



Oregon

Kate Brown, Governor

Water Resources Department

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January 21, 2016

VIA E-MAIL

DEMING RANCH LAND AND CATTLE LLC
100 OLD AIRPORT RD
AUBERN, CA 95603

SUBJECT: Water Right Transfer Application T-11810

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11810. 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 Klamath Herald and News 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 503-986-0890 or Sarah.A.Henderson@wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11810
Scott White, District 17 Watermaster (*via e-mail*)
Klamath Basin Rangeland Trust, Agent for the applicant (*via e-mail*)

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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11810, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE AND PARTIAL
)	CANCELLATION OF TWO WATER
)	RIGHTS

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

DEMING RANCH LAND AND CATTLE LLC
100 OLD AIRPORT RD
AUBERN, CA 95603

Findings of Fact

1. On May 5, 2014, DEMING RANCH LAND AND CATTLE LLC filed an application to change the place of use and character of use under Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960 and 9961 to instream use. The Department assigned the application number T-11810.
2. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Klamath County Planning Department. Additionally, the Department provided notification of the proposed action to this local government upon receipt of Transfer Application T-11090.
3. Notice of the application for transfer was published on May 13, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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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4. On December 17, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11810 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 16, 2016, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. On June 29, 2015, the Department contacted the Klamath Basin Rangeland Trust by written correspondence to notify the applicant's agent that additional information was needed describing the flow of water in Deming Creek from the points of diversion to the South Fork Sprague River.
6. On July 1, 2015, the Department contacted the Klamath Basin Rangeland Trust by written correspondence to notify the applicant's agent of the underlying layered water rights that needed to be cancelled or transferred within the application.
7. On July 2, 2015, the applicant's agent submitted documentation explaining the project to restore the natural connection between Deming Creek and South Fork Sprague River. On December 11, 2015, the Watermaster confirmed that the project is complete and that Deming Creek is once again connected with the South Fork Sprague River.
8. On August 3 and 7, 2015, the applicant's agent submitted cancellation affidavits for the underlying layered water rights to be cancelled within this order and submitted a Permit Amendment application to move additional layered water rights.
9. On December 14, 2015, the Department received clarification from the agent that the stock portions of Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960 and 9961, are being included in the transfer application for the irrigation season only.

10. The first right to be transferred is as follows:

Certificate: 9952 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)

Use: IRRIGATION of 105.3 ACRES AND STOCK WATER use during the irrigation season

Priority Date: 1882

Rate: 2.63 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.31 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	26	NE NW	40.0
36 S	14 E	WM	26	NW NW	40.0
36 S	14 E	WM	26	SW NW	12.0
36 S	14 E	WM	26	SE NW	13.3
Total					105.3

11. Certificate 9952 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	23	NE SE	LOWERMOST DIVERSION – LATITUDE: 42.433358 LONGITUDE: -121.017567

12. A total of 315.9 Acre-Feet (AF) of water may be beneficially used annually under the existing right.
13. The second right to be transferred is as follows:

Certificate: 9953 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)

Use: IRRIGATION of 53.8 ACRES, AND STOCK WATER use during the irrigation season

Priority Date: 1885

Rate: 1.34 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.67 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	26	NE NE	15.8
36 S	14 E	WM	26	NW NE	33.0
36 S	14 E	WM	26	SE NE	5.0
Total					53.8

14. Certificate 9953 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	23	NE SE	LOWERMOST DIVERSION – LATITUDE: 42.433358 LONGITUDE: -121.017567

15. A total of 161.4 AF of water may be beneficially used annually under the existing right.

16. The third right to be transferred is as follows:

Certificate: 9954 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)

Use: IRRIGATION of 57.2 ACRES AND STOCK WATER use during the irrigation season

Priority Date: 1886

Rate: 1.43 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.71 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	20	NW NE	8.0
36 S	15 E	WM	20	NE NW	7.2
36 S	15 E	WM	20	NW NW	3.0
36 S	15 E	WM	20	SW NW	2.4
36 S	15 E	WM	20	SE NW	31.0
36 S	15 E	WM	20	NE SW	5.6
Total					57.2

