



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 13, 2012

JAMES R. AND PHYLLIS A. OLSON
80840 DUFUR VALLEY RD
DUFUR, OR 97021-3107

SUBJECT: Transfer Application T-11272

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11272. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.

Because there is a change in character of use, the applicant is responsible for giving public notice of the transfer changes in a local newspaper having a general circulation in the area of the water right. The notice must be published at least once a week for three consecutive weeks. We have prepared the notice for you (enclosed). The deadline for individuals to file protests or standing statements is 30 days after the date of last publication. Please have the newspaper insert the date of last publication in the proper place.

After publication, the Department needs to receive an affidavit specifying the dates the notice was published. Please have the newspaper prepare and mail an original affidavit of publication to me at the address shown in the letterhead, by April 26, 2012.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0884 or Laura.K.Wilke@ wrd.state.or.us if I may be of assistance.

Sincerely,

Laura Wilke
Flow Restoration Program Coordinator

cc: Robert Wood, District 3 Watermaster
The Freshwater Trust c/o David Pilz

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

In the Matter of Instream Transfer) PRELIMINARY DETERMINATION
Application T-11272,) PROPOSING APPROVAL OF A
Wasco County) CHANGE IN PLACE OF USE AND
) CHARACTER 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. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant

JAMES R. AND PHYLLIS A. OLSON
80840 DUFUR VALLEY RD.
DUFUR, OR 97021

Agent

The Freshwater Trust, c/o Natasha Bellis
65 SW Yamhill St., Suite 200
Portland, OR 97204

Findings of Fact

Background

1. On July 13, 2011, James R. and Phyllis A. Olson filed an application to change the place of use and character of use under Certificates 46843, 62741, 62742, 62743, 63794, 63795, and 63796 to instream use. The Department assigned the application number T-11272.
2. The first right to be transferred is as follows:

Certificate: 46843 in the names of PRESTON & LILLIAN LINDHORST (confirmed by Fifteen Mile Creek decree)

Use: IRRIGATION of 10.8 ACRES

Priority Date: 1875

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.0 acre-feet per acre in any irrigation season.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	220 FEET NORTH AND 160 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	12 E	WM	1	SE NE	10.80

- Certificate 46843 describes the annual duty of the right as 3.0 acre-feet (AF) per acre; however the Fifteenmile Creek Decree further describes the duty in the following 30-day volumes. Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30 day period. From July 1st, the diversion is limited to ¾ AF per acre in any 30 day period.
- Certificate 46843 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 1/40th of CFS per acre after July 1st, except in case of rotation.

Max Rate After July 1 st
0.27 CFS

- A total of 32.4 AF of water may be beneficially used annually under the existing right.
- The second right to be transferred is as follows:

Certificate: 62741 in the name of LILLIAN LINDHORST (confirmed by Fifteen Mile Creek decree)

Use: IRRIGATING 22.94 ACRES, being 3.47 acres from POD #1, 14.47 ac from POD #2, and 5.0 acres from POD #3

Priority Date: 1875

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second per acre AFTER JULY 1st, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The right is limited to not more than ONE ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD UP TO JULY 1ST OF EACH YEAR AND THEREAFTER NOT TO EXCEED THREE-FOURTHS ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	POD 1 - 290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
2 S	12 E	WM	1	NE SE	POD 2 - 150 FEET SOUTH AND 870 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
2 S	12 E	WM	1	SW SE	POD 3 - 1910 FEET SOUTH AND 2170 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD
2 S	12 E	WM	1	NE SE	2.00	1
2 S	12 E	WM	1	NE SE	14.47	2
2 S	12 E	WM	1	NW SE	1.47	1
2 S	12 E	WM	1	SW SE	5.00	3

7. Certificate 62741 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 1/40th of CFS per acre after July 1st, except in case of rotation.

Point of Diversion	Max Rate After July 1st
POD #1	0.09 CFS
POD #2	0.36 CFS
POD #3	0.13 CFS
Total	0.58 CFS

8. A total of 68.8 AF, being 10.41 AF from POD #1, 43.41 AF from POD #2, and 15.0 AF from POD #3, of water may be beneficially used annually under the existing right.
9. The third right to be transferred is as follows:

Certificate: 62742 in the name of LILLIAN LINDHORST (perfected under Permit S-4095)

Use: IRRIGATING 6.0 ACRES

Priority Date: MAY 24, 1919

Rate: 0.08 CFS, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	12 E	WM	1	NW SE

