

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

In the Matter of Instream Transfer)	FINAL ORDER APPROVING A
Application T-8890, Umatilla County)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE AND
)	CANCELLATION OF PORTIONS OF
)	CERTAIN WATER RIGHTS

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of appropriation, 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.

OAR 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

OREGON WATER TRUST on behalf of CLARK & LYLA LAMPSON
522 SW FIFTH AVENUE, SUITE 825
PORTLAND, OREGON 97204

Findings of Fact

1. On September 6, 2001, the Oregon Water Trust, filed, on behalf of Clark E. & Lyla J. Lampson, filed a transfer application to permanently change the place of use and character of use under Certificate 12750 to instream use. The Department assigned the application number T-8890.
2. Notice of the application for instream transfer was published on September 24, 2001, pursuant to ORS 540.520. No comments were filed in response to the notice. The Oregon Department of Fish & Wildlife (ODFW) did however submit a statement, on October 17, 2001, supporting the proposed instream transfer. ODFW identified that the Walla Walla River provides spawning and rearing habitat for a variety of fish species, including summer steelhead, bull trout and redband trout. The Walla Walla River also supports other aquatic and wildlife species. ODFW indicated in their comments that this instream transfer would, along with other conservation projects in the Walla Walla River Basin, increase the volume of flow and reduce water temperatures during critical summer months, thus benefiting the fish and wildlife species that reside there.

This is an order in other than a 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. A Preliminary Determination was issued by the Department on December 19, 2006. Notice of the Preliminary Determination was published on the Department's web site in accordance with OAR 690-380-4020. No protests were filed. Newspaper notice was previously published pursuant to 690-015-0080(1). Publication occurred in the Valley Herald (a newspaper having a general circulation in the area in which the change is proposed) on January 17, January 24 and January 31, 2003. In accordance with OAR 690-380-0090(5), therefore, newspaper notice of the preliminary determination is not required.

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

Certificate: 12750 in the name of Higby Harris (confirmed by the Walla Walla Decree)
Use: Irrigation of 19.0 Acres
Priority Date: 1895
Rate: One and One-Half Miner's Inches per Acre
Source: Walla Walla River
Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	18	SW SE	7.6
5 N	36 E	WM	18	SE SE	8.8
5 N	36 E	WM	19	NE NE	2.6

5. Based upon the Walla Walla River Decree and information provided by the applicant, the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	36 E	WM	20	NE NE	Spence Ditch – 780 feet south and 870 feet West from the NE corner of Section 20

6. There are two supplemental water rights (Certificates 12752 and 27106) appurtenant to a portion of the lands on which the water right described for transfer is located. The applicant has submitted affidavits of cancellation for the portion of these supplemental rights affected by this transfer.
7. A maximum of 28.5 miner's inches may be diverted for the portion of the water right to be transferred. This is equivalent to 0.71 cubic foot per second (cfs).
8. Application T-8890 proposes to change the character of use to instream use for fish and aquatic habitat enhancement.
9. Application T-8890 proposes to change place of use of the right to create an instream reach from the POD (as described in Finding of Fact #4) to the Oregon-Washington State Line.
10. The application proposed that the quantities to be transferred instream be protected as follows:

Certificate	Priority Date	Instream Rate	Instream Period
12750	1895	0.71 cfs (28.5 miner's inches)	Season of Use

11. Based upon the Walla Walla River Decree, the existing water right, described in Finding of Fact #4, has a year round season of use and does not have a specified duty limitation. However, the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Because use of the existing right for irrigation year round at the full amount allowed would exceed amounts necessary to accomplish the existing beneficial use, the Department proposes to limit the amount of water that may be protected instream below the POD (as described in Finding of Fact #14) consistent with recent practices by water users and Irrigation Districts in cooperation with the United States Fish and Wildlife within the basin.
12. Return flows from the existing use return to the Walla Walla River below the point of diversion at approximately the east edge of Section 19, Township 5 North, Range 36 East, W.M.
13. Approximately 6 miles below the POD, the Walla Walla River losses significant flow to seepage losses.
14. To prevent injury and enlargement and to account for return flows and stream channel losses as described in Findings of Fact #11 through #13, the applicant has agreed to modify the quantities to be transferred and protected instream as follows:

Certificate	Priority Date	Instream period	Reach #1*	Reach #2	Reach #3**
12750	1895	June 8 – June 30	0.70 cfs	0.20 cfs	0.1 cfs
		July 1 – July 31	0.70 cfs	0.24 cfs	0.1 cfs
		Aug 1 – Aug 31	0.70 cfs	0.20 cfs	0.1 cfs
		Sept 1 – Sept 30	0.70 cfs	0.16 cfs	0.1 cfs
		Total Annual Instream Volume	159.6 AF	45.6 AF	22.8 AF

* The instream rate in Reach #1 may be further limited as described in Finding of Fact #15.