17. Certificate 9954 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	30	NW NW	DIVERSION A - LATITUDE: 42.441901 LONGITUDE: -120.961370

18. A total of 171.6 AF of water may be beneficially used annually under the existing right.

19. The fourth right to be transferred is as follows:

Certificate: 9955 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
Use: IRRIGATION of 100.7 ACRES AND STOCK WATER use during the irrigation season
Priority Date: 1886
Rate: 2.51 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.25 CFS thereafter
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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.
Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	17	SW SE	13.0
36 S	15 E	WM	17	SE SE	13.0
36 S	15 E	WM	20	NE NE	2.1
36 S	15 E	WM	20	NW NE	22.0
36 S	15 E	WM	20	NE NW	31.8
36 S	15 E	WM	20	NW NW	18.8
Total					100.7

20. Certificate 9955 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	17	SE SE	DIVERSION A - LATITUDE: 42.441901 LONGITUDE: -120.961370

21. A total of 302.1 AF of water may be beneficially used annually under the existing right.

22. The fifth right to be transferred is as follows:

Certificate: 9956 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
Use: IRRIGATION of 14.7 ACRES AND STOCK WATER use during the irrigation season
Priority Date: 1889
Rate: 0.36 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.18 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	18	NE SW	7.0
36 S	15 E	WM	18	NW SW	6.7
36 S	15 E	WM	18	NW SE	1.0
Total					14.7

23. Certificate 9956 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	18	NE SE	LOWER ANDERSON FIELD SOUTH DIVERSION - LATITUDE: 42.446131 LONGITUDE: -120.985770

24. A total of 44.1 AF of water may be beneficially used annually under the existing right.

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

Certificate: 9957 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)

Use: IRRIGATION of 57.5 ACRES AND STOCK WATER use during the irrigation season

Priority Date: 1889

Rate: 1.43 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.71 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	18	SW NW	22.0
36 S	15 E	WM	18	SE NW	9.3
36 S	15 E	WM	18	NE SW	21.2
36 S	15 E	WM	18	NW SW	5.0
Total					57.5

26. Certificate 9957 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	18	NW SE	UPPER ANDERSON FIELD NORTH DIVERSION - LATITUDE: 42.446614 LONGITUDE: -120.983808

27. A total of 172.5 AF of water may be beneficially used annually under the existing right.

28. The seventh right to be transferred is as follows:

Certificate: 9958 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)

Use: IRRIGATION of 28.6 ACRES AND STOCK WATER use during the irrigation season

Priority Date: 1889

Rate: 0.71 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.35 CFS thereafter

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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	18	NE SW	5.8
36 S	15 E	WM	18	NW SW	22.8
Total					28.6

29. Certificate 9958 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	18	NW SE	UPPER ANDERSON FIELD SOUTH DIVERSION LATITUDE: 42.446274 LONGITUDE: -120.985264

30. A total of 85.8 AF of water may be beneficially used annually under the existing right.

31. The eighth right to be transferred is as follows:

Certificate: 9959 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
Use: IRRIGATION of 10.8 ACRES AND STOCK WATER use during the irrigation season
Priority Date: 1892
Rate: 0.27 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.13 CFS thereafter
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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.
Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	24	NW NW	9.0
36 S	14 E	WM	24	SW NW	1.8
Total					10.8

32. Certificate 9959 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	13	SE SW	OB 1 DIVERSION - LATITUDE: 42.443351 LONGITUDE: -121.008719

