

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10225, Yamhill County)	PROPOSING DENIAL OF A CHANGE
)	IN POINTS OF DIVERSION AND
)	PLACE OF USE

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

WALLACE AEBI
3501 HWY 47
MCMINNVILLE, OR 97128

Findings of Fact

Background

1. On August 16, 2006, Wallace Aebi filed a transfer application to change the place of use and the points of diversion under Certificates 33682, 15171, 15102 and 30861. The Department has assigned the application number T-10225.
2. On April 20, 2007, and May 21, 2007, the applicant submitted revisions to the application and map, modifying the locations of the proposed points of diversion.
3. The first right to be transferred is as follows:
Certificate: 33682 in the name of DARREL LAURENCE PARNELL (perfected under Permit S-19915)
Use: IRRIGATION of 7.3 ACRES
Priority Date: DECEMBER 22, 1950
Rate: 0.09 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

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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 4 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	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 into a reach of the North Yamhill River protected by Instream Water Right Certificate 72972 (DEQ for pollution abatement).

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

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 use a 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	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 (ODFW for benefit of fish life).

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 Point 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

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 use a 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	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 (ODFW for benefit of fish life).

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 4 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	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 into a reach of the North Yamhill River protected by Instream Water Right Certificate 72972 (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 (ODF&W) 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 (ODF&W) 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 a recommendation from ODF&W 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 change 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 (ODFW instream certificate 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 movement would take the point of diversion for 0.22 cfs of water into the reach of the North Fork Yamhill River protected by Instream Water Right Certificate 72972 (DEQ instream certificate for pollution abatement).
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 three-mile reach protected by Instream Water Right Certificate 72972 (DEQ instream certificate 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 ODF&W instream water right Certificate 72586.
27. Based on Findings of Fact #25 and #26, the proposed POD changes would potentially result in injury to (ODF&W) instream right Certificate 72586 due to reduction in flows between the authorized POD reach and the proposed upstream POD location, and to

(DEQ) instream right Certificate 72972 due to movement of the POD into the instream reach.

Determination and Proposed Action

The changes proposed in application T-10225 appear **not** to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application will be denied unless the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality recommend that the Department consent to injury of the instream water rights pursuant to OAR 690-380-5050, or protests are filed pursuant to OAR 690-380-4030.

Dated at Salem, Oregon this 27th day of June 2007.


Phillip C. Ward, Director *PN*

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.