

DURING THE IRRIGATION SEASON SHALL NOT EXCEED 3.0 ACRE FEET PER ACRE; AND PROVIDED FURTHER THAT THE RATE OF FLOW SHALL NOT EXCEED 1/40 OF A SECOND FOOT PER ACRE AFTER JULY 1.

Period of Use: Not specified in Certificate

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion: Not specified in Certificate

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Change
1 S	14 E	WM	3	SW SW	1.00	POD
1 S	14 E	WM	3	SW SW	1.55	POD / POU
1 S	14 E	WM	9	NE NE	14.10	POD / POU
1 S	14 E	WM	9	SE NE	12.53	POD / POU
1 S	14 E	WM	10	NW NW	10.32	POD / POU

4. Certificate 5678 does not describe the location of the point of diversion; however, information is available from the Department's records and the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	14 E	WM	9	SE NE	2130 FEET SOUTH AND 1060 FEET WEST FROM THE NE CORNER OF SECTION 9

5. Transfer Application T-11121 proposes to move the authorized point of diversion for 1.0 acre approximately 2,800 feet downstream, and to move the authorized point of diversion for 38.5 acres approximately 8.5 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	33	NW SW	970 FEET SOUTH AND 410 FEET EAST FROM THE W¼ CORNER OF SECTION 33
1 S	14 E	WM	3	SW SW	146 FEET NORTH AND 556 FEET EAST FROM THE SW CORNER OF SECTION 3

6. Transfer Application T-11121 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	33	NE SW	6.3
1 S	13 E	WM	33	NE SW	6.8
1 S	13 E	WM	33	NW SW	20.3
1 S	13 E	WM	33	SW SW	5.1
Total					38.5

7. Certificate 5678 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree appears to indicate that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water, but also states that the irrigation rate shall not

exceed 1/40 of a cubic foot per second (CFS) per acre after July 1, except in case of rotation. Therefore, the maximum rate after July 1 is 0.99 CFS.

8. Certificate 5678 does not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. Therefore, use is allowed anytime water can be beneficially used, provided it does not exceed the annual duty. For purposes of this transfer and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used.
9. Notice of the application for transfer was published on August 24, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion located in the SWSW of Section 3, T 1 S, R 14 E.W.M. to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
11. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion located in the NWSW of Sec. 33, T 1 S, R 13 E, W.M., to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.
12. Instream water right Certificates 59678 and 64744 exist for the reach of the river in which the authorized point of diversion would be moved upstream. Certificate 59678 was established under ORS 537.346 (minimum stream flow conversion) for the purposes of supporting aquatic life and minimizing pollution and carries a priority date of November 3, 1983. Instream water right Certificate 64744 was established under ORS 537.431 (state agency application process) for the purpose of anadromous and resident fish habitat and carries a priority date of March 27, 1990. Additionally, instream rights established through water right transfers, evidenced by Certificates 76220 (priority 1860), 76771 (priority 1907) and 76772 (priority 1907), exist in the reach within which the POD is proposed to be moved upstream.
13. On April 11, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-11121 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 11, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information that the applicants are authorized to pursue the Transfer. The applicants also requested that the portion of IL-594 dealing with Certificate 5678 be terminated on the same day as the approval of Transfer Application T-11121.
14. On May 11, 2012, the applicants requested that the Department seek a recommendation from the Oregon Department of Fish and Wildlife (ODFW) and the Department of Environmental Quality (DEQ) as to whether the Department should consent to injury of the instream water rights pursuant to OAR 690-380-4030.

15. On May 31, 2012, the Department issued a Preliminary Determination proposing to deny Transfer Application T-11121 unless ODFW and DEQ recommended consent to injury of the instream water rights, and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 5, 2012, and in The Dalles Chronicle newspaper on June 6, 13 and 20, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
16. On May 31, 2012, requests were sent to ODFW and DEQ for recommendations concerning consent to injury of instream rights under Certificates 59678 and 64744.
17. Recommendations were received from ODFW on January 31, 2013 and from DEQ on February 14, 2013 for consent to injury.
18. Notice of the agencies' Consent to Injury recommendations was published on March 12, 2013, pursuant to OAR 690-380-5050. No comments or requests for a public meeting were filed in response to the notice.