** The instream rate in Reach #3 may be adjusted as described in Finding of Fact #16.

- Reach #1:** From the POD (as described in Finding of Fact #5) to the east edge of Section 19.
- Reach #2:** From the east edge of Section 19 to Nursery Bridge, located at approximately River Mile 44.5.
- Reach #3:** From Nursery Bridge to the Oregon-Washington State Line, located at approximately River Mile 41.5.

15. The instream flows within Reach #1 may be protected at the rate described in Finding of Fact #14 unless the Watermaster concludes that diversion of the rate established under the decree for irrigation rights exceeds the amount of water beneficially needed and restricts irrigation users to a lesser rate. If irrigation users are restricted to a lesser rate, then the rate protected instream will be reduced proportionately. However, the rate protected instream within Reach #1 will not be less than the equivalent of 1/40th cfs per acre.
16. The instream rate within Reach #3 will be protected as described in Finding of Fact #14. However, the quantity of water protected instream within this reach may be adjusted in the future. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will be used to determine the amount of water that any instream water right created as a result of this transfer may be entitled to downstream from the original point of diversion within Reach #3.

17. There are several existing instream water rights located within the same proposed reach described in Finding of Fact #14. There is one existing instream water right, Certificate 59839 with a priority date of November 3, 1983, established under ORS 537.346 (minimum streamflow conversion), for the purpose of supporting aquatic life. This instream water right is located from the confluence of the South Fork Walla Walla River with the Walla Walla River to the Little Walla Walla Diversion (located at approximately River Mile 45/46).

The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). These instream water rights are located on the Walla Walla River below the Little Walla Walla Diversion and are also for the purpose of supporting fish and aquatic life.

18. The applicant proposes that any instream water right established as a result of this instream transfer be additive to the existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant also proposes that any instream water right established as a result of this transfer replace a portion of the existing instream right, established pursuant to ORS 537.346 (minimum streamflow conversion), with an earlier priority date.
19. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the portion of the proposed reach located below the Little Walla Walla Diversion, a new instream water right established by this transfer would provide protection for additional streamflows necessary for fish and aquatic habitat enhancement, as identified in comments submitted by ODFW (Finding of Fact #2).
20. The instream water right, Certificate 59839, located in the portion of the proposed reach above the Little Walla Walla Diversion, is sufficient to protect the monthly quantities of water necessary for supporting aquatic life. However, this water right has a November 3, 1983, priority date. This portion of the reach is also a flow restoration priority watershed identified by the Oregon Department of Fish and Wildlife. An instream water right established as a result of this transfer would provide protection for streamflows necessary for supporting aquatic life under an earlier priority date.
21. The total monthly quantities of water to be protected under the existing instream water rights and proposed instream water right (as described in Finding of Fact #14) in the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
22. Based upon Findings of Fact #17 through #21, any instream water right established by this transfer application may 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, during the period June 8 through September 30, unless otherwise specified by an order approving a new instream water right under these statutes.

23. Water has been used within the last five years according to the terms and conditions of the rights, and there is no evidence in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
24. A ditch and delivery system sufficient to use the full amount of water allowed under the existing right is present.
25. The proposed change, as described in Finding of Fact #14, would not result in enlargement of the right.
26. The proposed change, as described in Finding of Fact #14, would not result in injury to other water rights.
27. 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.
28. The protection of flows within the proposed reach, as described in Finding of Fact #14, is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion that have been accounted for in the proposed instream use to be created by this transfer described in Finding of Fact #14; and
 - d) The quantity of water to be protected instream below the POD has been reduced to account for return flows within Reach #2 (see Finding of Fact #14). Return flows resulting from the exercise of the existing water right would re-enter the river downstream from the point of diversion approximately at the east edge of Section 19 (Township 5 North, Range 36 East).

