



diversion. These comments were made consistent with the transfer applications original intent to change the point of diversion.

3. On January 3, 2006, the Department sent the applicant a draft Preliminary Determination proposing to deny the transfer application.
4. On January 3, 2007, A & R Spada Farms filed an application to obtain a new surface water permit to divert water from the Willamette River for Irrigation use. On February 23, 2007, the Water Resources Commission granted A & R Spada Farms a Basin Program exception to allow the use of water from the Willamette River for irrigation purposes under a new surface water permit. The Basin Program exception granted to A & R Spada Farms required that transfer application T-6645, as well as transfer application T-6646, be converted to an instream transfer to offset the new irrigation use from the Willamette River.
5. On June 26, 2007, the Department issued a Proposed Final Order to approve surface water permit application S-86739 contingent upon the approval transfer applications T-6645 and T-6646 as instream transfers.
6. On June 26, 2007, application T-6645 was amended, with concurrence from the applicant, to be an instream transfer application.
7. The right to be transferred is as follows:

**Certificate:** 13774 in the name of MORTON TOMPKINS (perfected under Permit S-13631)

**Use:** IRRIGATION of 57.4 ACRES

**Priority Date:** APRIL 28, 1939

**Rate:** 0.73 CUBIC FOOT PER SECOND (CFS)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet (AF) per acre per year

**Source:** UNNAMED SLOUGH, tributary to WILLAMETTE RIVER

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	3 W	WM	23	NE SE	UNSPECIFIED BY CERTIFICATE

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	3 W	WM	23	NE SE	37.40
5 S	3 W	WM	23	SE SE	20.00

8. A total of 143.5 acre-feet of water may be beneficially used annually under the existing right.
9. There are three ground water registrations (GR-1540, GR-1541, and GR-1542) appurtenant to the same place of use as described for Certificate 13774. On November 5, 2007, the applicant submitted affidavits to abandon (partially or in full) these ground water certificates of registration.

10. On March 13, 2008, the applicant requested that the proposed instream use be protected as follows:

Purpose: Instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

Location: Create an instream use at the POD.

11. Notice of the application as an instream transfer was published pursuant to ORS 540.520 and OAR 690-380-4000 on September 4, 2007. No comments were filed in response to this notice.
12. On February 14, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-6645 to the applicant. The draft Preliminary Determination set forth a deadline of March 15, 2008, for the applicant to respond. On March 13, 2008, the applicant concurred with the findings of the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
13. On March 25, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6645 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 1, 2008, and in Statesman Journal on April 4, 11, and 18, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No comments or protests were filed in response to the Department's weekly notice or to the newspaper notice.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

14. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. The condition of the diversion structure and ditches for the lands to which the right is appurtenant suggest that there has been an extended period of time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
15. This instream transfer application (T-6645) is being processed in conjunction with instream transfer application T-6646. Transfer application T-6645 proposes to transfer Certificate 13774 (max rate of 0.73 CFS) to instream use and transfer application T-6646 proposes to transfer Certificate 13772 (max rate of 0.65 CFS) to instream use. If flows were protected instream at the full rates allowed by each right over the full irrigation season (March 1 through October 31) the max duty allowed by each right would be exceeded.
16. In addition, if flows were protected at the max quantity allowed for each right proposed for transfer under T-6645 and T-6646, estimated average natural flows for the area would be exceeded. Estimated average natural flows may not be exceeded except in those instances where periodic flows are significant for the requested instream use.

17. Based upon Findings of Fact #15 and #16, on March 13, 2008, the applicant requested that the proposed instream use be protected as follows:

That the quantities of water to be transferred instream be protected as follows:

Period	Rate (cfs)	Volume (acre-feet)
March 1 through March 31	0.43	26.44
April 1 through April 30	0.30	17.85
May 1 through May 31	0.21	12.91
June 1 through June 30	0.15	8.93
July 1 through July 31	0.08	4.92
August 1 through August 31	0.04	2.46
September 1 through September 30	0.08	4.76
October 1 through October 31	0.21	12.91
	<b>Total AF</b>	91.18

18. On December 20, 2007, staff visited the site and identified that for the purposes of this instream transfer, the point at which water may be protected instream should be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
5 S	3 W	WM	23	NE SE	LATITUDE 45.12107 DEGREES NORTH AND LONGITUDE 123.01170 DEGREES WEST (LOCATED ON THE RIGHT BANK OF THE UPSTREAM SIDE OF THE BRIDGE ON GRAND ISLAND LOOP ROAD)

19. The proposed change would not result in enlargement of the right.
20. The proposed change would not result in injury to other water rights.
21. 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.
22. The protection of flows at a point (as described in Findings of Fact #18) is appropriate, considering:
- The instream water right begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion;
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.

23. There are no existing instream water rights for the same point as that proposed for the new instream water right.
24. If any instream water rights are established in the future, an instream use created as a result of this transfer may replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with an earlier priority date. Any instream use created as a result of this transfer may also add to any other instream water rights created for the same location pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process).
25. The total monthly quantities of water to be protected under the proposed instream right at a point (as described in Findings of Fact #18) will provide for a beneficial purpose and, together with the proposed instream quantities under transfer application T-6646, do not exceed the estimated average natural flow.

