

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

In the Matter of Transfer Application ) FINAL ORDER APPROVING A  
T-6823, Washington County ) CHANGE IN PLACE OF USE AND AN  
) ADDITIONAL POINT OF DIVERSION

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**

LAWRENCE L. WAIBEL  
4250 SW MINTER BRIDGE ROAD  
HILLSBORO, OREGON 97123

**Findings of Fact**

1. Lawrence L. Waibel filed an application to transfer the place of use and point of diversion under Certificates 23662 and 23465. The Department assigned the application number T-6823. March 15, 2005 Juliana Waibel (Lawrence L. Waibel’s widow) amended the transfer to propose that the new point of diversion be an additional point of diversion.

2. The first right to be transferred is as follows:

**Certificate:** 23662 in the name of LAWRENCE L.

**Use:** IRRIGATION of 28.3 ACRES

**Priority Date:** JANUARY 26, 1953

**Rate:** 0.35 CUBIC FEET PER SECOND (CFS)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre

**Source:** TUALATIN RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	2 W	WM	17	NW SW	None specified on certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	2 W	WM	18	NE NE	1	6.4
1 S	2 W	WM	18	SE NE		20.2
1 S	2 W	WM	18	NE SE		1.7

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. The second right to be transferred is as follows:  
**Certificate:** 23465 in the name of LAWRENCE L. WAIBEL

**Use:** IRRIGATION of 44.0 ACRES

**Priority Date:** JANUARY 9, 1950

**Rate:** 0.50 CFS

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre

**Source:** TUALATIN RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	2 W	WM	17	NW SW	None specified on certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	17	SW NW	19.4 (APOD)
1 S	2 W	WM	17	NE SW	1.0 (POU & APOD)
1 S	2 W	WM	17	NE SW	0.1 (POU)
1 S	2 W	WM	17	NW SW	18.2 (APOD)
1 S	2 W	WM	17	NW SW	5.3 (POU & APOD)

4. Application T-6823 proposes to change the place of use for 5.4 acres under Certificate 23465 to:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	17	SW NW	5.40

5. Application T-6823 proposes to add an additional point of diversion for Certificates 23662 and 23465 approximately ½ mile upstream in the Tualatin River to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	2 W	WM	17	NW SW	1120 FEET SOUTH AND 535 FEET EAST FROM THE W¼ CORNER OF SECTION 17

6. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. WaterWatch of Oregon filed a response to the notice, raising questions about the effect on the instream water right, and requesting the Department to condition the transfer to require installations of fish screens and bypass devices, measurement and recording of water use and compatibility with local comprehensive plans.
7. The Oregon Department of Fish and Wildlife (ODFW) was notified of the transfer as required under ORS 540.525 and 540.532. ODFW requested that any order approving the transfer be conditioned to require the proposed diversion to be equipped with an appropriate fish screening or by-pass device, and noted that the existing POD is equipped with such a device.
8. The proposed changes are consistent with local comprehensive land use planning ordinances as required by ORS 197.180.
9. Water has been used within the five years prior to filing of the transfer application 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.

10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right.
12. The transfer proposes an additional POD upstream in a reach where flows are protected under instream water right certificates 72960 and 59692.
13. Instream water right Certificate 72960, established pursuant to ORS 537.336 at the request of the Oregon Department of Environmental Quality (DEQ), is for flows to be maintained in the Tualatin River from river mile 52.8 (NE ¼ Sec. 9, T1S, R3W, W.M.) to river mile 38.5 (NW¼, Sec. 16, T1S, R2W, W.M.). The date of priority of the right is August 5, 1993. The quantity of water allocated under the instream right is 75 cfs year round for pollution abatement.
14. Instream water right Certificate 59838, established pursuant to ORS 537.346, is for flows to be maintained in the Tualatin River and its tributaries above USGS gage no. 14-2075 at West Linn, (SW¼, Sec. 34, T2S, R1E, W.M.), measured at the gage. The date of priority of the right is May 25, 1966. The quantities of water allocated under the instream right for supporting aquatic life and minimizing pollution are 30 cfs October 1-May 31, 20 cfs June 1-July 15, and 15 cfs July 16-September 30.
15. The Department's streamflow model indicates the likelihood that natural flows in the Tualatin River at gage 14206500 (near Farmington) would often be insufficient to meet the requirements of the instream water rights during the period from June through November. Therefore an upstream movement of the point of diversion would allow the potential for injury to the instream water rights by further reducing the flows available to the junior instream water rights in the stretch between the authorized and proposed diversion points.
16. Actual streamflow records at the Rood Bridge gage less than 3 miles downstream of the authorized and proposed diversion points indicate that most years the flows at Rood Bridge do not drop below 75 cfs due to augmentation of natural flow with stored water. During the period of record from 1995-2002 daily streamflow was consistently above 75 cfs with the exception of 79 days in 2001 (between July 5 and October 21), and one day (September 24) in 1995.
17. The Department cannot find that the proposed change would not result in injury to the instream water right, if water is diverted at the new POD during the period from June through October of each year at times when flows are insufficient to meet instream rights. However, the applicant has agreed not to divert water at the proposed POD for the allowed use whenever flows in Tualatin River, as measured at the Rood Bridge gage, drop below 75 cfs. This condition is sufficient to ensure that the change would not result in injury to the instream water rights.

## Conclusions of Law

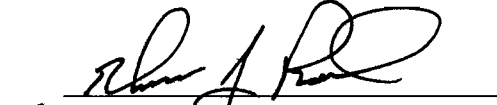
The changes in place of use and additional point of diversion proposed in application T-9823, as conditioned below are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

### Now, therefore, it is ORDERED:

1. The changes in place of use and additional point of diversion proposed in application T-6823 are approved.
2. Water right Certificates 23662 and 23465 are cancelled.
3. The right to 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 Certificates 23662 and 23465 and any related decree.
4. Water shall **not** be diverted at the additional upstream point of diversion when streamflow in the Tualatin River, as measured at the Rood Bridge gage, is less than 75 cfs, (and therefore is insufficient to meet the needs of the instream water rights).
5. The proposed change shall be completed on or before October 1, 2006.
6. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
7. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
8. The former place of use of the transferred water shall no longer be irrigated as part of this water right.
9. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 6<sup>th</sup> day of June, 2005.

  
Phillip C. Ward, Director

Mailing date: JUN 0 8 2005