

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre-feet per acre during the irrigation season from April 2 to October 31 of each year

Source: DITCH CREEK, tributary to PLEASANT CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SE SW	125 FEET NORTH & 140 FEET WEST FROM N1/4 CORNER, SECTION 32*

(* This point of diversion is also known as: **POD 1.**)

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Change
34 S	4 W	WM	28	SW SW	12.36	POD only
34 S	4 W	WM	28	SW SW	3.04	POD and POU
34 S	4 W	WM	33	NW NW	1.76	POD only
34 S	4 W	WM	33	NW NW	0.84	POD and POU
TOTAL:					18.00	

4. Application T-9393 proposes to move the authorized point of diversion approximately 0.08 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SW SE	POD 2 - 35 FEET NORTH & 155 FEET EAST FROM N1/4 CORNER, SECTION 32

5. Application T-9393 also proposes to change the place of use of a portion of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	4 W	WM	33	SW NW	0.88
34 S	4 W	WM	33	SE NW	3.00
TOTAL:					3.88

6. The second right to be transferred is as follows:

Certificate: 44381 in the name of DITCH CREEK RANCH (perfected under Permit S-18651)

Use: IRRIGATION of 28.12 ACRES

Priority Date: MARCH 16, 1949

Rate: 0.35 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre-feet per acre during the irrigation season from April 2 to October 31 of each year

Source: DITCH CREEK, tributary to PLEASANT CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SE SW	125 FEET NORTH & 140 FEET WEST FROM N1/4 CORNER, SECTION 32*

(* This point of diversion is also known as: **POD 1.**)

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Change
34 S	4 W	WM	29	SE SE	0.50	POD only
34 S	4 W	WM	32	NE NE	14.62	POD only
34 S	4 W	WM	33	NW NW	11.48	POD only
34 S	4 W	WM	33	NW NW	1.52	POD and POU
TOTAL:					28.12	

7. Application T-9393 proposes to move the authorized point of diversion approximately 0.08 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SW SE	POD 2 - 35 FEET NORTH & 155 FEET EAST FROM N1/4 CORNER, SECTION 32

8. Application T-9393 also proposes to change the place of use of a portion of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	4 W	WM	33	SE NW	1.52
TOTAL:					1.52

9. The third right to be transferred is as follows:

Certificate: 44382 in the name of DITCH CREEK RANCH (confirmed by Rogue River decree)

Use: IRRIGATION of 84.59 ACRES

Priority Date: 1877

Rate: 1.28 CUBIC FEET PER SECOND (cfs)

Source: DITCH CREEK, tributary to PLEASANT CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SE SW	125 FEET NORTH & 140 FEET WEST FROM N1/4 CORNER, SECTION 32*
34 S	4 W	WM	33	SW NW	2040 FEET SOUTH & 230 FEET EAST FROM NW CORNER, SECTION 33**

(* This point of diversion is also known as: **POD 1.**)

(** This point of diversion is also known as: **POD 3.**)

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
34 S	4 W	WM	32	NENE	18.98	POD only
34 S	4 W	WM	32	NW NE	2.90	POD only
34 S	4 W	WM	32	NW NE	1.50	POD, APOD, POU & USE
34 S	4 W	WM	32	SE NE	3.40	POD only
34 S	4 W	WM	33	NW NW	9.20	POD only
34 S	4 W	WM	33	SW NW	17.80	POD only
34 S	4 W	WM	33	SE NW	29.01	POD only
34 S	4 W	WM	33	NE SW	1.80	POD only
TOTAL:					84.59	

10. Certificate 44382 does not differentiate the diversions serving the respective lands. However, the order approving application T-2469 (Special Order Volume 20 Page 505 signed March 29, 1971) authorized the establishment of a new point of diversion in Section 33 (POD 3) to serve a portion of the right (72.01 acres). The final proof survey identifies the following lands as served by POD 3:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	4 W	WM	32	NE NE	10.80
34 S	4 W	WM	32	SE NE	3.40
34 S	4 W	WM	33	NW NW	9.20
34 S	4 W	WM	33	SW NW	17.80
34 S	4 W	WM	33	SE NW	29.01
34 S	4 W	WM	33	NE SW	1.80
TOTAL:					72.01

11. Application T-9393 proposes to move the authorized point of diversion for the 12.58 acres served by the diversion (POD 1) in Section 29 (being 8.18 of the acres listed in the NE ¼ NE ¼ and 4.4 acres (2.90 + 1.50 ac.) in the NW ¼ NE ¼ of Section 32, T. 34S, R. 4W, W.M. listed in the table in Finding of Fact #9) approximately 0.08 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SW SE	POD 2 - 35 FEET NORTH & 155 FEET EAST FROM N1/4 CORNER, SECTION 32

12. Application T-9393 also proposes to add an authorized point of diversion for 1.5 acres (being in the NW ¼ NE ¼ of Section 32, T. 34S, R. 4W, W.M.) of the 12.58 acres served by the diversion (POD 1) in Section 29 approximately 0.7 mile downstream at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	33	SW NW	POD 3 - 2040 FEET SOUTH & 230 FEET EAST FROM NW CORNER, SECTION 33