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing 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 during the irrigation season of each year.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	12 E	WM	1	SE NE	6.00

10. Certificate 63742 does not provide a description of the measured distances for the original point of diversion. However, a previous transfer order approving Transfer T-3894, as

evidenced by Special Order Volume 31, Page 231, identifies the location as Roberts Ditch, which is further described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NW SE	ROBERTS DITCH – NORTH 80 DEGREES 51 MINUTES WEST, 638 FEET FROM THE SE 1/4 CORNER OF THE NW ¼ SE ¼ OF SECTION 1

11. Certificate 62742 does not describe the annual duty of the right; however the Fifteenmile Creek Decree identifies the annual duty as 3.0 AF per acre.
12. A total of 18.0 AF of water may be beneficially used annually under the existing right.
13. The fourth right to be transferred is as follows:

Certificate: 62743 in the name of LILLIAN LINDHORST (perfected under Permit S-5412)

Use: IRRIGATING 26.52 ACRES, being 11.72 acres from POD 2 and 14.8 acres from POD 3

Priority Date: NOVEMBER 17, 1921

Rate: 0.33 CFS, being 0.15 CFS from POD 2 and 0.18 CFS from POD 3, IF AVAILABLE AT THE ORIGINAL POINTS OF DIVERSION

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing 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 during the irrigation season of each year.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NE SE	POD 2 - 150 FEET SOUTH AND 870 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 1
2 S	12 E	WM	1	SW SE	POD 3 - 1910 FEET SOUTH AND 2170 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD
2 S	12 E	WM	1	NE SE	9.72	2
2 S	12 E	WM	1	NW SE	2.00	2
2 S	12 E	WM	1	NW SE	3.77	3
2 S	12 E	WM	1	SW SE	11.03	3

14. The locations of the original points of diversion are not described in Certificate 62743. However, the original points of diversion, are described in the Final Order approving Transfer T-3892, as evidenced by Special Order Volume 31, Page 228, and are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NE SE	HAYERLY DITCH – NORTH 4 DEGREES 12 MINUTES EAST, 228 FEET FROM THE SE ¼ CORNER OF THE NW SE OF SECTION 1, BEING WITHIN THE NE SE OF SAID SECTION 1

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SW SE	SMITH DITCH NO. 1 – NORTH 84 DEGREES 09 MINUTES EAST, 293 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 1, BEING WITHIN THE SW SE OF SAID SECTION 1

15. Certificate 62743 does not describe the annual duty of the right; however the Fifteenmile Creek Decree describes the annual duty as 3.0 AF per acre.
16. A total of 79.56 AF of water may be beneficially used annually under the existing right.
17. The fifth right to be transferred is as follows:

Certificate: 63794 in the name of LILLIAN LINDHORST (confirmed by Fifteen Mile Creek decree)

Use: IRRIGATING 3.2 ACRES

Priority Date: 1875

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre AFTER JULY 1st, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The right is limited to not more than ONE ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD UP TO JULY 1ST OF EACH YEAR AND THEREAFTER NOT TO EXCEED THREE-FOURTHS ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION.

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NW SE	"Roberts Ditch"

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	12 E	WM	1	SE NE	3.20

18. Certificate 63794 does not provide a description of the measured distances for the original point of diversion, being Roberts Ditch. However, a previous transfer order approving Transfer L-88, as evidenced by Special Order Volume 19, Page 10, identifies the location of Roberts Ditch as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NW SE	1475 FEET NORTH AND 1880 FEET WEST FROM THE SE CORNER OF SECTION 1

19. Certificate 63794 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 1/40th of CFS per acre after July 1st, except in case of rotation.

Max Rate After July 1 st
0.08 CFS

20. A total of 9.6 acre-feet of water may be beneficially used annually under the existing right.

21. The sixth right to be transferred is as follows:

Certificate: 63795 in the name of LILLIAN LINDHORST (perfected under Permit S-3910)

Use: IRRIGATING 4.5 ACRES

Priority Date: AUGUST 19, 1918

Rate: 0.06 CFS, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing 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 during the irrigation season of each year.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	12 E	WM	1	NE SE	4.50

22. The location of the original point of diversion is not described in Certificate 63795. However, the original point of diversion, is described in the Final Order approving Transfer T-3895, as evidenced by Special Order Volume 31, Page 233, and is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NE SE	HAVERLY DITCH – NORTH 4 DEGREES 12 MINUTES EAST, 228 FEET FROM THE SE ¼ CORNER OF THE NW SE OF SECTION 1, BEING WITHIN THE NE SE OF SAID SECTION 1

