



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 31, 2012

Paul & Dixie Schanno
82163 Dufur Valley Road
Dufur, OR 97021

SUBJECT: Water Right Transfer Application T-11120

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11120. 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 and in The Dalles Chronicle newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a 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. The protest period will end 30 days after the last date of newspaper publication.

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) 986-0881 or teri.k.hranac@wrdd.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

Enclosure

cc: T-11120
Robert L. Wood, District 3 Watermaster (*via e-mail*)
Larry Toll, Agent



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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11120, Wasco County)	PROPOSING APPROVAL OF
)	CHANGES 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

PAUL AND DIXIE SCHANNO
82163 DUFER VALLEY ROAD
DUFER, OR 97021-3142

Agent

TENNISON ENGINEERING CORP.
Attn: LARRY TOLL
3313 W. 2ND STREET, SUITE 100
THE DALLES, OR 97058

Findings of Fact

Background

1. On August 12, 2010, Paul and Dixie Schanno filed an application to change the place of use and character of use under Certificates 5678, 48992, and 50112 to instream use. The Department assigned the application number T-11120.
2. On February 29, 2012, the applicant amended the application to clarify the quantity of water to be transferred instream and clarified the relationship between the proposed instream water right and existing instream water rights.
3. The portion of the first right to be transferred is as follows:
 - Certificate:** 5678 in the name of SAM WARD (confirmed by Fifteen Mile Creek)
 - Use:** IRRIGATION of 1.82 ACRES
 - Priority Date:** 1869
 - Rate:** Not listed on Certificate
 - Limit/Duty:** 3.0 ACRE FEET PER ACRE IN ANY IRRIGATION SEASON
 - Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER
 - Authorized Point of Diversion:** Not listed on Certificate

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.
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Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	9	SE NE	1.82

4. Water Right Certificate 5678 does not specify the point of diversion (POD); however, based on the best information available from the local watermaster and the Certified Water Right Examiner, the point of diversion is located at approximately River Mile (RM) 24.5, 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 OF THE NE CORNER OF SECTION 9

5. Certificate 5678 describes the annual duty of the right at 3.0 acre-feet (AF) per acre; however, the Fifteenmile Creek Decree describes the duty in the following 30-day volumes. Prior to July 1, the diversion is restricted to 1.0 AF per acre during any 30 day period. From July 1, the diversion is limited to ¾ AF per acre in any 30 day period.
6. 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 1/40th of a cubic foot per second (CFS) per acre after July 1, except in case of rotation.

Max Rate after July 1
0.05 CFS

7. A total of 5.46 AF may be beneficially used annually under the existing right.
8. The portion of the second right to be transferred is as follows:
Certificate: 48992 in the name of PAUL SCHANNO (perfected under Permit S-36683)
Use: IRRIGATION of 32.2 ACRES
Priority Date: FEBRUARY 16, 1972
Rate: 0.40 CUBIC FOOT PER SECOND
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, 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.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	33	NW SW	1990 FEET SOUTH AND 410 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 33

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	13 E	WM	33	NE SW	4	6.8
1 S	13 E	WM	33	NW SW		20.3
1 S	13 E	WM	33	SW SW		5.1

9. A total of 96.6 AF of water may be beneficially used annually under the existing right.

10. The portion of the third right to be transferred is as follows:

Certificate: 50112 in the name of HARIETT and WILFORD MOE (perfected under Permit S-36987)

Use: IRRIGATION of 6.3 ACRES

Priority Date: JUNE 12, 1972

Rate: 0.07 CUBIC FOOT PER SECOND

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, 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.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1 S	13 E	WM	33	NE SW	4	2470 FEET NORTH AND 2050 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	13 E	WM	33	NE SW	4	6.3

11. A total of 18.9 AF of water may be beneficially used annually under the existing right.

12. Certificates 5678, 48992 and 50112 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 is allowed anytime water can be beneficially used for irrigation provided it 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 to prevent any enlargement.

13. Application T-11120 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.

14. Application T-11120 proposes to change the place of use of the rights to create an instream reach from each of the authorized points of diversion to the mouth of Fifteenmile Creek.
15. The applicant proposes the quantities water to be transferred instream to be protected follows:

Certificate	Priority Date	Instream Period	Rate (cfs)	Volume (acre-feet)
48992	2/16/1972	July 3 through October 31	0.40	96.6
50112	6/12/1972	July 3 through October 31	0.07	18.9
5678	1869	July 3 through October 31	0.02	5.5
Totals			0.49	121.0

16. There are existing instream water rights, including Certificates 59678, 64744, 76220, 76771, and 76772, for the same reach as that proposed for the new instream water rights. Additional instream water rights may be established under pending transfer application T-11272.
17. 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.
18. Notice of the proposed instream transfer was provided to the affected local government prior to submission of this instream transfer application. The applicant provided a Land Use Information Form signed on July 21, 2010, by the proper authority from Wasco County. Additionally, the Department provided notification of the proposed action to this local government upon receipt of Transfer Application T-11120.
19. 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.
20. On April 11, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11120 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 11, 2012, for the applicants to respond.
21. On May 8, 2012, 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. In addition, the applicants requested the proposed beginning date for the instream transfer be January 1, 2013, or prior to the next irrigation season to prevent a partial instream leasing season. The applicants requested the instream volumes be adjusted to accurately reflect the proportionate 50% reduction for the

losing stream reaches. 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-11120.

