

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

In the Matter of Instream Transfer                                     )     FINAL ORDER  
Application T-9770, Douglas County,                                    )  
Oregon                                                                                )

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. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

**Applicant**

Oregon Department of Fish and Wildlife (ODFW)  
3406 Cherry Avenue NE  
Salem, Oregon 97303

**Findings of Fact**

1. ODFW filed an application to transfer the place of use and the character of use under Certificate 54607 to instream use. The Department assigned the application number T-9770.
2. The portion of the right to be transferred is as follows:

**Certificate:** 54607 in the name of Oregon Department of Fish & Wildlife  
**Use:** Fish propagation at Rock Creek Hatchery  
**Priority Date:** October 14, 1976  
**Quantity:** 7.0 cfs  
**Source:** North Umpqua R tributary to Umpqua R  
**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Location
26	S	3	W	W.M.	1	SE	SW	1955 feet South and 110 feet West from Center ¼ corner, Section 1

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	
26	S	3	W	W.M.	1	NE	SW

*This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.*

3. Application T-9770 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
4. Application T-9770 proposes to change the place of use of the right to create an instream reach from the authorized point of diversion, to the confluence of Rock Creek and the North Umpqua River.
5. The applicant proposes the quantities water to be transferred instream to be protected year-around from January 1 to December 31 at a rate of 7.0 cfs.
6. There is an existing instream water right, Certificate 59940, for the same reach as proposed for the new instream water right.
7. The applicant initially proposed to replace a portion of instream water right Certificate 59940 with the 7.0 cfs proposed to be transferred. However, the existing instream water right has a priority date of March 26, 1974 and is senior to the right to be transferred. The existing water right cannot be replaced by a water right with a priority date of October 14, 1976. The applicant has subsequently requested that the 7.0 cfs to be transferred instream be additive to Certificate 59940.
8. ODFW has filed an instream water application, IS 71173, that documents the needs for additional flow beyond those provided by Certificate 59940.
9. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
10. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and fish hatchery sufficient to use the full amount of water allowed under the existing right are present.
12. The following rights exist for the same purpose, propagation of fish, at the Rock Creek Fish Hatchery.

<b>Certificate</b>	<b>Priority</b>	<b>Rate</b>	<b>Source</b>
4916	1/23/1923	3.0 cfs	Rock Cr
11989	1/3/1936	10.0 cfs	Rock Cr

<b>Certificate</b>	<b>Priority</b>	<b>Rate</b>	<b>Source</b>
20270	4/16/1947	10.0 cfs	Rock Cr
54607	10/14/1976	32.0 cfs	N Umpqua R
54598	8/28/1978	5800 AF	Lake Cr in Diamond Lk Res.
54599	8/28/1978	5800 AF	Diamond Lk Res.

13. The proposed change would not result in enlargement of the right, if the total direct flow rate used at the Rock Creek Fish Hatchery does not exceed 25.0 cfs.
14. The proposed change would not result in injury to other water rights.
15. The amount of the proposed instream flow and the timing of the proposed instream flow is allowable within the limits and use of the original water right.
16. The protection of flows within the reach described in Finding of Fact #4 is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) Rock Creek is the source of the next significant downstream point of inflow;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
17. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
18. By adding to other instream water rights for the same location, the instream right will provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

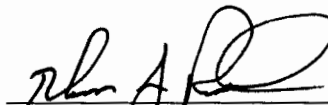
### **Conclusions of Law**

The changes in place of use and character of use proposed in application T-9770 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

1. The change in place of use and character of use proposed in application T-9770 is approved.
2. The change shall be effective upon issuance of this Final Order.
3. Certificate 54607 is cancelled and a new instream water right for the portion of the right transferred to instream use shall be issued. A new certificate for the remaining portion of the right not modified by this transfer shall also be issued. To prevent enlargement, the remaining right shall include the following condition: The exercise of this right, together with certificates 4916, 11989, and 20270 shall not exceed a total combined diversion of 25.0 cfs for fish propagation at the Rock Creek Fish Hatchery.
4. The instream water right shall provide for the protection of streamflows from the point of diversion, being SE ¼ SW ¼, Section 1, Township 26 South, Range 3 West, W.M.; 1955 feet South and 110 feet West from Center ¼ corner, Section 1 to the confluence of Rock Creek and the North Umpqua River in Section 1, Township 26 South, Range 3 West, W.M.
5. The quantity of water to be protected under the instream water right is 7.0 cfs from January 1 to December 31.
6. The instream right established by this transfer shall be in addition to instream water rights established pursuant to ORS 537.341, 537.346, 537.348 or 537.470.

Dated at Salem, Oregon this 21<sup>st</sup> day of January, 2005.

  
for Phillip C. Ward  
Director

Mailing date: JAN 25 2005