



**Rate:** 0.04 Cubic Foot per Second (CFS)

**Limit/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet (AF) per acre per year

**Source:** Tualatin River, tributary to the Willamette River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	1 W	WM	14	NE SE	1320 FEET SOUTH AND 30 FEET WEST FROM EAST 1/4 CORNER OF SECTION 14

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	14	NE SE	3.6

4. A total of 9.0 AF of water may be beneficially used annually under the existing right.
5. Application T-10332 proposes to change the character of use to instream use for pollution abatement, conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values on a time limited basis.
6. The applicant requests that the water right described in Finding of Fact #3 revert to its authorized use and place of use upon request if it is determined by the applicant that use of water under Certificate 48491 is needed, such as if the property is sold to a new landowner or if reclaimed water (currently being used for irrigation purposes on the described place of use) becomes unavailable.
7. Application T-10332 proposes to change the place of use of the right to create an instream reach from the point of diversion (as described in Finding of Fact #3) to the mouth of the Tualatin River.
8. The applicant proposes the quantities of water to be transferred instream to be protected as follows:

Instream Period	Rate (cfs)	Volume (AF)
June 22 through September 30	0.045	9.0

9. There are existing instream water rights within the same reach as that proposed for the new instream water right. Two of the instream flow protections (MF-174 and MF-175) are minimum stream flows that have not yet been converted to instream water rights and are senior to the proposed instream use. Instream water right Certificate 59692, which was converted from a minimum streamflow (MF-173) under ORS 537.346, is also senior to the proposed instream use. Instream water right Certificate 80000, which was established as a result of the state agency instream application process (ORS 537.341), is junior to the proposed instream use.
10. The applicant proposes that any instream water right established as a result of this instream transfer to be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant also proposes that any instream water right

established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with an earlier priority date.

11. The application includes a Land Use Information form completed and signed by a representative of the City of Tigard planning department. Additionally, the Department provided notification of the proposed action to Washington County, Clackamas County, and the cities of Tualatin, West-Linn, Durham, Rivergrove, and King City.
12. Notice of the application for transfer was published on March 20, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
13. On June 9, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10332 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of July 8, 2008, for the applicant to respond. The additional information requested by the Department was received on July 31, 2008. On July 31, 2008, the applicant concurred with the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
14. On October 31, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10332 and mailed 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 4, 2008, and in the Daily Journal of Commerce on November 12, 19, and 26, 2008, 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.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

15. Water was not used within the five years prior to submittal of the transfer application on March 5, 2007, according to the terms and conditions of the right. The subject land has been irrigated with treated wastewater effluent known as reclaimed water. A registration for use of reclaimed water was filed with the Department on September 18, 1997. Because the nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under the existing water right, the applicant has sufficiently rebutted the presumption of forfeiture in accordance with ORS 540.610(2)(h).
16. A diversion structure, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
17. Certificate 48491 allows the diversion of 0.24 CFS for irrigation of 19.3 acres. The applicant has requested to transfer 3.6 acres of irrigation use to instream use on a time-limited basis. A total of 15.7 acres will continue to receive water, up to a maximum of 0.2 CFS, under Certificate 48491. The portion available for transfer to instream use from the irrigation of 3.6 acres is 0.04 CFS.

18. Based upon Finding of Fact #16, on July 31, 2008, the applicant agreed to modify the quantity to be transferred instream and protected as follows:

Instream Period	Rate (cfs)	Volume (AF)
June 22 through September 30	0.04	9.0

19. The proposed change, as modified, would not result in enlargement of the right. The lands described in Finding of Fact #3 may continue to receive reclaimed water during the term of this time-limited instream transfer.
20. The proposed change, as modified, would not result in injury to other water rights.
21. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
22. The protection of flows within the proposed reach is appropriate, considering:
- The instream water right begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion;
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - 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.
23. The existing instream flow protections and instream water rights are at times not met during the requested period for instream protection. In addition, the proposed instream reach is located within a high priority area for stream flow restoration.
24. The proposed instream use is junior in priority date to stream flow protections MF-174 and MF-175 and to instream water right Certificate 59692. Each of these instream uses was established for the purpose of supporting aquatic life and minimizing pollution. The proposed instream use may not replace a portion of these instream flows as requested (see Finding of Fact #10). However, based upon Finding of Fact #22, the proposed instream use may be additive to these existing instream protections.
25. The proposed instream use is senior in priority date to instream water right Certificate 80000, established for the purpose of pollution abatement, and may replace a portion of that right with an earlier priority date.
26. By adding to MF-174, MF-175, Certificate 59692, and any instream water rights established as a result of the instream transfer or conserved water statutes, the instream right will provide protection for additional streamflows necessary for aquatic life and minimizing pollution.

27. By replacing a portion of Certificate 80000 or other junior instream rights created as a result of the state agency or minimum streamflow conversion process, the instream right will provide protection for streamflows previously identified as necessary for minimizing pollution under earlier priority dates.
28. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in time-limited instream transfer application T-10332 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

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

1. The changes in character of use and place of use to instream use proposed in application T-10332 are approved.
2. The exercise of the right evidenced by Certificate 48491 for irrigation of 3.6 acres at the former place of use shall be SUSPENDED, without loss of priority, for the term of the transfer authorized herein. The former place of use may continue to receive water under a registration for use of reclaimed water filed with the Department on September 18, 1997.
3. The instream water right established under this order shall provide for the protection of streamflows from the point of diversion (as described in Finding of Fact #3) to the mouth of the Tualatin River.

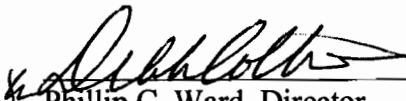
4. The quantities of water to be protected instream during the term of this order are:

Instream Period	Rate (cfs)	Volume (AF)
June 22 through September 30	0.04	9.0

5. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
6. During the term of this order, the instream water right shall be additive to MF-174, MF-175, and Certificate 59692 and replace a portion of Certificate 80000 during the period June 22 through September 30.
7. During the term of this order, the right to the instream 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 48491 and any related decree.

8. This order may be terminated upon submission of evidence by the applicant that conditions for termination of the order have been met. Conditions for termination include:
  - a) Ownership of the lands to which certificate 48491 are appurtenant has changed and the new landowner intends to exercise Certificate 48491 on the land;
  - b) Reclaimed water is no longer available for use on the subject lands; or
  - c) The applicant provides other information demonstrating that termination of the order is necessary.
9. The order may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (May 22) or after the instream period has begun, water may not be used under Certificate 48491 until the following calendar year, unless the Director determines that enlargement would not occur.
10. Upon termination of this transfer order, the use of water shall revert to its original use and place of use as described by Certificate 48491. The use shall revert to the authorized use and place of use upon submission of a termination request from the applicant.

Dated at Salem, Oregon this 29<sup>th</sup> day of December, 2008.

  
Phillip C. Ward, Director

Mailing Date JAN 02 2009