



**Quantity:** N/A

**Rate/Duty:** 1.5 miner's inches per ac (3/80 cfs/ac) measured at the point of diversion, being 0.027 cfs

**Source:** Tumalum R (also known as the Walla Walla River), tributary to Columbia R

**Authorized Point of Diversion:** No point of diversion (POD) is listed on the certificate, or in the decree. The application describes the following POD:

Township		Range		Meridian	Sec	¼ ¼	Location
5	N	35	E	W.M.	1	NE NW	1750 Feet South and 2200 Feet East of NW Corner of Section 1

However, based on Department records, the Department finds that a more accurate representation of the POD, is:

Township		Range		Meridian	Sec	¼ ¼	Location
5	N	35	E	W.M.	1	SE NW	890 Feet North and 425 Feet West and of Center of Section 1

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Acres
5	N	35	E	W.M.	1	NE NW	0.719

- Application T-9618 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life.
- Application T-9618 proposes to change the place of use of the right to create an instream reach from the Walla Walla River POD, being SE ¼ NW ¼ of Section 1, T 5 N, R 35 E, W.M., being 425 Feet West and 890 Feet North of Center of Section 1 to the State Line.
- The applicant proposes the quantities water to be transferred instream to be protected as follows:

Period	Rate (cfs)
January 1 to December 31	0.027

- There are existing instream water rights, evidenced by certificates 77006, 77007, 76779 and 80968, within the same reach as that proposed for the new instream water right. These instream water rights were established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process).
- The applicant proposes that the instream water right be additive to the existing instream water rights for the same reach established pursuant to ORS 537.348 and ORS 537.470.
- 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 diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. The amount of the proposed instream flow and the timing of the proposed instream flow are allowable within the limits and use of the original water right.
15. The protection of flows at the authorized point of diversion to the State Line is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The amount of water protectable past the point of diversion has been reduced to account for return flows that re-enter the river downstream of the point of diversion;
  - c) The location of confluences with other streams downstream of the point of diversion;
  - d) There are known areas of natural losses below the Nursery Bridge grade control structure. These areas are can be accounted for by conditioning the instream right with the following language: Stream channel losses and gains calculated based on available data and the use of water by 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.
16. The total monthly quantities of water to be protected under the existing instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
17. By adding to other instream water rights for the same location, the instream right will provide protection for additional streamflows necessary for fish and aquatic life.
18. The three (3) acre water right boundaries of Certificate 13123 are non-specific within an approximate 16 acre area. The Department has received affidavits from the landowners listed in Table 1, stating they are the owners of lands and the appurtenant water right as evidenced by Certificate 13123, State Record of Water Right Certificates. These affidavits further state that a portion of the water right appurtenant to their property has been abandoned and request the certificate be canceled.

Table 1. Landowners abandoning any and all interest in water right Certificate 13123:

Marvin Hair, for Smith Frozen Foods
Lincoln Cooper
Dennis D. Doherty and Emile M. Holeman, Umatilla County Commissioners, for Umatilla County

19. Pursuant to OAR 690-017-002(a), the Department has determined that the applicant, and the landowners listed in Table 1 are the record owners, as established by county deed records, of the 16 acres, more or less, of property to which a portion of the water right evidenced by Certificate 13123 could be appurtenant.
20. Certificate 13123 allows for the use of up to 0.1125 cfs (one and one-half miner's inches per acre) from the Tumalum River, with a 1900 priority date.
21. The portion of Certificate 13123 which has been abandoned is for the use of 0.0855 cfs for irrigation of 2.281 acres.

**Conclusions of Law**

The changes in place of use and character of use proposed in application T-9618 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 rights evidenced by the remaining portion of Certificate 13123 shall be cancelled.

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


1. The changes in place of use and character of use proposed in application T-9618 are approved.
2. Certificate 13123 shall be cancelled and a new instream water right for the portion of the right transferred to instream use shall be issued.
3. The instream water right shall provide for the protection of streamflows from the point of diversion, SE ¼ NW ¼, Section 1, T 5 N, R 35 E, W.M., being 425 Feet West and 890 Feet North of Center of Section 1 to the State Line. Within the specified stream reach, 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 water by 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.

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

Time Period	Rate (cfs)		
	At POD	Immediately Below POD	Reach Between POD to State Line
April 1 to October 31, and at other times when other agricultural diversions are being exercised.	0.027	0.005	Based on Determination #3

5. 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.
6. The former place of use shall no longer be irrigated as part of these rights.
7. The remaining portion of certificate 13123 is cancelled.

Dated at Salem, Oregon this 18<sup>th</sup> day of July, 2005.

  
 Phillip C. Ward  
 Director