23. Certificate 63795 does not describe the annual duty of the right; however the Fifteenmile Creek Decree describes the annual duty as 3.0 AF per acre.
24. A total of 13.5 acre-feet of water may be beneficially used annually under the existing right.
25. The seventh right to be transferred is as follows:

Certificate: 63796 in the name of LILLIAN LINDHORST (perfected under Permit S-7301)
Use: IRRIGATING 1.75 ACRES
Priority Date: MAY 5, 1926
Rate: 0.03 CFS, IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION
Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NW SE	SMITH AND ROBERTS DITCH

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing 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 during the irrigation season of each year.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	SE NE	290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	12 E	WM	1	NE SE	0.50
2 S	12 E	WM	1	NW SE	1.25

26. Certificate 63796 does not provide a description of the measured distances for the original point of diversion, being Smith and Roberts Ditch. However, a previous transfer order approving Transfer T-3895, as evidenced by Special Order Volume 31, Page 233, identifies the location as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	1	NW SE	SMITH AND ROBERTS DITCH – NORTH 80 DEGREES 51 MINUTES WEST, 638 FEET FROM THE SE ¼ CORNER OF THE NW ¼ SE ¼ OF SECTION 1

27. Certificate 63796 does not describe the annual duty of the right; however the Fifteenmile Creek Decree describes the annual duty as 3.0 AF per acre.
28. A total of 5.25 acre-feet of water may be beneficially used annually under the existing right.
29. Certificates 46843, 62741, 62742, 62743, 63794, 63795, and 63796 do not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not

specify a season of use, therefore use allowed anytime water can be used beneficially and does not exceed the annual duty. For purpose of this instream transfer and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used to help establish when water may be transferred to instream use.

30. Application T-11272 proposes to change the character of use of each of the above described water rights to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
31. Application T-11272 proposes to change the place of use of the right to create an instream reach from each of the authorized POD's to the mouth of Fifteenmile Creek.
32. The applicant proposes the quantities water to be transferred instream to be protected as follows:

Certificate	Instream Period	Priority Date	Rate (cfs)	Volume (acre-feet)
46843	June 17 through October 15	1875	0.14	33.6
62741	June 17 through October 15	1875	0.29	69.6
62742	June 17 through October 15	5/24/1919	0.08	19.2
62743	June 17 through October 15	11/17/1921	0.33	79.2
63794	June 17 through October 15	1875	0.04	9.6
63795	June 17 through October 15	8/19/1918	0.06	14.4
63796	June 17 through October 15	5/5/1926	0.02	4.8
		Total	0.92	230.4

33. The applicant has requested that any instream water right established as a result of this instream transfer 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 has also requested that any instream water rights 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 a more senior priority date.
34. The applicant provided notice of the intent to transfer the above described water rights to instream use to the City of Dufur and Wasco County prior to submitting the instream transfer application. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-11272.
35. Notice of the application for transfer was published on July 26, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
36. On December 7, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11272 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 5, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a

Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

37. Certificates 46843, 62741, 62742, 62743, 63794, 63795, and 63796 were leased instream within the last five years under Instream Lease Application IL-590, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610. Instream Lease IL-590 was approved by the Department on January 12, 2005, as evidenced by Special Order Volume 63, Page 93, and the term of the lease began on January 1, 2007, and ended on December 31, 2011.
38. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present prior to the water rights being leased instream. It appears that the delivery system has since been removed. However, the water rights have been fully exercised through an instream lease (IL-590) that was in effect 2007 through 2011.
39. There are no known stream channel losses from the authorized PODs (~ River Mile 36) to River Mile (RM) 29. However, below RM 29 there is a known losing reach on Fifteen Mile Creek. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to more than 50 percent. Therefore, protected flows generated from this transfer will be reduced below RM 29 by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights. The instream use may also be conditioned to allow more or less water to be protected instream below River Mile 29 based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified in Reach #1 (as described in Finding of Fact #41).
40. The instream use requested by the applicant requires some modification. The instream volume requested under Certificates 46843, 62742, 62743, and 63795 exceeded the maximum seasonal volume allowed under each right. In addition, some of the instream rates have been adjusted under the decreed water rights (Certificates 46843, 62741, and 63794) to prevent 30 day seasonal volume limitations from being exceeded. In addition, the instream period has been adjusted to fall within July 1 through October 31, to protect water during the lowest flow months in Fifteenmile Creek.
41. Based on Findings of Fact #39 and #40, on January 27, 2012, the applicants agreed to modify the quantities to be transferred and protected instream as follows:

