

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING AN
T-11478, Yamhill County)	ADDITIONAL POINT OF DIVERSION
)	AND CHANGES IN PLACE OF USE

Authority

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

CHRISTENSEN FARMS LLC
ATTN: ZACH CHRISTENSEN
17215 SW CHRISTENSEN RD.
MCMINNVILLE, OR 97128

Findings of Fact

1. On September 27, 2012, ZACH CHRISTENSEN of CHRISTENSEN FARMS LLC filed an application for an additional point of diversion under Certificates 16716, 19861, 22486, 47042, 49960, 49961, 50648, 64516 and 87465 and to change the place of use under Certificates 16716, 19861, 22486, 47042, 49961, 64516 and 87465. The Department assigned the application number T-11478.
2. Notice of the application for transfer was published on October 2, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 13, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11478 to the applicant because of injury to instream water right Certificates 72978 and 80357. The draft Preliminary Determination cover letter set forth a deadline of September 12, 2014, for the applicant to respond.
4. On September 16 and October 9, 2014, the applicant requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of Environmental Quality (DEQ), as to whether the Department should

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

consent to injury of the instream water right pursuant to OAR 690-380-5030, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

5. On November 13, 2014, the Department issued a Preliminary Determination proposing to deny Transfer Application T-11478 unless ODFW and DEQ recommend consent to injury, and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 18, 2014 and in the McMinnville News Register newspaper on November 21 and 28, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
6. On November 14, 2014, requests were sent to ODFW and DEQ for recommendations concerning consent to injury of instream water rights under Certificates 72978 and 80357.
7. On January 22, 2015 and February 10, 2015 recommendations were received from ODFW and DEQ in favor of consent to injury of the instream water rights.
8. Notice of the agencies' recommendations was published on February 24, 2015, pursuant to OAR 690-380-5050. No comments or requests for a public meeting were filed in response to the notice.
9. ODFW and DEQ recommendations stated that the consent to injury should be contingent upon approval of Transfer Application T-11876 point of diversion and place of use change. And ODFW has determined that a fish screen is required at the new point of diversion prior to prior to the diverting of the water.
10. The portion of the first right to be transferred is as follows:

Certificate: 16716 in the name of MERL C. BROWN (perfected under Permit S-15807)
Use: IRRIGATION of 22.8 ACRES
Priority Date: MAY 4, 1944
Rate: 0.29 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
5 S	5 W	WM	35	NW SW	71

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SE NE	71	12.8
5 S	5 W	WM	35	SW NW	71	1.1
5 S	5 W	WM	35	NW SW	71	8.9
Total						22.8

11. Certificate 16716 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	35	NW SW	71	POD 4: 1960 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 35

12. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	34	NE SE		71	19.6
5 S	5 W	WM	34	NE SE			0.8
5 S	5 W	WM	34	SE SE	2		2.0
5 S	5 W	WM	35	NW SW		71	0.4
Total							22.8

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

Certificate: 19861 in the name of HARRY CROWE (perfected under Permit S-17684)
Use: IRRIGATION of 14.6 ACRES
Priority Date: APRIL 18, 1947
Rate: 0.18 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
5 S	5 W	WM	34	NW SE	71
5 S	5 W	WM	35	NW SW	71

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SW NE	71	5.0
5 S	5 W	WM	34	NE SE	71	9.6
Total						14.6

14. Certificate 19861 does not provide measured distances for the location of the points of diversion. Based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	34	NW SE	71	POD 2: 1750 FEET NORTH AND 2240 FEET WEST FROM THE SE CORNER OF SECTION 34
5 S	5 W	WM	35	NW SW	71	POD 4: 1960 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 35

15. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NE SE	71	5.5
5 S	5 W	WM	34	NE SE		0.4
5 S	5 W	WM	34	NW SE	71	8.5
5 S	5 W	WM	34	NW SE		0.2
Total						14.6

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

Certificate: 22486 in the name of HARRY F. CROWE (perfected under Permit S-19363)

Use: IRRIGATION of 0.6 ACRES

Priority Date: MARCH 31, 1950

Rate: 0.01 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot
5 S	5 W	WM	34	SE SE	2

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NW SE	71	0.6
Total						0.6

17. Certificate 22486 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	34	SE SE	2	POD 3: 1300 FEET NORTH AND 310 FEET WEST FROM THE SE CORNER OF SECTION 34

18. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SW NE	71	0.6
Total						0.6