***Full and Partial Abandonment of Ground Water Registrations***

26. There are existing (layered) ground water registrations, GR-1540, GR-1541, and GR-1542, appurtenant to the lands on which Certificate 13774 is proposed for transfer to instream use. Changes in place of use and/or character of use may only be made if concurrent changes are also made to other layered water rights. If other layered water rights are not included as part of the transfer application, then they may also be cancelled/abandoned.
26. Consistent with OAR 690-380-2240, on October 4, 2007, the Department provided notice to the applicants of the layered ground water registrations. Within 30 days of this notification the applicant submitted affidavits certifying that the affected portions of the ground water registrations had been abandoned. The abandonment of these ground water registrations is contingent upon the approval of this instream transfer application.
27. The portion of the first Ground Water Registration to be abandoned is as follows:

**Registration:** Registration Number GR-1540 (Certificate Number GR-1483) in the name of Harvey Ewert

**Use:** Irrigation

**Tentative Priority Date:** 1928

**Quantity:** Rate: 92.5 Gallons per Minute (GPM)  
Volume: 14.8 AF

**Acres:** 7.4 acres

**Source:** Pump Well #3, within the Willamette River Basin

**Original POD:**

Township		Range		Meridian	Sec	¼ ¼	Location
5	S	3	W	W.M.	23	SE SE	PUMP WELL #3: 650 FEET WEST AND 800 FEET NORTH FROM SE CORNER OF SECTION 23

**Original Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Tax Lot	Acres
5	S	3	W	WM	23	SE	SE	1300	7.4

28. The second Ground Water Registration to be abandoned is as follows:

**Registration:** Registration Number GR-1541 (Certificate Number GR-1484) in the name of Harvey Ewert

**Use:** Irrigation

**Tentative Priority Date:** 1928

**Quantity:** Rate: 200 Gallons per Minute (GPM)  
Volume: 50.0 AF

**Acres:** 26.0 acres

**Source:** Pump Well #2, within the Willamette River Basin

**Original POD:**

Township		Range		Meridian	Sec	¼ ¼		Location
5	S	3	W	W.M.	23	NE	SE	PUMP WELL #2: 650 FEET WEST AND 1750 FEET NORTH FROM SE CORNER OF SECTION 23

**Original Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Tax Lot	Acres
5	S	3	W	WM	23	NE	SE	1300	16.0
5	S	3	W	WM	23	SE	SE	1300	10.0

29. The third Ground Water Registration to be abandoned is as follows:

**Registration:** Registration Number GR-1542 (Certificate Number GR-1485) in the name of Harvey Ewert

**Use:** Irrigation

**Tentative Priority Date:** 1928

**Quantity:** Rate: 250 Gallons per Minute (GPM)  
Volume: 40.0 AF

**Acres:** 24.0 acres

**Source:** Pump Well #2, within the Willamette River Basin

**Original POD:**

Township		Range		Meridian	Sec	¼ ¼		Location
5	S	3	W	W.M.	23	NE	SE	PUMP WELL #1: 650 FEET WEST AND 2500 FEET NORTH FROM SE CORNER OF SECTION 23

**Original Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Tax Lot	Acres
5	S	3	W	WM	23	NE	SE	1300	24.0

30. The affidavits to abandon the entirety or a portion of a ground water registration will be placed in the appropriate registration files. A final determination on the abandonment of these ground water registrations will occur in an adjudication proceeding under ORS 537.670 to 537.695.

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in application T-6645 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandonment of the Ground Water Registrations should be recognized. The approval of the application and abandonment of the Ground Water Registrations shall be contingent up the final approval of a permit under Application S-86739.

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in application T-6645 are approved.
2. The partial abandonment of Ground Water Registration GR-1540 (Certificate of Registration GR-1483) and the full abandonment of Ground Water Registrations GR-1541 (Certificate of Registration GR-1484) and GR-1542 (Certificate of Registration GR-1485) is recognized. Recognition of the abandonment shall not be construed as a final determination of the right to appropriate ground water under the registrations. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.
3. Water right certificate 13774 is cancelled. A new certificate confirming the instream water right shall be issued.
4. The instream water right shall provide for the protection of streamflows for a point located at:

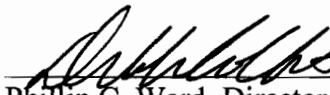
Twp	Rng	Mer	Sec	Q-Q	Coordinates
5 S	3 W	WM	23	NE SE	LATITUDE 45.12107 DEGREES NORTH AND LONGITUDE 123.01170 DEGREES WEST (LOCATED ON THE RIGHT BANK OF THE UPSTREAM SIDE OF THE BRIDGE ON GRAND ISLAND LOOP ROAD)

5. The quantities of water to be protected under the instream water right are:

Period	Rate (cfs)	Volume (acre-feet)
March 1 through March 31	0.43	26.44
April 1 through April 30	0.30	17.85
May 1 through May 31	0.21	12.91
June 1 through June 30	0.15	8.93
July 1 through July 31	0.08	4.92
August 1 through August 31	0.04	2.46
September 1 through September 30	0.08	4.76
October 1 through October 31	0.21	12.91
	<b>Total AF</b>	91.18

6. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. 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 13774 and any related decree.
9. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this 23<sup>rd</sup> day of June, 2008.

  
 Phillip C. Ward, Director

Mailing date: JUN 23 2008