33. A total of 32.4 AF of water may be beneficially used annually under the existing right.

34. The ninth right to be transferred is as follows:

Certificate: 9960 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
Use: IRRIGATION of 5.9 ACRES AND STOCK WATER use during the irrigation season
Priority Date: 1892
Rate: 0.14 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.07 CFS thereafter
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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.
Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	24	NE NW	2.0
36 S	14 E	WM	24	NW NW	2.5
36 S	14 E	WM	24	SW NW	1.4
Total					5.9

35. Certificate 9960 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	14 E	WM	13	SE SW	OB 2 DIVERSION - LATITUDE: 42.442015 LONGITUDE: -121.010483

36. A total of 17.7 AF of water may be beneficially used annually under the existing right.

37. The tenth right to be transferred is as follows:

Certificate: 9961 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
Use: IRRIGATION of 99.4 ACRES AND STOCK WATER use during the irrigation season
Priority Date: 1903
Rate: 2.49 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.24 CFS thereafter
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 ONE- FORTIETH of a cubic foot per second per acre, prior to June 15th, and ONE-EIGHTIETH of a cubic foot per

second per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

Source: DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

Authorized Place of Use:

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	15 E	WM	16	NW SW	16.0
36 S	15 E	WM	16	SW SW	9.5
36 S	15 E	WM	17	SE SE	13.1
36 S	15 E	WM	20	NE NE	37.9
36 S	15 E	WM	20	NW NE	7.5
36 S	15 E	WM	20	SW NE	13.2
36 S	15 E	WM	20	SE NE	2.2
Total					99.4

38. Certificate 9961 does not describe the location of the point of diversion, however information is available from the applicant indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	15 E	WM	16	NW SW	CAMPBELL RESERVOIR DIVERSION - LATITUDE: 42.448166 LONGITUDE: -120.953362

39. A total of 298.2 AF of water may be beneficially used annually under the existing right.

40. Transfer Application T-11810 proposes to change the character of use of these rights to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

41. Transfer Application T-11810 proposes to change the place of use of the rights to create instream reaches from the POD's (as described in Findings of Fact No.'s 11, 14, 17, 20, 23, 26, 29, 32, 35 and 38) to the mouth of Deming Creek on into the South Fork Sprague River to the confluence with the North Fork Sprague River.

42. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	32.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
9960	1892	0.07	12.9	0.02	4.7
9952	1882	1.26	230.4	0.35	84.6
9953	1885	0.65	117.8	0.18	43.3
Totals		6.41	1168.9	1.78	429.4

43. 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.

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

44. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

45. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11810.

46. The transfer application requests to protect water instream from Deming Creek into the South Fork Sprague River. An instream reach is generally from the point of diversion to the mouth of the source stream (Deming Creek) but may be protected further if measurable in the receiving stream (the South Fork Sprague River) (OAR 690-077-0015 (8)). The quantity that may be transferred instream from Deming Creek is measurable into the South Fork Sprague River and may be protected instream in the South Fork Sprague River.

47. The applicant has requested to protect water instream from the POD's on Deming Creek and into the South Fork Sprague River to its mouth. A portion of the water diverted under each water right returns to the South Fork Sprague River and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the

quantities requested to be protected instream in Reach No. 10 have been adjusted to account for return flows into the South Fork Sprague River.

48. The quantities to be transferred and protected instream are as follows and based on Finding of Fact No. 47, Instream Reach No. 10 is modified:

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 38) to the POD (as described in Finding of Fact No. 20)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 20) to the POD (as described in Finding of Fact No. 17)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
Totals		2.40	438.2	0.66	161.0

Instream Reach No. 3: From the POD (as described in Finding of Fact No. 17) to the POD (as described in Finding of Fact No. 26)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
Totals		3.09	563.5	0.85	207.0

Instream Reach No. 4: From the POD (as described in Finding of Fact No. 26) to the POD (as described in Finding of Fact No. 29)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
Totals		3.78	689.4	1.04	253.3

Instream Reach No. 5: From the POD (as described in Finding of Fact No. 26) to the POD (as described in Finding of Fact No. 23)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
Totals		4.12	752.0	1.14	276.3

