



**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
3 S	5 W	WM	25	SW NW	43	NONE GIVEN
3 S	5 W	WM	25	SE NW	43	NONE GIVEN

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	25	SW NE	43	0.9
3 S	5 W	WM	25	SE NW	43	6.4

4. Application T 10225 proposes to move the authorized points of diversion (POD) approximately 7.6 miles downstream from Panther Creek to a point on the North Yamhill River:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	4 W	WM	10	SW NW	Madison Malone DLC 49	POD B: SOUTH 75 DEGREES 11 MINUTES 20 SECONDS WEST, 2262 FEET FROM THE NE CORNER OF MADISON MALONE DLC 49

5. The proposed change in POD for the right evidenced by Certificate 33682 from Panther Creek would move the POD out of a reach on Panther Creek protected by Instream Water Right Certificate 72585 (Applicant: ODFW for fish life) and into a reach of the North Yamhill River protected by Instream Water Right Certificates 72972 (Applicant: DEQ for pollution abatement) and 72586 (Applicant: ODFW for fish life).
6. Application T-10225 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	10	SE NW	45	7.3

7. The second right to be transferred is as follows:  
**Certificate:** 15171 in the name of FRED AEBI (perfected under Permit S-15542)  
**Use:** IRRIGATION of 14.8 ACRES  
**Priority Date:** JULY 12, 1943  
**Rate:** 0.19 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2½ acre-feet per acre during the irrigation season of each year  
**Source:** NORTH FORK YAMHILL RIVER, tributary to YAMHILL RIVER

**Authorized Points of Diversion:\***

Twp	Rng	Mer	Sec	Q-Q
4 S	4 W	WM	10	SW NW
4 S	4 W	WM	10	SE NW
4 S	4 W	WM	10	NE SW
4 S	4 W	WM	10	NW SW

Note: A portable pumping plant roves throughout a 0.95 mile reach of the North Fork Yamhill River within the following quarter quarters:

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	10	SW NE	45	9.4
4 S	4 W	WM	10	SE NW	45	5.4

8. Application T-10225 proposes to move the point of diversion upstream approximately 1.75 miles from a portable pumping plant roaming throughout a 0.95 mile reach to a single fixed point on the North Fork Yamhill River:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	4 W	WM	3	NW SW	Charles S. Tustin DLC 45	POD A: NORTH 19 DEGREES 5 MINUTES 21 SECONDS WEST, 4124 FEET FROM THE NE CORNER OF MADISON MALONE DLC 49

9. The proposed change in POD for the right evidenced by Certificate 15171 from North Fork Yamhill River would move the POD upstream, within a reach protected by Instream Water Right Certificate 72586 (Applicant: ODFW for benefit of fish life) and out of a reach protected by Instream Water Right Certificate 72972 (Applicant: DEQ for pollution abatement), but into a reach protected by Instream Water Right Certificate 72973 (Applicant: DEQ for pollution abatement).
10. Application T-10225 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	10	NW NW	45	14.8

11. The third right to be transferred is as follows:  
**Certificate:** 15102 in the name of FRED AEBI (perfected under Permit S-14290)  
**Use:** IRRIGATION of 19.5 ACRES  
**Priority Date:** APRIL 10, 1940  
**Rate:** 0.25 CUBIC FOOT PER SECOND (cfs)  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2½ acre-feet per acre during the irrigation season of each year  
**Source:** NORTH FORK YAMHILL RIVER, tributary to YAMHILL RIVER

**Authorized Points of Diversion:\***

Twp	Rng	Mer	Sec	Q-Q
4 S	4 W	WM	10	SW NW
4 S	4 W	WM	10	SE NW
4 S	4 W	WM	10	NE SW
4 S	4 W	WM	10	NW SW

Note: A portable pumping plant roves throughout a 0.95 mile reach of the North Fork Yamhill River within these quarter quarters.

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	4 W	WM	10	SW NW	3		8.2
4 S	4 W	WM	10	SE NW	2		7.9
4 S	4 W	WM	10	NE SW		49	3.2
4 S	4 W	WM	10	NW SW		49	0.2

12. Application T-10225 proposes to move the point of diversion upstream approximately 1.75 miles from a portable pumping plant roaming throughout a 0.95 mile reach to a single fixed point on the North Fork Yamhill River described as:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	4 W	WM	3	NW SW	Charles S. Tustin DLC 45	POD A: NORTH 19 DEGREES 5 MINUTES 21 SECONDS WEST, 4124 FEET FROM THE NE CORNER OF MADISON MALONE DLC 49

13. The proposed change in POD for the right evidenced by Certificate 15102 from North Fork Yamhill River would move the POD upstream, within a reach protected by Instream Water Right Certificate 72586 (Applicant: ODFW for benefit of fish life) and out of a reach protected by Instream Water Right Certificate 72972 (Applicant: DEQ for pollution abatement), but into a reach protected by Instream Water Right Certificate 72973 (Applicant: DEQ for pollution abatement).

