

Rate/Duty: 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre

Source: Mill Creek, tributary to the Pudding River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
4 S	1 W	WM	33	NE SW
4 S	1 W	WM	33	NW SW
4 S	1 W	WM	33	SE NW
4 S	1 W	WM	33	SW SW

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	1 W	WM	33	SW NW		13.0
4 S	1 W	WM	33	SE NW	3	3.6
4 S	1 W	WM	33	NE SW	4	2.3
4 S	1 W	WM	33	NW SW		30.0
4 S	1 W	WM	33	SW SW		4.1

4. A total of 132.5 acre-feet of water may be beneficially used annually under the existing right.
5. The water right does not provide specific coordinates for the points of diversion. The applicant has requested that the point of diversion located in the NW ¼ SW ¼ of Section 33 be used as the starting point for any instream reach created as a result of this transfer. The location of this point of diversion is shown on the instream transfer application map and is located approximately 1610 feet North and 924 feet East from the SW Corner of Section 33.
6. Application T-9827 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values.
7. Application T-9827 proposes to change the place of use of the right to create an instream reach from the point of diversion located in the NW ¼ SW ¼ of Section 33, located approximately 1610 feet North and 924 feet East from the SW Corner of Section 33, to the mouth of Mill Creek.
8. The applicant proposes that the quantities water to be transferred instream to be protected as follows:

Period	Rate (cfs)	Volume (acre-feet)
April 1 to October 1	0.663	356.4

9. The Department finds that the applicant's request requires modification. The applicant has agreed to the proposed change. The maximum volume that may be protected instream is 132.5 acre-feet. At 0.663 cfs and 132.5 acre-feet, water may be protected instream for a period of 101 days. The Oregon Department of Fish and Wildlife has identified that the proposed instream water right is in an area where additional flows are necessary for the

recovery of salmonids during the period July through September. Therefore, the instream period has been modified as follows:

Period	Rate (cfs)	Volume (acre-feet)
June 22 to October 1	0.663	132.5

10. There are no existing instream water rights for the same reach as that proposed for the new instream water right.
11. Original notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000 on December 21, 2004. A revised notice of the transfer as an instream transfer was published on January 11, 2005. No comments were filed in response to either of the notices.
12. On October 13, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9827 and mailed a copy to the applicant. Notice of the preliminary determination for the transfer application was published on the Department's weekly notice on October 17, 2006, and in the Woodburn Independent newspaper on November 15, 22 and 29, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. 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.
14. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. 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.
18. The protection of flows within the proposed reach 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 no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.

19. The total monthly quantities of water to be protected under the proposed instream right in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Conclusions of Law

The proposed changes in character of use and place of use to instream use in application T-9827 are consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

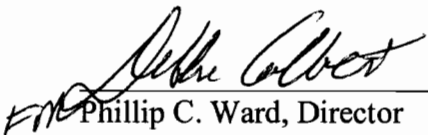
1. The change in character of use and place of use to instream use proposed in application T-9827 are approved and shall be effective upon issuance of this Final Order.
2. Certificate 17127 is cancelled and a new instream water right will be issued.
3. The instream water right shall provide for the protection of streamflows in Mill Creek from the point of diversion located in Township 4 South, Range 1 West, NW ¼ SW ¼ of Section 33, approximately 1610 feet North and 924 feet East from the SW Corner of Section 33, to the mouth of Mill Creek.

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

Period	Rate (cfs)
June 22 to October 1	0.663

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 a subsequent order establishing a new instream water right.
6. The instream water right established by this transfer is subject to all other conditions and limitations contained in Certificate 17127 and any related decree.
7. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this 11th day of January 2007.


Phillip C. Ward, Director

Mailing Date: JAN 15 2007