Partial Cancellation of Certificate 12752 and Certificate 27106

29. There is an existing supplemental right, certificate 12752, appurtenant to a portion of lands on which certificate 12750 is proposed for transfer to instream use. On February 19, 2003, the applicant submitted an affidavit, signed by Clark and Lyla Lampson, requesting that the affected portion of the supplemental water right under certificate 12752 be cancelled upon issuance of the Final Order approving T-8890 and T-8891.
30. The portion of certificate 12752 to be cancelled is as follows:

Certificate:	12752 in the name of Higby Harris (confirmed by Umatilla River Decree)
Use:	Supplemental Irrigation
Acres:	8.0 acres
Priority Date:	1895
Source:	Spring in the SW SE, Section 18

Rate: One and One-Half Miner's Inches per Acre

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q		Acres
5 N	36 E	W.M.	18	SE	SE	8.0

31. There is an existing supplemental right, certificate 27106, appurtenant to a portion of lands on which certificate 12750 is proposed for transfer to instream use. On February 19, 2003, the applicant submitted an affidavit, signed by Clark and Lyla Lampson, requesting that the affected portion of the supplemental water right under certificate 27106 be cancelled upon issuance of the Final Order approving T-8890 and T-8891.

32. The portion of certificate 27106 to be cancelled is as follows:

Certificate: 27106 in the name of Archie Harris (perfected under permit G-419)

Use: Supplemental Irrigation

Acres: 19.0 acres

Priority Date: January 7, 1957

Source: A well in the Walla Walla River Basin

Rate: 0.23 CFS (limited to 1/80th cfs per acre)

Duty: 3.0 acre-feet per acre

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q		Acres
5 N	36 E	W.M.	18	SW	SE	8.0
5 N	36 E	W.M.	18	SE	SE	8.4
5 N	36 E	W.M.	19	NE	NE	2.6

Conclusions of Law

The proposed changes in place of use and character of use in application T-8890 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 are approved. The portions of Certificates 12752 and 27106 described in Finding of Fact #30 and #32 are abandoned and will be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use to instream use proposed in application T-8890 are approved and effective upon issuance of this Final Order.
2. Certificate 12750 is hereby 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.
3. Certificate 12752 is hereby cancelled and a new certificate confirming the portion of the right NOT affected by the affidavit of cancellation described in Finding of Fact #30 shall also be issued. The cancellation of this certificate shall occur concurrent with the approval of transfer application T-8891.

4. Certificate 27106 is hereby cancelled and a new certificate shall be issued confirming the portion of the right NOT affected by transfer application T-8891 and the affidavit of cancellation described in Finding of Fact #32. The cancellation of this certificate shall occur concurrent with the approval transfer application T-8891.
5. The instream water right shall provide for the protection of streamflows from the authorized point of diversion to the Oregon-Washington State Line. The quantities of water to be protected under the instream water right are as follows:

Certificate	Priority Date	Instream period	Reach #1 *	Reach #2	Reach #3 **
12750	1895	June 8 – June 30	0.70 cfs	0.20 cfs	0.1 cfs
		July 1 – July 31	0.70 cfs	0.24 cfs	0.1 cfs
		Aug 1 – Aug 31	0.70 cfs	0.20 cfs	0.1 cfs
		Sept 1 – Sept 30	0.70 cfs	0.16 cfs	0.1 cfs
		Total Annual Instream Volume	159.6 AF	45.6 AF	22.8 AF

* The instream rate in Reach #1 may be further limited as described in Finding of Fact #15.

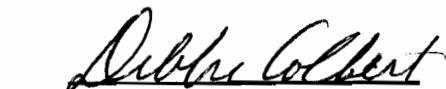
** The instream rate in Reach #3 may be adjusted as described in Finding of Fact #16.

- Reach #1:** From the POD (as described in Finding of Fact #5) to the east edge of Section 19.
- Reach #2:** From the east edge of Section 19 to Nursery Bridge, located at approximately River Mile 44.5.
- Reach #3:** From Nursery Bridge to the Oregon-Washington State Line, located at approximately River Mile 41.5.

6. The instream flows within Reach #1 will be protected at the rate described unless the Watermaster concludes that diversion of the rate established under the decree for irrigation rights exceeds the amount of water beneficially needed and restricts irrigation users to a lesser rate. If irrigation users are restricted to a lesser rate, then the rate protected instream will be reduced proportionately. However, the rate protected instream within Reach #1 will not be less than the equivalent of 1/40th cfs per acre.
7. Within the specified stream reach #3, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach #3.
8. 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.
9. The former place of use of the transferred water shall no longer receive water as part of these rights.

10. 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 12750 and any related decree.

Dated at Salem, Oregon this 12th day of February 2007.


Phillip C. Ward, Director

Mailing Date FEB 15 2007