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

19. The right has been leased instream under IL-594 during the period February 2005 to present and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. The proposed changes would not result in enlargement of the right.
21. The stream flows within the reach are frequently below the levels allocated under these instream water rights. Thus, the instream water rights under Certificates 59678 and 64744 would be injured as a result of the proposed change in point of diversion.
22. Potential injury to Certificates 59678 and 64744 would most likely occur April through October and would result in reduced spawning habitat for adult steelhead and lamprey, reduced availability of foraging habitat for rearing, reduced edge habitat for fry and juvenile steelhead. Reductions in water depth and water quality would affect both adult and juvenile fish, including resident rainbow trout. Reduced flows have the potential to affect water quality, and to limit fish spawning migration, escape cover and forage opportunities for steelhead and lamprey.
23. This reach is rated by ODFW as Category 2 habitat from spring to July 1, when it becomes Category 3 through August, returning to Category 2 in the fall for Chinook spawning and incubation. When impacts are unavoidable, ODFW requires in-kind, in-proximity replacement of impacted habitat and no net loss of habitat quantity or quality.
24. On October 18, 2012, the transfer applicant proposed the following conditions be applied to mitigate the potential injury (in addition to requiring concurrent approval of instream Transfer Application T-11120):

- a) Limit the diversion of water under the 1869 priority date for the 38.5 acres transferred upstream to when instream water right certificates 59678 and 64744 are met at the gaging station (Fifteenmile Cr. near The Dalles, #14105550) operated by OWRD. When the instream water rights are not met at the listed gaging station, the water user may pump up to 0.76 cfs of water (Certificate 48907), which can be used to irrigate the 60.5 acres of 1861 priority (Certificate 48907) and the 38.5 acres with 1869 priority date transferred upstream. In order to offset times when the water flow oscillates back and forth between meeting and not meeting the instream water right, a 7-day running average will be used to calculate the instream water right flow for purposes of limiting or allowing water use under this condition. Should the Watermaster during regulation of water call for 1869 priority date water rights to be shut off because of low creek flows, this 38.5 acres will not be irrigated until the Watermaster allows further irrigation by 1869 rights.
- b) Condition “a” above will not apply to the 38.5 acres or the portion of the 38.5 acres if it is transferred back downstream to the original POD location or further downstream.
- c) If the holder of the 38.5 acres of 1869 priority date water right leases or causes any water rights to be leased instream, a negotiation can occur between the holder, ODFW and OWRD to alter the restrictions under condition “a”.

25. The Oregon Department of Fish and Wildlife (ODFW) and Department of Environmental Quality (DEQ) concluded that the transfer would result in net benefits to the resource if the preceding conditions were applied, since these conditions would result in a net increase in streamflow in a proximal reach downstream from the original POD, thereby providing habitat benefits to fish, and no negative impact on stream temperature.

26. In addition to Certificates 59678 and 64744, the following instream water rights were established under ORS 537.348 (instream transfer process):

Certificate	Priority	Quantity	Period of Use
76220	1860	0.30 cfs	6/1 to 9/28
76771	1907	0.09 cfs	6/1 to 9/28
76772	1907	0.04 cfs	6/1 to 9/28
Total		0.43 cfs	

Based on the Department’s records, the stream flows allocated for instream water right Certificates 76220, 76771, and 76772 are met. Therefore, no injury will occur to these instream water rights.

27. Instream Lease IL-594 must be terminated prior to approval of this transfer.

28. This transfer is contingent upon approval of instream Transfer Application T-11120, which was submitted to provide mitigation for this transfer application.

Conclusions of Law

Based on the recommendation of the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality, the Department consents to injury of the instream water right evidenced by Certificates 59678 and 64744. The proposed changes in point of diversion and place of use in application T-11121 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, 690-380-5030 and 690-380-5050.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and change in place of use proposed in Transfer Application T-11121 are approved, concurrently with an order approving T-11120. Instream Lease IL-594 will be terminated by a separate order, concurrent with this order.
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 5678 and any related decree.
3. Water right certificate 5678 is cancelled.
4. The quantity of water diverted at the new points of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. Prior to diverting water at the POD located in the SWSW of Section 3, T 1 S, R 14 E. W.M., the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary. The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. The water user shall operate and maintain an approved fish screen at the new point of diversion located in the NWSW of Sec. 33, T 1 S, R 13 E, W.M. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. The former place of use of the transferred right shall no longer receive water under the rights.

9. The diversion of water under the 1869 priority date for the 38.5 acres transferred upstream is limited to times when instream water right certificates 59678 and 64744 are met, as measured at the gaging station (Fifteenmile Cr. near The Dalles, #14105550) operated by OWRD. When the instream water rights are not met at the listed gaging station, the water user may pump up to 0.76 cfs of water (Certificate 48907), which can be used to irrigate the 60.5 acres of 1861 priority (Certificate 48907) and the 38.5 acres with 1869 priority date transferred upstream. In order to offset times when the water flow oscillates back and forth between meeting and not meeting the instream water right, a 7-day running average will be used to calculate the instream water right flow for purposes of limiting or allowing water use under this condition. Should the Watermaster during regulation of water call for 1869 priority date water rights to be shut off because of low creek flows, these 38.5 acres will not be irrigated until the Watermaster allows further irrigation by 1869 rights.
10. Condition #9 above will not apply to the 38.5 acres or the portion of the 38.5 acres if it is transferred back downstream to the original POD location or further downstream.
11. If the holder of the 38.5 acres of 1869 priority date water right leases or causes any water rights to be leased instream, a negotiation can occur between the holder, ODFW and OWRD to alter the restrictions under Condition #9.
12. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
13. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 30 day of April, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: MAY 06 2013