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

Certificate: 47042 in the name of CRIMSON WEST FARM, INC. BY GLEN A. CHRISTENSEN (perfected under Permit S-39059)
Use: IRRIGATION of 19.7 ACRES
Priority Date: MAY 7, 1974 for 0.09 c.f.s. and JUNE 3, 1974 for 0.16 c.f.s.
Rate: 0.25 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	35	NW SW	1	2100 FEET NORTH AND 840 FEET EAST FROM THE SW CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	34	NE SE		71	1.0
5 S	5 W	WM	35	NE NW		71	0.9
5 S	5 W	WM	35	NW NW		71	2.5
5 S	5 W	WM	35	SW NW		71	4.1
5 S	5 W	WM	35	SE NW		71	2.7

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	35	SE NW	2		6.0
5 S	5 W	WM	35	NW SW		71	2.5
Total							19.7

20. Certificate 47042 provides measured distances for the location of the point of diversion. However, based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	35	NW SW	1	POD 6: 2240 FEET NORTH AND 840 FEET EAST FROM THE SW CORNER OF SECTION 35

21. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SE NE	71	12.8
5 S	5 W	WM	35	SW NW	71	2.4
5 S	5 W	WM	35	NW SW	71	4.5
Total						19.7

22. The fifth right to be transferred is as follows:

Certificate: 49960 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-40859)
Use: IRRIGATION of 29.5 ACRES
Priority Date: JULY 6, 1976
Rate: 0.37 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE SW	5	*1340 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 26

*For purposes of this transfer application this POD will be named POD 9

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	26	NE SW		73	1.1
5 S	5 W	WM	26	NE SW	5		3.1
5 S	5 W	WM	26	NW SW		73	25.3
Total							29.5

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

Certificate: 49961 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-40860)

Use: IRRIGATION of 2.6 ACRES

Priority Date: JULY 6, 1976

Rate: 0.03 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	34	SE SW	50 FEET SOUTH AND 120 FEET EAST FROM THE SW CORNER OF HAMPTON DLC 71

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NE SW		0.2
5 S	5 W	WM	34	NE SW	71	0.5
5 S	5 W	WM	34	SE SW		0.7
5 S	5 W	WM	34	NW SE		0.1
5 S	5 W	WM	34	NW SE	71	1.1
Total						2.6

24. Certificate 49961 provides measured distances for the location of the point of diversion. However, based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	34	NE SW	POD 1: 20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71

25. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SW NE	71	2.4
5 S	5 W	WM	34	SE NE	71	0.2
Total						2.6

26. The seventh right to be transferred is as follows:

Certificate: 50648 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-42508)

Use: IRRIGATION of 95.0 ACRES

Priority Date: MAY 4, 1977

Rate: 1.19 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	5 W	WM	35	NW NW		71	*330 FEET SOUTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 35
5 S	5 W	WM	26	NE SW	5		**1340 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 26

*For purposes of this transfer application this POD will be named POD 7

**For purposed of this transfer application this POD will be named POD 9

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
5 S	5 W	WM	26	SW NW		73	25.4
5 S	5 W	WM	26	SE NW		73	10.6
5 S	5 W	WM	26	NE SW		73	1.1
5 S	5 W	WM	26	NE SW	5		1.3
5 S	5 W	WM	26	NW SW		73	4.8
5 S	5 W	WM	26	SW SW		71	2.3
5 S	5 W	WM	27	SE SE		71	4.4
5 S	5 W	WM	34	NE NE		71	22.0
5 S	5 W	WM	35	NW NW		71	23.1
Total							95.0

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

Certificate: 64516 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-43966)
Use: IRRIGATION of 16.8 ACRES
Priority Date: FEBRUARY 28, 1979
Rate: 0.21 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: SOUTH YAMHILL RIVER, a tributary of WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	34	SE SW	20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NW NE	71	0.7
5 S	5 W	WM	34	NE NW	71	15.1
5 S	5 W	WM	34	NW SW		1.0
Total						16.8

28. Certificate 64516 provides the location of the point of diversion. However, based upon additional information provided by the applicant, for purposes of this transfer application, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	34	NE SW	POD 1: 20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71

29. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NW NE	71	5.2
5 S	5 W	WM	34	SW NE	71	11.4
5 S	5 W	WM	34	SE NE	71	0.2
Total						16.8