14. Application T-10225 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	10	NE NW	45	16.7
4 S	4 W	WM	10	NW NW	45	1.8
4 S	4 W	WM	10	SE NW	45	1.0

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

**Certificate:** 30861 in the name of DARREL L. PARNELL (perfected under Permit S-19915)

**Use:** IRRIGATION of 10.5 ACRES

**Priority Date:** DECEMBER 22, 1950

**Rate:** 0.13 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2½ acre-feet per acre during the irrigation season of each year

**Source:** PANTHER CREEK, tributary to NORTH YAMHILL RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
3 S	5 W	WM	25	SW NW	43
3 S	5 W	WM	25	SE NW	43

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	25	SW NE	43	1.4
3 S	5 W	WM	25	SE NW	43	9.1

16. Application T 10225 proposes to move the authorized points of diversion approximately 7.6 miles downstream from Panther Creek to a point on the North Yamhill River:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
4 S	4 W	WM	10	SW NW	Madison Malone DLC 49	POD B: SOUTH 75 DEGREES 11 MINUTES 20 SECONDS WEST, 2262 FEET FROM THE NE CORNER OF MADISON MALONE DLC #49

17. The proposed change in POD for the right evidenced by Certificate 30861 from Panther Creek would move the POD out of a reach on Panther Creek protected by Instream Water Right Certificate 72585 (Applicant: ODFW for fish life) and into a reach of the North Yamhill River protected by Instream Water Right Certificate 72972 (Applicant: DEQ for pollution abatement).

18. Application T-10225 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	10	SW NW	45	9.4
4 S	4 W	WM	10	SE NW	45	1.1

19. Notice of the application for transfer was published on August 22, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. Comments were filed in response to the notice. The Oregon Department of Fish and Wildlife (ODFW) indicated that Transfer T-10225 may injure the Instream Water Right described in Certificate 72586 and if the transfer is approved have requested inclusion of a condition requiring installation of proper fish screens.
20. On June 7, 2007, the Department mailed a copy of the draft Preliminary Determination to the applicant, proposing to deny Transfer Application T-10225 unless the Oregon Department of Fish and Wildlife (ODFW) and the Oregon Department of Environmental Quality (DEQ) recommend that the Department consent to injury to instream water rights. The draft Preliminary Determination set forth a deadline of July 9, 2007, for the applicant to respond.
21. On June 17, 2007, the applicant requested that the Department seek recommendations from ODFW and DEQ as to whether the Department should consent to injury of the instream water rights pursuant to OAR 690-380-4030, requested that the Department proceed with issuance of a Preliminary Determination, and on June 21, 2007, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
22. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

23. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10225.
24. The proposed changes would not result in enlargement of the rights.
25. The existing point of diversion (POD) for Certificates 33682 and 30861 is within a reach of Panther Creek protected by Instream Water Right Certificate 72585 (for benefit of fish life), thus the change in POD may potentially result in additional flows in the protected reach of Panther Creek. However, the proposed change would move the point of diversion for 0.22 cfs of water into the reach of the North Fork Yamhill River protected by Instream Water Right Certificates 72972 (for pollution abatement) and 72586 (for benefit of fish life).
26. The proposed upstream movement of the points of diversion for 0.44 cfs under Certificates 15102 and 15171 would move portable pumping sites out of a reach protected by Instream Water Right Certificate 72972 (for pollution abatement) to a fixed diversion point no longer within the reach. However, the upstream movement would reduce flows in a reach of the North Fork Yamhill River protected by Instream Water Right Certificates 72586 (for benefit of fish life), and 72972 and 72973 (for pollution abatement).
27. Based on Findings of Fact #25 and #26, the proposed POD changes would potentially result in injury to Instream Water Right Certificates 72586, 72972, and 72973 due to reduction in flows between the authorized POD reach and the proposed upstream POD location, and to Instream Water Right Certificate 72972 due to movement of the POD downstream into the instream reach.
28. On June 27, 2007, the Department issued a Preliminary Determination and mailed a copy to the applicants, proposing to deny Transfer T-10225 unless recommendations were received from ODFW and DEQ consenting to injury to the instream water rights. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 3, 2007, and in the McMinnville News-Register newspaper on July 7, 14 and 21, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
29. On June 27, 2007, the Department sent letters to ODFW and DEQ and copies of the Preliminary Determination, requesting the agencies' recommendations on whether the Department should consent to injury of the instream water rights because the proposed changes would result in a net benefit to the resource; and any conditions necessary to ensure that the proposed changes will be consistent with the recommendation.

