

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Transfer)	FINAL ORDER APPROVING
Application T-6715)	TRANSFER APPLICATION
Proposing a Change in Place)	T-6715
of Use and a Change in)	
Point of Diversion for)	
Water Right Certificate 26475)	

FINDINGS OF FACT

1. Pursuant to ORS 540.505 to 540.580 and OAR Chapter 690, Division 380, Daniel H. Hemshorn, 14350 Wilco Highway, Woodburn, Oregon, 97071, filed transfer application to change the point of diversion and place of use of a portion of a water right evidenced by Water Right Certificate 26475.
2. The Department assigned the application transfer application number T-6715.
3. Certificate 26475 includes the following terms and conditions:
 - a. Allows the use of the Pudding River, a tributary of the Molalla River, for irrigation of 34.2 acres.
 - b. The maximum amount of water to which the right is entitled is 0.43 cubic foot per second.
 - c. The date of priority of the right is December 16, 1955.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

- d. The authorized point of diversion is located in Lot 2 (SW¼ NW¼), Section 21, T 5 S, R 1 W, W.M..
- e. The authorized place of use for this right is:

NE¼ NE¼ 22.2 Acres
NW¼ NE¼ 0.4 Acre
SW¼ NE¼ 3.6 Acres
SE¼ NE¼ 8.0 Acres
Section 20

Township 5 South, Range 1 West, W.M.

- f. The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2½ acre feet per acre for each acre irrigated during the irrigation season of each year.
 - g. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.
 - h. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.
4. Pursuant to ORS 540.520(2)(g), the applicant provided evidence that water has been used, in the five year period prior to the filing date of the transfer application, according to the terms and conditions of the water right.
 5. The owner of the authorized place of use has given permission for the proposed changes to take place.
 6. The proposed changes are compatible with the local comprehensive land use plans.
 7. Notice of the transfer application has been published in the Department's weekly notice on April 29, 1992 and in the Silverton Appeal-Tribune on February 26, March 5 and 12, 2003.

8. No protests were filed in response to the notices.
9. The District 16 Watermaster review of the proposed changes concluded, if approved, the proposed transfer would not cause injury to other water rights.
10. The Oregon Department of Fish and Wildlife review of the transfer application found no injury to an instream water right or any other water rights. Pursuant to ORS 540.525 or 540.532, The Oregon Department of Fish and Wildlife recommends the Department condition approval of the transfer to require installation of a fish screen or fish by-pass device on the proposed point of diversion to prevent fish from entering the diversion.
11. Transfer Application T-6715 is proposing to change the point of diversion upstream in the Pudding River a distance of approximately 5.5 stream miles to the SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32, T 5 S, R 1 W, W.M.; 440 feet North and 670 feet West from the SE Corner of Section 32.
12. Transfer Application T-6715 is proposing to change the place of use of 34.2 acres to:

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 22.9 Acres
Section 32

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 11.3 Acres
Section 33

Township 5 South, Range 1 West, W.M.

13. Instream water right Certificate 72955, established pursuant to ORS 537.346 at the request of the Oregon Department of Environmental Quality, is for flows to be maintained for pollution abatement in the Pudding River from River Mile 41.0 to River Mile 21.5.
14. The reach of the Pudding River in which the applicant proposes to move his authorized point of diversion upstream is within the reach described in Certificate 72955.

15. Stream flows in the reach of the Pudding River covered by the instream right are measured near Woodburn at stream gage 14201340. Summary stream flow data for the gage at Woodburn has not been published, however, daily stream flow data has been published since October 1997 by the United States Geological Survey. Stream flows below the reach are measured near Aurora at stream gage 1420200. Summary data for the period 1928 to 1964 are published.
16. The following table provides a comparison of monthly Pudding River stream flow at the gage near Aurora (Butte Creek flow subtracted from Aurora) and the instream water right:

Month	Stream Gage 14202000 Near Aurora Exceedance Flows (Adjusted for Butte Creek inflows)				Instream Certificate 72955 (cfs)
	80%	85%	90%	95%	
October	64	60	56.5	51.1	11
November	183	107	77	55	11
December	559	443	381	287	11
January	894	792	638	523	11
February	984	869	753	593	11
March	827	758	686	572	11
April	655	576	503	416	11
May	351	309	250	206	11
June	177	160	142	118	11
July	74	66.2	59.2	52.3	11
August	46	44	38.1	33.6	11
September	49.1	47.5	44.3	40	11

17. Published daily mean stream flow data for the gage at Woodburn from October 1, 1997 to September 30, 2001 do not fall below the amount of stream flow authorized under Certificate 72955.
18. According to available stream flow data, Certificate 72955 is met within the reach between the authorized point of diversion and the proposed point of diversion. The proposed change, as conditioned, would **not** injure the in-stream water right.

CONCLUSION OF LAW

1. Pursuant to ORS 540.530, having received no timely protests to the proposed transfer and following examination of the transfer application, the Director has determined the change in place of use and the change in point of diversion proposed by T-6715 can be effected without injury to existing water rights.

ORDER

Now, therefore, it is ORDERED:

1. Transfer Application T-6715 modifying a portion of Water Right Certificate 26475 to change the place of use and to change the point of diversion is hereby approved.
2. The proposed change in place of use and change in point of diversion can be made if the following conditions are met:
 - a. The proposed changes shall be completed before October 1, 2004.
 - b. The quantity of water diverted at the new point of diversion, along with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.

- c. 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.
- d. Water shall be acquired from the same surface water source as the original point of diversion.
- e. The former place of use shall no longer be irrigated as a part of this water right.
- f. Use of water from the proposed point of diversion shall be regulated if stream flow in the Pudding River at gage 14201340, near Woodburn, drops below 11.0 cubic feet per second.
- g. If water for the right is available at the authorized point of diversion on the Pudding River below the confluence with Zollner Creek, existing water rights on the Pudding River and its tributaries above the confluence with Zollner Creek will not be regulated in favor of the proposed point of diversion.
- h. If there is insufficient water in the Pudding River and its tributaries above the confluence with Zollner Creek, the water right at the proposed point of diversion may be regulated to satisfy existing water rights on the Pudding River and its tributaries above the confluence with Zollner Creek.

- i. The water user shall install and maintain a fish screen or fish by-pass device. 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.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

3. Certificate 26475 is cancelled.
4. When satisfactory proof of the completed changes is received, a new certificate confirming this water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed JUN 04 2003.



Paul R. Cleary, Director