I may be of assistance.

Sincerely,



Dante Luongo  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application T-13890  
Joel M. Plahn, District 22 Watermaster (*via e-mail*)  
Kim Grigsby, Agent for the applicant (*via e-mail*)

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