Instream Reach No. 6: From the POD (as described in Finding of Fact No. 23) to the POD (as described in Finding of Fact No. 32)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8

Totals	4.30	785.2	1.19	288.1
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Instream Reach No. 7: From the POD (as described in Finding of Fact No. 32) to the POD (as described in Finding of Fact No. 35)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
Totals		4.43	808.8	1.23	296.8

Instream Reach No. 8: From the POD (as described in Finding of Fact No. 35) to the POD's (as described in Finding of Fact No.'s 11 and 14)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
9960	1892	0.07	12.9	0.02	4.7
Totals		4.50	821.7	1.25	301.5

Instream Reach No. 9: From the POD's (as described in Finding of Fact No.'s 11 and 14) to the mouth of Deming Creek

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
9960	1892	0.07	12.9	0.02	4.7
9952	1882	1.26	230.4	0.35	84.6
9953	1885	0.65	117.8	0.18	43.3
Totals		6.41	1169.9	1.78	429.4

Instream Reach No. 10: From the mouth of Deming Creek into the South Fork Sprague River to the confluence with the North Fork Sprague River

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.07	195.9	0.30	72.0
9955	1886	1.09	198.5	0.30	71.9
9954	1886	0.62	112.8	0.17	41.4
9957	1889	0.62	113.3	0.17	41.7
9958	1889	0.31	56.3	0.09	20.7
9956	1889	0.16	29.0	0.04	10.6
9959	1892	0.12	21.2	0.03	7.8
9960	1892	0.06	11.6	0.02	4.2
9952	1882	1.14	207.4	0.31	76.1
9953	1885	0.58	106.0	0.16	39.0
Totals		5.77	1052.0	1.59	385.4

49. The proposed change, as modified, would not result in injury to other water rights.

50. The proposed change, as modified, would not result in enlargement of the right.

51. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
52. The protection of flows 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 point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) There are return flows resulting from the exercise of the existing water rights that re-enter the river within the reach of the instream water right. The quantity of water to be protected instream in Reach No. 10 has been reduced to account for return flows.
53. Within the proposed reach on Deming Creek and on into the South Fork Sprague River, there are two pending instream water right applications filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341 to establish instream water rights. Application IS-70808 is an application to establish an instream water right on Deming Creek from the headwaters to Rocky Flat Creek and, if approved, will have a priority date of October 26, 1990. Application 70802 is an application to establish an instream water right on the South Fork Sprague River from Ish Tish Creek to the mouth of South Fork Sprague River and, if approved, will also have a priority date of October 26, 1990. Both applications propose to establish instream uses for migration, spawning, egg incubation, fry emergence, and juvenile rearing.
54. Presently there are no instream water rights on Deming Creek or the South Fork Sprague River established under the instream transfer and allocation of conserved water processes. However, by adding to any instream water rights, established in the future pursuant to ORS 537.348 (instream transfer process and instream lease) 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.
55. Application IS-70808, if approved, is within the same reach as that proposed for the new instream water rights under this transfer application on Deming Creek (Instream Reaches 1-8). During the months of July and August, the quantities proposed to be protected instream from this instream transfer within reaches 4 through 8 exceed the quantities requested in Application IS-70808. However, the Department has identified that this instream transfer will provide an additional public purpose. The Department has identified that the quantities protected instream may replace the quantities protected instream under any instream water right resulting from IS-70808 during the period May 1 through September 30 with an earlier priority date. The instream right established by this transfer may also be additive to any instream water right established by IS-70808 within reaches 4 through 8 during the period July 1 through August 31, unless otherwise specified in an order approving a new instream water right under ORS 537.341.