Resulting from Certificate 46843

Reach #1: From the authorized POD (as described in Finding of Fact #2) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
46843	1875	0.135	32.4	July 1 through October 29

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
46843	1875	0.068	16.3	July 1 through October 29

Resulting from Certificate 62741

Reach #1: From POD #3 to POD #2 (both as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.063	15.12	July 1 through October 29

Reach #2: From POD #2 to POD #1 (as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.243	58.32	July 1 through October 29

Reach #3: From POD #1 to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.286	68.64	July 1 through October 29

Reach #4: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.143	34.3	July 1 through October 29

Resulting from Certificate 62742

Reach #1: From the POD (as described in Finding of Fact #9) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62742	May 24, 1919	0.08	18.0	July 1 – October 21

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62742	May 24, 1919	0.04	9.0	July 1 – October 21

Resulting from Certificate 62743

Reach #1: From POD #3 to POD #2 (both as described in Finding of Fact #13)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62743	Nov. 17, 1921	0.18	44.4	July 1 – October 31

Reach #2: From POD #2 to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62743	Nov. 17, 1921	0.33	79.56	July 1 – October 31

Reach #3: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62743	Nov. 17, 1921	0.17	40.3	July 1 – October 31

Resulting from Certificate 63794

Reach #1: From the POD (as described in Finding of Fact #17) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63794	1875	0.04	9.6	July 1 through October 29

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63794	1875	0.02	4.8	July 1 through October 29

Resulting from Certificate 63795

Reach #1: From the POD (as described in Finding of Fact #21) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63795	Aug. 19, 1918	0.06	13.5	July 1 – October 21

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63795	Aug. 19, 1918	0.03	6.7	July 1 – October 21

Resulting from Certificate 63796

Reach #1: From the POD (as described in Finding of Fact #25) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63796	May 5, 1926	0.03	5.25	July 1 – September 26

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
63796	May 5, 1926	0.015	2.6	July 1 – September 26

42. The proposed changes, as modified, would not result in enlargement of the right.
43. The proposed changes, as modified, would not result in injury to other water rights.
44. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
45. The protection of flows, as modified, within the proposed reach is appropriate, considering:
 - a) The instream water right begins at the recorded points of diversion;
 - b) The location of confluences with other streams downstream of the points of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and

- d) 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.
46. Within the proposed reach on Fifteenmile Creek, there are several existing instream water rights. There is one instream water right, Certificate 59678, established under ORS 537.346 (minimum streamflow conversion) for the purposes supporting aquatic life and minimizing pollution and carries a priority date of November 3, 1983. There is also an instream water right, certificate 64744, established under ORS 537.341 (state agency application process) for the purpose of anadromous and resident fish habitat and carries a priority date of March 27, 1990. The remaining instream water rights, Certificates 76220, 76771, and 76772, were established under ORS 537.348 (instream transfer process) and have priority dates of 1860 and 1907.
47. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), within the proposed reach on Fifteenmile Creek are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.
48. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
49. During the period July 1 through October 31, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
50. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11272 appears to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11272 is approved, the final order will include the following:

1. The changes in character of use and place of use to instream use proposed in application T-11272 are approved.
2. Water right Certificates 46843, 62741, 62742, 62743, 63794, 63795, and 63796 are cancelled. New certificates confirming the instream water rights shall be issued.
3. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in Fifteenmile Creek as follows:

Resulting from Certificate 46843

Reach #1: From the authorized POD (as described in Finding of Fact #2) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
46843	1875	0.135	32.4	July 1 through October 29

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
46843	1875	0.068	16.3	July 1 through October 29

Resulting from Certificate 62741

Reach #1: From POD #3 to POD #2 (both as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.063	15.12	July 1 through October 29

Reach #2: From POD #2 to POD #1 (as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.243	58.32	July 1 through October 29

Reach #3: From POD #1 to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.286	68.64	July 1 through October 29

Reach #4: From River Mile 29 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62741	1875	0.143	34.3	July 1 through October 29

Resulting from Certificate 62742

Reach #1: From the POD (as described in Finding of Fact #9) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
62742	May 24, 1919	0.08	18.0	July 1 – October 21

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
62742	May 24, 1919	0.04	9.0	July 1 – October 21

Resulting from Certificate 62743

Reach #1: From POD #3 to POD #2 (both as described in Finding of Fact #13)

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
62743	Nov. 17, 1921	0.18	44.4	July 1 – October 31