30. On October 5, 2007, ODFW recommended that the Department consent to the injury of instream water right Certificate 72586 on the North Yamhill River, a tributary of the Yamhill River because the proposed changes would result in a net benefit to the fishery resource. The recommendation concluded that:

- a) The injury to the instream water rights by the upstream transfer of 0.44 cfs for 1.75 miles to POD A will be mitigated by the 7.6-mile downstream transfer of 0.22 cfs from water right Certificates 30861 and 33682 on Panther Creek to POD B on the North Yamhill River in the following manner:
  - i) 0.22 cfs of the 0.44 cfs injury is mitigated by the downstream transfer of 0.22 cfs for 1.75 miles on Panther Creek and the North Yamhill River.
  - ii) The remaining 0.22 cfs of the 0.44 cfs injury is mitigated by another 1.75 mile portion of the 7.6-mile downstream transfer on Panther Creek.
- b) (a) i) and ii) above provide more (3.5 miles) of higher value habitat (0.22 cfs in Panther Creek is worth more to fish populations than 0.44 cfs in the North Yamhill River at this location) to mitigate for the impacts to instream water right 72586 from loss of 0.44 cfs for 1.75 miles in the North Yamhill River.
- c) The 4.1 additional miles of 0.22 cfs transferred downstream in Panther Creek will provide the net benefit required for both Category 2 habitat and to meet ORS 540.530(c).
- d) To ensure the mitigation and net benefit detailed in (a) through (c) above, the PODs for Certificates 30861 and 33682 on Panther Creek must be permanently transferred to the new POD B (no additional POD at the original location) and the 0.22 cfs must be protected to POD B downstream of Panther Creek to ensure the net benefit under ORS 540.530(c) is met.
- e) Fish screening of both PODs is required because fish are present in the North Yamhill River. Fish screens must meet ODFW and National Marine Fisheries Service criteria. Since federally listed Upper Willamette winter steelhead are present, screens must be in place prior to diverting water from the new POD. These diversions may be eligible for ODFW's fish screening cost share program. This condition must be placed on the water right certificate(s).

31. On March 3, 2008 DEQ submitted a recommendation that the Department consent to the injury of instream water right Certificates 72972 and 72973 on the North Yamhill River, a tributary to the Yamhill River. DEQ determined that the combined benefits of the transfer would mitigate injury to the DEQ instream water rights and provide a net benefit to the resource. The recommendation concluded:

- a) The augmentation to low summer flow from proposed POD B avoids or mitigates a portion of the impact from proposed POD A. The addition of the 0.22 cfs for 6.8 miles from Panther Creek and 0.8 miles of the North Yamhill River will combine with the proposed POD A loss of 0.44 cfs for 1.75 miles, yielding a net loss of 0.22 cfs between river mile (RM) 2.2 and RM 3 of North Yamhill River plus a loss of 0.44 cfs between RM 3 and RM 3.95 of the North Yamhill River. The overall injury is limited to 0.22 cfs in the 0.8 mile stretch within ISWR 72972 and the 0.44 cfs in the 0.95 mile stretch within instream water right 72973.
  - b) Existing POD for the rights proposed to be moved to POD A is a roving pump, enabling the movement of its location upstream and downstream within a 0.95 mile segment of the North Yamhill River. The applicant has proposed to relinquish the existing POD roving rights and preserve the riparian buffer when the point of diversion is moved upstream to POD A. Riparian buffers have multiple benefits. They help reduce solar radiation input (due to the existence of shade-producing vegetation), reduce erosion and delivery of sediment, and remove or filter pollutants. Over time, the preservation of the riparian buffer will reduce any temperature impacts in the 0.95 mile segment affected by movement of POD A that resides within instream water right 72973.
  - c) Per ODFW, Panther Creek is higher value habitat than the North Yamhill River habitat because of its potential for spawning. The Panther Creek POD B transfer provides additional quantity and quality of higher value habitat for a large stretch (0.22 cfs for 6.8 miles on Panther Creek), which compensates for the impact in the 0.95 mile stretch of the North Yamhill River.
32. Notice of opportunity to comment on the recommendations to consent to injury of the instream water rights was published on March 18, 2008 in the Department's weekly notice pursuant to OAR 690-380-5050(4). No comments were received.
33. On April 23 and 30, May 9 and May 16, 2008, drafts of the Final Order were sent by email to representatives of ODFW, DEQ, the watermaster and Randal Aebi for review and comments. This order reflects responses to the comments received.