13. Application T-9393 also proposes to change the place of use and character of use of the 1.5 acres to 0.023 cfs of water for pond maintenance at the following location:

POND MAINTENANCE					
Twp	Rng	Mer	Sec	Q-Q	
34 S	4 W	WM	33	SW NW	

14. Application T-9393 proposes to move the authorized point of diversion for the 72.01 acres served by the diversion in Section 33 (described in Finding #10 above) approximately 0.62 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	29	SW SE	POD 2 - 35 FEET NORTH & 155 FEET EAST FROM N1/4 CORNER, SECTION 32

15. The fourth right to be transferred is as follows:

Certificate: 44444 in the name of DITCH CREEK RANCH (perfected under Permit R-5541)
Use: STORAGE FOR SUPPLEMENTAL IRRIGATION
Priority Date: OCTOBER 10, 1969
Quantity: 7.5 ACRE FEET
Source: DITCH CREEK, tributary to PLEASANT CREEK

Authorized Place of Use:

STORAGE				
Twp	Rng	Mer	Sec	Q-Q
34 S	4 W	WM	33	SW NW

16. The authorized point of diversion is not described on Certificate 44444. However, the final proof map for the right shows the point of diversion at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	4 W	WM	33	SW NW	2040 FEET SOUTH & 230 FEET EAST FROM NW CORNER, SECTION 33**

(** This point of diversion is also known as: **POD 3.**)

17. The amendment to application T-9393 received on July 25, 2005, proposed to add an authorized point of diversion under Certificate 44444. However, subsequent discussion between the Department and the applicant's consultant, Norm Daft, revealed the proposed additional point of diversion was not in a practical location to be used for filling the reservoir and should be removed from the transfer application.

18. Application T-9393 proposes to change the character of use of the right to storage for multi-purposes.

19. Notice of the application for transfer was published on April 22, 2003, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife (ODFW) did request inclusion of a condition requiring installation of proper fish screens.

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

20. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

21. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.

22. The proposed changes would not result in enlargement of the rights.

23. The proposed changes to the rights evidenced by Certificates 44380, 44381, 44444 would not result in injury to other water rights.

24. The proposed changes to those portions of the right evidenced by Certificate 44382 that are served by the diversion in Section 29 would not result in injury to other water rights.
25. Water is allocated to instream uses under Certificate 72675. The stream reach described in the certificate includes the portion of Ditch Creek that would be affected by the proposed change in point of diversion for the 72.01 acres of the right evidenced by Certificate 44382 that currently are served by the diversion in Section 33.
26. Streamflows within the reach of Ditch Creek are frequently below the levels allocated under instream water right certificate 72675. Thus, the instream water right would be injured as a result of the proposed change in point of diversion to an upstream location for those portions of the right evidenced by Certificate 44382 that are served by the diversion in Section 33.
27. On February 14, 2006, the Department mailed a copy of the *draft* Preliminary Determination proposing to deny Transfer Application T-9393 to the applicants and their consultant. The proposed denial was due to instream water right Certificate 72675 being injured as a result of the transfer, as described in Findings #25 and #26. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of March 21, 2006, for the applicants to respond.
28. On March 21, 2006, the applicants requested that the Department proceed with issuance of the preliminary determination and seek a recommendation from ODFW as to whether the Department should consent to injury of the instream water right pursuant to OAR 690-380-5030.
29. On April 27, 2006, the Department issued a preliminary determination proposing to deny Transfer Application T-9393 due to the potential for injury to instream water right certificate 72675, unless ODFW recommended the Department consent to the injury pursuant to ORS 540.530. Concurrent with issuance of the preliminary determination, the Department requested such a recommendation. Additionally, notice of the preliminary determination for the transfer application was published in the Department's weekly notice on May 2, 2006, and in *The Rogue River Press* newspaper on September 5, 12 and 19, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
30. On July 12, 2006, ODFW recommended that the Department consent to the injury of instream water right Certificate 72675. Based upon a set of actions and conditions proposed by ODFW and the applicant, ODFW determined the overall project benefits will offset the negative effects and provide a net benefit to the uses of the instream water right. The recommendation concluded that:
 - a) Flow reduction of 0.853 cfs for the 0.62 mile of stream from POD 3 to POD 2 will result in a loss of habitat quantity and quality in this reach. However, habitat quantity loss will be offset by opening an estimated 1.12 miles of fish habitat through fish passage at the diversions, by providing full stream flow for 0.08 mile from (old) POD 1 to (new) POD 2 and by providing a bypass flow for the entire diversion reach on the applicant's property.