56. Application IS-70802 is within the same reach as that proposed for the new instream water rights under this transfer application on the South Fork Sprague River (Instream Reach 10). Any instream water right established by this transfer may replace a portion of any instream water right established by Application IS-70802 with an earlier priority date.
57. During the period May 1 through September 30, 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.
58. In addition, during the period July 1 through August 31, any instream water right established by this transfer application within reach 4 through 8 may in addition to any instream water right established pursuant to ORS 537.341, unless otherwise specified in an order approving a new instream water right under this statute or ORS 537.346, ORS 537.348, or ORS 537.470
59. 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.

Partial Cancellation of a Water Right

60. On August 7, 2015, an affidavit certifying that a portion of Certificate 21416 has been abandoned and requesting partial cancellation of the right was received from Daniel Kominek for Deming Ranch Land & Cattle, LLC.
61. In reviewing the partial cancellation affidavit for Certificate 21416 and the water right, the Department found that the applicant had asked for a rate different than what the Department has determined for the amount of acres to be cancelled. The first right to be partially cancelled is as follows and reflects the appropriate quantities for cancellation:

Certificate: 21416 in the name of W. R. CAMPBELL, ET AL. (perfected under Permit S-13015)

Use: IRRIGATION of 3.9 ACRES and SUPPLEMENTAL IRRIGATION OF 153.1 ACRES

Priority Date: AUGUST 17, 1937

Rate: 2.41 CFS

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, or its equivalent for each acre irrigated prior to June 15, and ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated after June 15, of each year 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 from March 1, to October 1, and shall be still further limited to a total diversion of not to exceed 25.0 second-feet.

Source: STORED WATER IN CAMPBELL RESERVOIR, ON AN UNNAMED DRY WASH, CONSTRUCTED UNDER APP. S-17044, PER. R-716, tributary of SOUTH FORK SPRAGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	15 E	WM	16	SW NW

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	26	NW NE	1.7
36 S	14 E	WM	26	SE NE	2.2
Total					3.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	26	NE NE	12.0
36 S	14 E	WM	26	NW NE	33.0
36 S	14 E	WM	26	SE NE	2.8
36 S	14 E	WM	26	NE NW	40.0
36 S	14 E	WM	26	NW NW	40.0
36 S	14 E	WM	26	SW NW	12.0
36 S	14 E	WM	26	SE NW	13.3
Total					153.1

62. On August 3, 2015, an affidavit certifying that a portion of Certificate 33926 has been abandoned and requesting partial cancellation of the right was received from Daniel Kominek for Deming Ranch Land & Cattle, LLC.
63. In reviewing the partial cancellation affidavit for Certificate 33926 and the water right, the Department found that the certificate contains had a scrivener's error in describing the total amount of acres as being 454.1, the correct amount is 455.0 acres. The Department also found that the applicant had asked for a rate different than what the Department has determined for the amount of acres to be cancelled. The second right to be partially cancelled is as follows and reflects the appropriate quantities for cancellation:

Certificate: 33926 in the name of HENRY C. GERBER & R. M. RANCH CO. (perfected under Permit G-1795)

Use: SUPPLEMENTAL IRRIGATION of 179.1 ACRES

Priority Date: MAY 9, 1961

Rate: 1.76 CFS

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 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: WELL No. 1 in the SOUTH FORK SPRAGUE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	14 E	WM	25	SW NW	1770 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 25

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	14 E	WM	26	NE NE	1.8
36 S	14 E	WM	26	NW NE	16.8
36 S	14 E	WM	26	SW NE	19.5
36 S	14 E	WM	26	SE NE	20.8
36 S	14 E	WM	26	NE NW	33.4
36 S	14 E	WM	26	NW NW	36.6
36 S	14 E	WM	26	SW NW	28.6
36 S	14 E	WM	26	SE NW	21.6
Total					179.1

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11810 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 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

