



**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
17 S	2 W	WM	32	NE NW	2	None specified on the certificate

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC
17 S	2 W	WM	29	SE SW	61
17 S	2 W	WM	29	SW SE	61
17 S	2 W	WM	29	SE SE	61
17 S	2 W	WM	32	NE NE	61
17 S	2 W	WM	32	NE NE	62
17 S	2 W	WM	32	NW NE	61
17 S	2 W	WM	32	NW NE	62
17 S	2 W	WM	32	SW NE	62
17 S	2 W	WM	32	SE NE	62
17 S	2 W	WM	32	NE NW	61
17 S	2 W	WM	32	NE NW	62

3. The applicant submitted information that more specifically describes the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
17 S	2 W	WM	32	NE NW	2	40 FEET SOUTH AND 1350 FEET EAST FROM THE NW CORNER OF SECTION 32, T 17 S, R 2 W, W.M.

4. Application T-10212 proposes an additional point of diversion on the McKenzie River at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	2 W	WM	29	NE SW	3,570 FEET SOUTH AND 2,400 FEET EAST FROM THE NW CORNER OF SECTION 29

5. The authorized point of diversion is located on the McKenzie (Kaiser) Slough. The slough connects with the McKenzie River approximately 2000 feet up the slough from the authorized point of diversion. The proposed additional point of diversion is located approximately 150 feet downstream from the entrance to the slough on the river. Therefore, the requested additional point of diversion is, in effect, a downstream transfer.
6. The applicant requested a time period of five years to complete the transfer.
7. Notice of the application for transfer was published on July 11, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. Brad Taylor of the Eugene Water and Electric Board (EWEB) responded to the notice and requested a copy of the proposed order.
8. On February 8, 2007, the Department issued a preliminary determination proposing to approve Transfer T-10212 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on February 13, 2007, and in the Register-Guard newspaper on February 18,

February 25 and March 4, 2007 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

9. On April 9, 2007, the Department issued a Final Order approving the transfer. The order was recorded at Special Order Volume 71, Pages 475 through 478. The order contained a scrivener's error in the description of the point of diversion listed in Finding of Fact #3, which was corrected in a superseding order issued April 19, 2007 and recorded at Special Order Volume 71, Pages 556 through 559.
10. The superseding order recorded at Special Order Volume 71, Pages 556 through 559 contained scrivener's errors in reference to the transfer application number in Finding of Fact #8 and Order Condition #1. This order supersedes the previous order recorded at Special Order Volume 71, Pages 556 through 559, to correct the errors in the references to the transfer application number.
11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device.
12. 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.
13. A pump and pipeline system sufficient to use the full amount of water allowed under the existing right is present.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

The additional point of diversion proposed in application T-10212 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

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

1. The order approving application T-10212 and entered at Special Order Volume 71, Pages 556 through 559 is superseded and of no further force or effect.
2. The additional point of diversion proposed in application T-10212 is approved.
3. Water Right Certificate 20942 is cancelled.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.

5. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Prior to diverting water at the new point of diversion, the water user shall install a fish screen and/or by-pass device as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 8<sup>th</sup> day of May 2007.

  
\_\_\_\_\_  
Phillip C. Ward, Director

**MAY 16 2007**

Mailing date: \_\_\_\_\_