

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
5	S	5	W	W.M.	28	NW NE	200	5.3
5	S	5	W	W.M.	28	SW NE	200	14.6

- Application T-9831 proposes to add a point of diversion for the transferred portion of the right approximately 0.55 mile upstream from the existing point of diversion in Deer Creek, in the South Yamhill River sub-basin of the Willamette River Basin as follows:

Proposed Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Location
5	S	5	W	W.M.	28	NE SW	901	3,760 ft South & 3,700 ft West from NE Corner of Section 28

Note: The transfer map was based on the Department’s Final Proof Survey map for the Permit 34891, which identified the direction of streamflow as southwesterly. Subsequent review and comparison with maps from other sources, however, confirmed that Deer Creek flows in a northeasterly direction between the authorized and proposed points of diversion.

- Application T-9831 proposes to change the place of use for the transferred portion of the water right to:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
5	S	5	W	W.M.	28	NE SW	901	19.9

- The transfer proposes to add a point of diversion upstream within Deer Creek, in which flows are protected by junior instream water rights.
- Certificate 59483 (priority November 3, 1983) is for flows to be maintained in Deer Creek at the mouth for the purpose of supporting aquatic life and minimizing pollution. It was established under ORS 537.346 through conversion of minimum perennial streamflow MF 91.
- Certificate 72984 (priority August 5, 1993) is for flows of 1.5 cfs to be maintained year-round in Deer Creek from the headwaters to river mile 0.0 (SE¼, Section 14, Township 5S, Range 5W, WM for pollution abatement. Flows are to be measured at the lower end of the stream reach to protect necessary flows throughout the reach. It was established under ORS 537.336 through application IS 73563 by the Oregon Department of Environmental Quality.
- The Department’s streamflow model indicates the likelihood that flows in Deer Creek are often insufficient to meet the requirements of the instream water rights during the period from April through November.

9. Due to lack of a streamflow measuring station near the confluence of Deer Creek with the South Yamhill River, streamflow records are not available to document the extent to which the requirements of the instream water rights are actually met.
10. 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 notice.
11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
13. The proposed change would not result in enlargement of the right.
14. The Department finds that the proposed change would not result in injury to the instream water right under Certificate 59483 because flows are only protected at the mouth of Deer Creek. However, if water is diverted at the new POD during the period from April through October of each year when flows are insufficient to meet the instream right under Certificate 72984 (1.5 cfs), there would be potential injury to that right due to further reduction of flows in the stretch between the proposed upstream POD and the authorized POD.
15. Applicant agreement to the following conditions, however, would be sufficient to ensure that the change would not result in injury to the instream water right:
 - a) Prior to diverting water at the additional point of diversion (POD), the water user shall install a staff gage, near, but downstream from, the additional POD, for measuring and recording the quantity of water instream. The staff gage must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
 - b) The water user shall record daily water level readings at the gage, noting date and time, on the days during the period of July, August and September when water is diverted for allowed use under T-9831. Measurement and recording of streamflow shall not be required on days during July, August and September when water is not diverted at the additional POD. At time of proof, the recording requirement may be waived upon certificate issuance if three or more consecutive years of daily measurements, when water is diverted, indicate that flows are sufficient to meet the needs of the instream water right (1.5 cfs) virtually 100% of the time during the months of July, August and September.
 - c) The water user shall not divert water at the proposed POD for the allowed use whenever flows in Deer Creek, as measured at the staff gage, drop below 1.5 cfs. However, the water user may divert water at less than the authorized rate as long as a minimum of 1.5 cfs flow is maintained in Deer Creek, as measured at the staff gage.

16. On August 15, 2005 the applicant submitted a letter agreeing to condition the transfer as in Finding #15 above. The transfer, as conditioned, would not result in injury to other rights including instream rights.

Conclusions of Law


The proposed changes in point of diversion and place of use in application T-9831 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-9831 are approved.
2. Water right certificate 44426 is cancelled. Certificate 81613 is issued describing that portion of the right not involved in this transfer.
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 Certificate 44426 and any related decree.
4. 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.
5. Prior to diverting water at the additional point of diversion (POD), the water user shall install a staff gage, near, but downstream from, the additional POD, for measuring and recording the quantity of water instream. The staff gage must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The water user shall record daily water level readings at the gage, noting date and time, on the days during the period of July, August and September when water is diverted for allowed use under T-9831. Measurement and recording of streamflow shall not be required on days during July, August and September when water is not diverted at the additional POD. At time of proof, the recording requirement may be waived upon certificate issuance if three or more consecutive years of daily measurements, when water is diverted, indicate that flows are sufficient to meet the needs of the instream water right (1.5 cfs) virtually 100% of the time during the months of July, August and September.
7. The water user shall not divert water at the proposed POD for the allowed use whenever flows in Deer Creek, as measured at the staff gage, drop below 1.5 cfs. However, the water user may divert water at less than the authorized rate as long as a minimum of 1.5 cfs flow is maintained in Deer Creek, as measured at the staff gage.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

9. The approved changes (including recording of three or more years of water level readings in accordance with Condition #6 above), shall be completed, and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
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.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 1ST day of November, 2005.

For 
Phillip C. Ward
Director

Mailing date: _____

NOV 03 2005