- b) Adult coho and steelhead migrate and spawn during the water storage season. To ensure the benefits of this transfer and to provide a net benefit, storage rights associated with this transfer (Certificate 44444) should be conditioned to appropriate water for storage only after the instream water right flow is met.
- c) An increase in habitat quantity, and likely quality (including escape cover, foraging habitat and reduction in water temperature), will result by providing a bypass flow during the irrigation season to the 0.55 mile diversion reach below POD 3, which currently receives little to no water during the summer. The applicants will provide a bypass flow of at least 0.217 cfs in Ditch Creek at POD 2; except at times when the flow at POD 2 is less than 1.063 cfs, the water user shall leave a bypass flow equal to 20 percent of the flow in the stream. The bypass flow shall be maintained in Ditch Creek from POD 2 downstream to where Ditch Creek intersects West Evans Creek Road.

Additionally, by providing full stream flow for the 0.08 mile reach from the old diversion (POD 1) downstream to the new diversion (POD 2), an increase in habitat quantity and quality (including rearing, spawning and migration habitat) will result.

- d) To ensure the bypass flow is protected, the applicants will transfer the bypass flow (including the 20 percent provision) to instream use through the Allocation and Use of Conserved Water process.
 - e) The channel is expected to narrow and stabilize at and below the pushup dam at POD 1 for at least 0.08 mile. This will allow riparian vegetation to recolonize the area providing more escape and forage habitat. Additionally, allowing stabilization and eliminating the artificial side channel will provide shade and a deeper channel which should, at a minimum, allow the stream to maintain cooler temperatures.
31. Notice of the opportunity to comment on the recommendation to consent to injury of the instream water right was published on August 22, 2006, in the Department's weekly notice pursuant to OAR 690-380-5050(4). No comments were received.
 32. On June 4, 2007, the Department e-mailed a *draft* final order for T-9393 to the applicant's consultant for review. On June 5, 2007, the applicant's consultant responded and identified a potential problem with the proposed date for completion of the transfer and an error in the condition language affecting the establishment of the instream water right associated with an application for Allocation and Use of Conserved Water to be submitted by the applicants.
 33. The applicants submitted an Application for Allocation and Use of Conserved Water on August 8, 2007. The Department assigned the application number CW-52.
 34. Considering the comments received on June 5, 2007, the Department e-mailed a *REVISED draft* final order for Transfer T-9393 to the applicants and their consultant on January 22, 2008, and provided a description of the changes made.

35. On January 23, 2008, the applicant's consultant requested, on the applicants' behalf, that the Department proceed with issuance of a final order for Transfer T-9393.

Conclusions of Law

The Water Resources Department consents to injury of the instream water right under Certificate 72675. The changes in point of diversion, place of use and character of use proposed in Transfer Application T-9393 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and 690-380-5030.

Now, therefore, it is ORDERED:

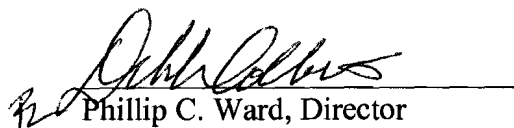
1. The changes in point of diversion, place of use and character of use proposed in Transfer Application T-9393 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 44380, 44381, 44382, and 44444 and any related decree.
3. Water Right Certificates 44380, 44381, 44382 and 44444 are cancelled.
4. The quantity of water diverted at the new and additional points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion. Further, the water right evidenced by Certificate 44382 is affected by Allocation of Conserved Water CW-52. After the allocation of conserved water, the water right evidenced by Certificate 44382 (as changed by this final order approving Transfer Application T-9393) will allow diversion and use of the following quantities of water:

Certificate	Priority Date	POD #	Max Diversion Rate (CFS) After CW-52 Project	Use
44382	1877	2	1.043	Irrigation of 83.09 Acres
		2 & 3	0.02	Pond Maintenance
Total:			1.063	

5. The former place of use of the transferred water shall no longer receive water as part of these rights.
6. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user shall provide fish passage, according to Oregon Department of Fish and Wildlife specifications, at the existing downstream diversion dam (POD 3).

8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at all permanent diversion structures and pump sites. 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 Oregon Department of Fish and Wildlife.
9. The water user shall leave a bypass flow of at least 0.217 cfs in Ditch Creek at POD 2; except at times when the flow at POD 2 is less than 1.063 cfs, the water user shall leave a bypass flow equal to 20 percent of the flow in the stream. The bypass flow shall be maintained in Ditch Creek from POD 2 downstream to where Ditch Creek intersects West Evans Creek Road.
10. The appropriation of water for storage under Certificate 44444 may only occur when the flow for instream water right Certificate 72675 or the bypass flow (described in Condition #9) is met, whichever is greater.
11. Upon the issuance of a final order approving this transfer (T-9393), the water user shall abandon use of the push up dam at POD 1, being located in the SE ¼ SW ¼ of Section 29, T34S R4W W.M.; 125 feet North and 140 feet West from the North ¼ corner of Section 32.
12. If the order approving Allocation of Conserved Water CW-52 does not take effect due to a protest or is not otherwise ultimately approved, then this order does not become final.
13. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
14. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 28th day of January 2007.


 Phillip C. Ward, Director

Mailing date: JAN 31 2008

