



# 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 97012-3142

**SUBJECT: Water Right Transfer Application T-11121**

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department has concluded that approval of the changes in points of diversion proposed in T-11121 would result in injury to instream water rights 59678 and 64744. Consistent with your request that we seek a recommendation from the Department of Fish and Wildlife (ODFW) and Department of Environmental Quality (DEQ) on whether we should consent to the injury to the instream water rights, we are proceeding with that process concurrently with issuance of the preliminary determination

The Water Resources Department holds instream water rights in trust for the benefit of the people of Oregon. Under ORS 540.530(c), we may approve the transfer only if the agency that requested the instream water right concludes that the changes proposed will result in net benefits to the resources protected by the instream water right, and recommends that we consent to the injury of the right. Please contact the agency staff person to whom the agency review letter has been sent, to discuss whether you may be able to assist in providing information needed for the analysis.

After we have received a recommendation from ODFW and DEQ on whether to consent to the injury, provided no protests have been filed, we will issue an order either:

- Approving the transfer with conditions, if any, identified in the agency recommendations as necessary to ensure that the change will result in net benefits, or
- Reaffirming our decision that the instream water right would be injured and denying the transfer.

The timing for issuance of the order will depend on the availability of information needed by ODFW and DEQ to perform the net benefits analysis upon which their recommendation must be based, and the time necessary to allow public review and comment on the recommendation. You are not authorized to use water from the proposed points of diversion pending a final decision by the Department on your transfer application.

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 as modified by the recommendation of ODFW and DEQ. 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@wrд.state.or.us](mailto:teri.k.hranac@wrд.state.or.us), if I may be of assistance.

Sincerely,



Teri Hranac  
Transfer Specialist  
Transfer and Conservation Section

Enclosures

cc: T-11121 and T-11120  
Bob Wood, District #3 Watermaster (*via e-mail*)  
Larry Toll, Agent for the applicant (*via e-mail at ltoll@tennesoneng.com*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11121, Wasco County	)	PROPOSING DENIAL OF CHANGES
	)	IN POINT OF DIVERSION AND
	)	CHANGE IN 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**

PAUL AND DIXIE SCHANNO  
82163 DUFUR VALLEY RD  
DUFUR OR 97021-3142

**Findings of Fact**

***Background***

1. On August 12, 2010, PAUL AND DIXIE SCHANNO filed an application to change the point of diversion and to change the place of use under Certificate 5678. The Department assigned the application number T-11121.
2. On August 12, 2010, the applicants also submitted instream Transfer Application T-11120 to provide mitigation for this transfer.
3. The portion of the right to be transferred is as follows:

**Certificate:** 5678 in the name of SAM WARD (confirmed by Fifteen Mile Creek Decree)

**Use:** IRRIGATION OF 39.5 ACRES

**Priority Date:** 1869

**Limit/Duty:** NOT TO EXCEED 1.0 ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD UP TO JULY 1 OF EACH YEAR AND THEREAFTER NOT TO EXCEED ¾ ACRE FOOT PER ACRE DURING ANY 30 DAY PERIOD; PROVIDED THAT THE TOTAL QUANTITY OF WATER DIVERTED DURING THE IRRIGATION SEASON SHALL NOT EXCEED 3.0 ACRE FEET PER ACRE; AND PROVIDED FURTHER THAT THE RATE OF

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.

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 W <sup>1</sup> / <sub>4</sub> 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 screening and/or by-pass device 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/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device 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/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
12. 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.
13. 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.

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

14. 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.
15. The proposed changes would not result in enlargement of the right.
16. 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.

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.

17. 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.

18. Instream Lease IL-594 must be terminated prior to approval of this transfer.
19. This transfer is contingent upon approval of instream Transfer Application T-11120, which was submitted to provide mitigation for this transfer application.

### Determination and Proposed Action

The changes in point of diversion and place of use proposed in application T-5678 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 (ODFW) and Oregon Department of Environmental Quality (DEQ) recommend that the Department consent to injury of an instream water right pursuant to OAR 690-380-5050 or protests are filed pursuant to OAR 690-380-4030.

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@wr.d.state.or.us](mailto:Teri.K.Hranac@wr.d.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.

**Notice of Preliminary Determination for  
Water Right Transfer T-11121**

T-11121 filed by Paul & Dixie Schanno, 82163 Dufur Valley Rd., Dufur, OR 97012, proposes changes in point of diversion and place of use under Certificate 5678. The right allows the use of water (priority date 1869) from Fifteenmile Creek in Sec. 9, T 1 S, R 14 E, W.M. for irrigation of 39.5 acres in Secs. 3, 9, and 10.

The applicants propose to move the point of diversion for 38.5 acres approx. 8.5 miles upstream to Sec. 33, T 1 S, R 13 E, W.M. and to change the place of use within Sec. 33. The applicants propose to change the point of diversion for 1 acre of land approx. 2800 feet downstream (Sec. 3, T 1 S, R 14 E, W.M.)

The Water Resources Department has concluded that the proposed transfer appears to **NOT** be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000 due to the injury of instream water right Certificates 59678 and 64744. The Department proposes to deny application T-11121 unless ODFW and DEQ recommend that the Department consent to injury of the instream water rights.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0852. The last date of newspaper publication is ***[DATE OF LAST PUBLICATION]***.