If Transfer Application T-11810 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-11810 are approved. The portions of the rights that have been abandoned are cancelled.*
2. *Water right Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961 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 the transfer.*
3. *The described portions of water right Certificates 21416 and 33926 are cancelled. New certificates will be issued describing those portions of the rights not affected by the cancellations.*
4. *The instream water right shall provide for the protection of streamflows from the POD's (as described in Finding of Fact No's 11, 14, 17, 20, 23, 26, 29, 32, 35 and 38) to the mouth of Deming Creek and into the South Fork Sprague River to the confluence with the North Fork Sprague River.*
5. *The quantities of water to be protected under the instream water rights are:*

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 38) to the POD (as described in Finding of Fact No. 20)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 20) to the POD (as described in Finding of Fact No. 17)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
<i>Totals</i>		2.40	438.2	0.66	161.0

Instream Reach No. 3: From the POD (as described in Finding of Fact No. 17) to the POD (as described in Finding of Fact No. 26)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
<i>Totals</i>		3.09	563.5	0.85	207.0

Instream Reach No. 4: From the POD (as described in Finding of Fact No. 26) to the POD (as described in Finding of Fact No. 29)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
Totals		3.78	689.4	1.04	253.3

Instream Reach No. 5: From the POD (as described in Finding of Fact No. 26) to the POD (as described in Finding of Fact No. 23)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
Totals		4.12	752.0	1.14	276.3

Instream Reach No. 6: From the POD (as described in Finding of Fact No. 23) to the POD (as described in Finding of Fact No. 32)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8

Totals	4.30	785.2	1.19	288.1
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Instream Reach No. 7: From the POD (as described in Finding of Fact No. 32) to the POD (as described in Finding of Fact No. 35)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
Totals		4.43	808.8	1.23	296.8

Instream Reach No. 8: From the POD (as described in Finding of Fact No. 35) to the POD's (as described in Finding of Fact No.'s 11 and 14)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
9960	1892	0.07	12.9	0.02	4.7
Totals		4.50	821.7	1.25	301.5

Instream Reach No. 9: From the POD's (as described in Finding of Fact No.'s 11 and 14) to the mouth of Deming Creek

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
9959	1892	0.13	23.6	0.04	8.7
9960	1892	0.07	12.9	0.02	4.7
9952	1882	1.26	230.4	0.35	84.6
9953	1885	0.65	117.8	0.18	43.3
<i>Totals</i>		6.41	1169.9	1.78	429.4

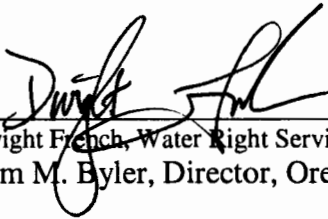
Instream Reach No. 10: From the mouth of Deming Creek into the South Fork Sprague River to the confluence with the North Fork Sprague River

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.07	195.9	0.30	72.0
9955	1886	1.09	198.5	0.30	71.9
9954	1886	0.62	112.8	0.17	41.4
9957	1889	0.62	113.3	0.17	41.7
9958	1889	0.31	56.3	0.09	20.7
9956	1889	0.16	29.0	0.04	10.6
9959	1892	0.12	21.2	0.03	7.8
9960	1892	0.06	11.6	0.02	4.2
9952	1882	1.14	207.4	0.31	76.1
9953	1885	0.58	106.0	0.16	39.0
<i>Totals</i>		5.77	1052.0	1.59	385.4

6. *Water rights upstream of the original point 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.*

7. *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 point of diversion. 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 within the specified stream reach.*
8. *During the period May 1 through September 30, 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.*
9. *In addition, during the period July 1 through August 31, any instream water right established by this transfer application within reach 4 through 8 may in addition to any instream water right established pursuant to ORS 537.341, unless otherwise specified in an order approving a new instream water right under this statute or ORS 537.346, ORS 537.348, or ORS 537.470*
10. *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 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961 and any related decree.*
11. *The former place of use of the transferred water shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this 21 day of January, 2016.



Dwight French, Water Right Services Division Administrator, for
Tom M. Byler, Director, Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrđ.state.or.us.

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