Reach #2: From POD #2 to River Mile 29

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
62743	Nov. 17, 1921	0.33	79.56	July 1 – October 31

Reach #3: From River Mile 29 to the mouth of Fifteenmile Creek

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
62743	Nov. 17, 1921	0.17	40.3	July 1 – October 31

Resulting from Certificate 63794

Reach #1: From the POD (as described in Finding of Fact #17) to River Mile 29

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63794	1875	0.04	9.6	July 1 through October 29

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63794	1875	0.02	4.8	July 1 through October 29

Resulting from Certificate 63795

Reach #1: From the POD (as described in Finding of Fact #21) to River Mile 29

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63795	Aug. 19, 1918	0.06	13.5	July 1 – October 21

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63795	Aug. 19, 1918	0.03	6.7	July 1 – October 21

Resulting from Certificate 63796

Reach #1: From the POD (as described in Finding of Fact #25) to River Mile 29

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63796	May 5, 1926	0.03	5.25	July 1 – September 26

Reach #2: From River Mile 29 to the mouth of Fifteenmile Creek

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
63796	May 5, 1926	0.015	2.6	July 1 – September 26

4. *Water rights upstream of the original points 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 points of diversion.*
5. *Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion located in:*

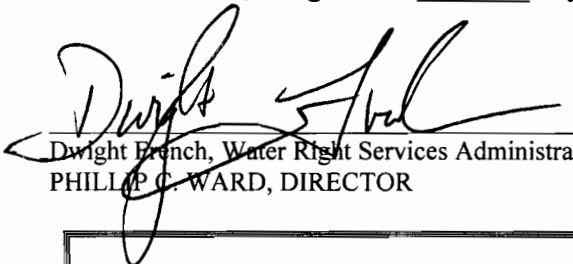
<i>Certificate</i>	<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
46843	2 S	12 E	WM	1	SE NE	220 FEET NORTH AND 160 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
62741	2 S	12 E	WM	1	SE NE	POD 1 - 290 FEET NORTH AND 200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
	2 S	12 E	WM	1	NE SE	POD 2 - 150 FEET SOUTH AND 870 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
	2 S	12 E	WM	1	SW SE	POD 3 - 1910 FEET SOUTH AND 2170 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 1
62742	2 S	12 E	WM	1	NW SE	ROBERTS DITCH – NORTH 80 DEGREES 51 MINUTES WEST, 638 FEET FROM THE SE ¼ CORNER OF THE NW ¼ SE ¼ OF SECTION 1
62743	2 S	12 E	WM	1	NE SE	Haverly Ditch – NORTH 4 DEGREES 12 MINUTES EAST, 228 FEET FROM THE SE ¼ CORNER OF THE NW SE OF SECTION 1, BEING WITHIN THE NE SE OF SAID SECTION 1
	2 S	12 E	WM	1	SW SE	SMITH DITCH NO. 1 – NORTH 84 DEGREES 09 MINUTES EAST, 293 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 1, BEING WITHIN THE SW SE OF SAID SECTION 1
63794	2 S	12 E	WM	1	NW SE	1475 FEET NORTH AND 1880 FEET WEST FROM THE SE CORNER OF SECTION 1
63795	2 S	12 E	WM	1	NW SE	Haverly Ditch – NORTH 4 DEGREES 12 MINUTES EAST, 228 FEET FROM THE SE ¼ CORNER OF THE NW SE OF SECTION 1, BEING WITHIN THE NE SE OF SAID SECTION 1
63796	2 S	12 E	WM	1	NW SE	SMITH AND ROBERTS DITCH – NORTH 80 DEGREES 51 MINUTES WEST, 638 FEET FROM THE SE ¼ CORNER OF THE NW SE OF SECTION 1, BEING WITHIN THE NW SE OF SAID SECTION 1

6. *Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to*

which this right is entitled downstream from the original point of diversion and within the specified stream reach from River Mile 29 to the mouth of Fifteenmile Creek and whether the described instream flows below River Mile 29 may be adjusted. If adjusted, instream flows from River Mile 29 to the mouth of Fifteenmile Creek may not exceed the quantities specified within Reach #1.

7. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise identified in a subsequent order establishing a new instream water right under these statutes.*
8. *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 46843, 62741, 62742, 62743, 63794, 63795, and 63796 and any related decree.*
9. *The former place of use of the transferred water shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this 13 day of March, 2012.


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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach me at 503-986-0884 or Laura.K.Wilke@wrdd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.