### **Conclusions of Law**

The Water Resources Department consents to injury of the instream water rights under Certificates 72586, 72972 and 72973. The proposed changes in points of diversion and place of use are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in point of diversion and place of use proposed in application T-10225 are approved.
2. Water right certificates 33682, 15171, 15102 and 30861 are cancelled.

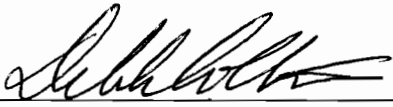


3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 33682, 15171, 15102 and 30861 and any related decree.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. The point of diversion associated with the rights from Panther Creek perfected under Permit S-19915 (formerly evidenced by Certificates 33682 and 30861) described in Findings of Fact #3 and #15 is no longer authorized and is transferred to POD B on the North Yamhill River at the location described in Findings of Fact #4 and #16.
7. Up to 0.22 cfs allowed from Panther Creek for the rights perfected under Permit S-19915 (formerly evidenced by Certificates 33682 and 30861) shall remain instream from the original point of diversion on Panther Creek described in Findings of Fact #3 and #15 to POD B on the North Yamhill River described in Findings of Fact #4 and #16.
8. POD A described in Findings of Fact #8 and #12 replaces the 0.95 mile reach for the roving point of diversion on the North Yamhill River described in Findings of Fact #7 and #11. Use of the 0.95 mile roving diversion will no longer be authorized for use under the rights.
9. If the water user fails to complete the changes described in Findings of Fact # 4 and #16, the authorized points of diversion for all other water rights described in this order shall also revert to the points of diversion that were authorized prior to issuance of this order.
10. A maximum rate of 0.44 cfs may be diverted from POD A. POD B may be used as an additional POD for the rights perfected under Permits S-15542 and S-14290 (formerly evidenced by Certificate 15171 and 15102).
11. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at each new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) and National Marine Fisheries Service design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screens and/or by-pass devices meet ODFW's criteria. The diversions may be eligible for cost share assistance under ODFW's cost share program. 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 devices were installed to the state's criteria. The water user shall maintain and operate the fish screens and/or by-pass devices, as appropriate, at the points of diversion consistent with ODFW's operational and maintenance standards. [This condition must be included in the confirming certificates.]
12. Prior to diverting water, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted at each point of diversion. The type and plans of the measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the

Department. The water user shall maintain and operate the measuring devices as required by the Department.

13. The water user shall restore riparian habitat that was disturbed by the installation/maintenance of the original Panther Creek point of diversion (located in Findings of Fact #3 and #15), the original North Yamhill River diversion sites (located in Findings of Fact #7 and #11) and the new POD A and POD B (located in Findings of Fact #4 and #8) with native vegetation to assist with temperature reduction, reducing sediments and erosion, and preventing leaching of agricultural chemicals. Riparian habitat restoration shall be consistent with the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415. Prior to, or concurrent with, submission of a Claim of Beneficial Use, the water user shall submit a letter co-signed by ODFW and DEQ to document that the restoration has been approved by the two agencies, based on a site visit or review of satisfactory evidence of completion of the restoration work (such as photos or Yamhill SWCD or NRCS reports). The water user shall maintain the riparian habitat as required by ODFW and DEQ.
14. Diesel or gasoline powered pumps and their generators must be installed so that hazardous wastes and chemicals are contained and do not enter the water or soil. As used in this condition, "install" means to prevent and contain any spill or leakage of fuel and oil for any diesel or gasoline pumps of generators to run pumps. If a spill occurs, the fuel or oil must be disposed of in a proper hazardous waste facility or other manner in accordance with water quality and hazardous waste laws.
15. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.
16. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 27<sup>th</sup> day of May 2008.



Phillip C. Ward, Director

Mailing date: MAY 30 2008