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

Certificate: 87465 in the name of CRIMSON WEST FARMS INC. (perfected under Permit S-47681)
Use: IRRIGATION of 2.7 ACRES

Priority Date: JULY 8, 1983

Rate: 0.03 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, a tributary of YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	26	SW SW	71	POD 1: 860 FEET NORTH AND 1090 FEET EAST FROM THE SW CORNER OF SECTION 26
5 S	5 W	WM	34	SE SW		POD 3: 20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71
5 S	5 W	WM	35	NW NW	71	POD 2: 240 FEET SOUTH AND 1080 FEET EAST FROM THE SW CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	SE SW		0.6
5 S	5 W	WM	34	SW SE		2.1
Total						2.7

31. Certificate 87465 provides the location of the points of diversion. However, based upon additional information provided by the applicant, for purposes of this transfer application, the points of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Original POD #	DLC	Measured Distances
5 S	5 W	WM	26	SW SW	1	71	POD 8: 860 FEET NORTH AND 1090 FEET EAST FROM THE SW CORNER OF SECTION 26
5 S	5 W	WM	34	NE SW	3	71	POD 1: 20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71
5 S	5 W	WM	35	NW NW	2	71	POD 7: 330 FEET SOUTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 35

32. Transfer Application T-11478 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	34	NW NE	71	2.7
Total						2.7

33. Transfer Application T-11478 proposes an additional point of diversion to Water Right Certificates 16716, 19861, 22486, 47042, 49960, 49961, 50648, 64516 and 87465, described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	35	NW SW	71	POD 5: 2180 FEET NORTH AND 510 FEET EAST FROM THE SW CORNER OF SECTION 35

34. Transfer Application T-11478 proposes an additional point of diversion with approximate distances from the existing points of diversion identified as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from POD #5
5 S	5 W	WM	34	NE SW	POD 1: 20 FEET SOUTH AND 200 FEET EAST FROM THE SW CORNER OF DLC 71	1.8 miles downstream
5 S	5 W	WM	34	NW SE	POD 2: 1750 FEET NORTH AND 2240 FEET WEST FROM THE SE CORNER OF SECTION 34	1.0 mile downstream
5 S	5 W	WM	34	SE SE	POD 3: 1300 FEET NORTH AND 310 FEET WEST FROM THE SE CORNER OF SECTION 34	0.4 mile downstream
5 S	5 W	WM	35	NW SW	POD 4: 1960 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 35	273 feet downstream
5 S	5 W	WM	35	NW SW	POD 6: 2240 FEET NORTH AND 840 FEET EAST FROM THE SW CORNER OF SECTION 35	337 feet upstream
5 S	5 W	WM	35	NW NW	POD 7: 330 FEET SOUTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 35	1.2 miles upstream
5 S	5 W	WM	26	SW SW	POD 8: 860 FEET NORTH AND 1090 FEET EAST FROM THE SW CORNER OF SECTION 26	1.8 miles upstream
5 S	5 W	WM	26	NE SW	POD 9: 1340 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 26	1.9 miles upstream

35. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

36. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
37. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11478.

38. The proposed changes would not result in enlargement of the rights.
39. Instream water rights, Certificate 72978 and 80357, exists for the reach of the river in which the additional point of diversion for Certificates 47042, 49960, 50648 and 87465, would be located upstream, and stream flows within the reach are frequently below the levels allocated under the instream water rights. Thus, the instream water rights would be injured as a result of the additional point of diversion associated with Certificates 47042, 49960, 50648, and 87465.
40. The reach of the river between the existing points of diversion and the additional point of diversion is within the reach of instream water rights located on the South Yamhill River described on Certificates 72978 and 80357.

Conclusion of Law

Based on the recommendation of the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality, the Department consents to injury of the instream water right evidenced by Certificates 72978 and 80357. The additional point of diversion and changes in place of use proposed in Transfer Application T-11478 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, 690-380-5030 and 690-380-5050.

Now, therefore, it is ORDERED:

1. The additional point of diversion and changes in place of use proposed in Transfer Application T-11478 are approved.
2. 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 Certificates 16716, 19861, 22486, 47042, 49960, 49961, 50648, 64516 and 87465 and any related decree.
3. Water right Certificates 16716, 19861, 22486, 47042, 49960, 49961, 50648, 64516 and 87465 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
 - b. The water user shall maintain the meters or measuring devices in good working order.

- c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from ODFW that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.
- The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 30 day of March, 2015.



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: MAR 31 2015