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

22. Water has been used within the last five years according to the terms and conditions of water right Certificates 48992 and 50112, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
23. Certificate 5678 has been leased instream within the last five years under Instream Lease Application IL-594, 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-594 was initially approved by the Department on February 22, 2005, and renewed on August 4, 2010, as evidenced by Special Order Volume 81, Pages 596-600. The term of the lease ends on October 31, 2014.
24. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under Certificates 48992 and 50112 were present within the five-year period prior to submittal of Application T-11120.
25. There are no known stream channel losses from the authorized PODs under Certificates 48992 (~River Mile 33.7) and 50112 (~River Mile 33.3) to River Mile (RM) 29. However, below RM 29 there is a known losing reach on Fifteen Mile Creek. The proposed instream reach for Certificate 5678 begins below RM 29, and is located within the losing reach. The reaches for Certificates 48992 and 50112 begin above the losing reach, above RM 29. 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%. Therefore, protected flows generated from this transfer will be reduced below RM 29 by 50% to prevent injury to downstream water users and/or enlargement of the water rights. The instream use may 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 #27).
26. After further review and consultation with the Watermaster, the Department identified that the original period of use under Certificate 50122 of 121 days could be expanded to 136 days without enlarging the right.
27. Based on Findings of Fact #25 and #26, on May 23, 2012, the applicant agreed to modify the quantities to be transferred and protected instream as follows:

Resulting from Certificate 5678:

Reach #1: At the authorized POD (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
5678	1869	0.02	5.5	July 3 through October 31

Reach #2: From immediately below the authorized POD to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
5678	1869	0.01	2.4	July 3 through October 31

Resulting from Certificate 48992:

Reach #1: From the authorized POD (as described in Finding of Fact #8) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
48992	2/16/1972	0.40	96.6	July 3 through October 31

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
48992	2/16/1972	0.20	48.0	July 3 through October 31

Resulting from Certificate 50112:

Reach #1: From the authorized POD (as described in Finding of Fact #10) to River Mile 29

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
50112	6/12/1972	0.07	18.9	June 18 through October 31

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
50112	6/12/1972	0.035	9.4	June 18 through October 31

28. The proposed changes, as modified, would not result in enlargement of the rights.
29. The proposed changes, as modified, would not result in injury to other water rights.
30. The amount and timing of the proposed instream flow are allowable within the limits and use of the original water rights.
31. The protection of flows within the proposed reaches is appropriate, considering:
 - a) The instream water rights would begin at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;

- c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and are accounted for within the proposed reaches below River Mile 29; and
 - d) Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the reach of the instream water rights.
32. There is an instream lease, IL-594, currently in effect for the portion of Certificate 5678 proposed for transfer to instream use. The instream lease was approved by the Department on August 4, 2010, as evidenced by Special Order Volume 81, Page 596. This instream lease is scheduled to terminate on October 31, 2014, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer T-11120 may be approved. Also, the date on which this instream transfer may be approved may be affected by the date on which the existing instream lease is terminated to prevent injury and enlargement.
33. 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 stream flow conversion) for the purposes of 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.
34. 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.
35. 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.
36. During the period June 18 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.

37. 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.
38. Transfer Application T-11120 is contingent upon approval of Transfer Application T-11121.
39. Instream Lease IL-594 must be terminated prior to issuance of an order approving Transfer Application T-11120.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11120 appear 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-11120 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-11120 are approved.*
2. *Water right certificates 5678, 48992, and 50112 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued describing those portions of the rights not affected by this transfer.*
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 5678:

Reach #1: At the authorized POD (as described in Finding of Fact #4)

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
5678	1869	0.02	5.5	July 3 through October 31

Reach #2: From immediately below the authorized POD 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>
5678	1869	0.01	2.4	July 3 through October 31

Resulting from Certificate 48992:

Reach #1: From the authorized POD (as described in Finding of Fact #8) 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>
48992	2/16/1972	0.40	96.6	July 3 through October 31

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>
48992	2/16/1972	0.20	48.0	July 3 through October 31

Resulting from Certificate 50112:

Reach #1: From the authorized POD (as described in Finding of Fact #10) 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>
50112	6/12/1972	0.07	18.9	June 18 through October 31

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>
50112	6/12/1972	0.035	9.4	June 18 through October 31

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 point of diversion.*
5. *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 points 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.*
6. *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.*
7. *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, 48992, and 50112, and any related decree.*

8. *The former place of use of the transferred water shall no longer receive water as part of this right.*

Dated at Salem, Oregon this 31 day of May, 2012.


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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrд.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.