

November 21, 2019 proposing to deny the instream transfer application. The deficiencies included:

- a) Additional information needed to support evidence of use for stock use under Certificate 19959.
- b) Additional information needed to demonstrate beneficial use for stock watering.
- c) Break down the amount of water that may be transferred instream and is proposed to be protected instream under Certificate 29534 from Crane Creek and Threemile Creek associated with 224.1 acres of Irrigation.
- d) Address requested changes to the transfer application map consistent with application map requirements.
- e) Additional time for the Department to develop flow data for water in Fourmile Creek if the applicant would like to pursue extending the instream reach beyond the mouth of Crane Creek.
- f) Without additional flow data for Fourmile Creek and without clarification on how water is to be protected instream between Crane Creek and Threemile Creek under certificate 29534, the Department is unable to determine for protection of flows in Threemile Creek, Crane Creek, and Fourmile Creek:
 - i) Whether instream flows from Crane Creek are measurable into Fourmile Creek.
 - ii) The Estimated Average Natural Flows of Fourmile Creek and whether those flows would be exceeded or not.
 - iii) Whether estimated average natural flows in Crane Creek or Threemile Creek would be exceeded.
 - iv) Whether protection of additional flows in Fourmile Creek would provide sufficient flows to meet the amount needed to provide increased public benefit and whether the amount, timing, and location of the proposed instream water rights would serve a public use or uses

5. On December 18, 2019, the Applicant's agent submitted revised application materials and the majority of the information requested by the Department in the cover letter to the Draft Preliminary Determination. The Applicant's agent also provided the necessary information to demonstrate that the applicant is authorized to pursue this instream transfer application.
6. As part of their December 18, 2019 response, the Applicant's agent did not specify how much water should be protected instream from each source under Certificate 29534. However, the Department was able to identify, based on review of the water right of record, how much water may be available for instream use from each source. Department staff discussed this breakdown with the Applicant's agent on February 7, 2020, and the agent concurred.

7. On January 9, 2020, the Watermaster's office obtained minimal flow data from an outside source for Fourmile Creek and also, subsequently, clarified that Crane Creek and Fourmile Creek are not currently connected. Both creeks, through different ditches, are diverted into Fourmile Canal.
8. On January 29, February 7, and February 18, 2020, additional information to complete the transfer application was provided by the Applicant's agent.
9. On February 20, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12971 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 18, 2020 (misidentified in the cover letter as February 18, 2020), for the applicant to respond. On February 24, 2020, the applicant's agent requested that the Department proceed with issuance of a Preliminary Determination.
10. On March 19, 2020, the Department issued a Preliminary Determination proposing to approve Instream Transfer Application T-12971 and mailed a copy to the applicant and their agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 24, 2020, and in the Klamath Herald and News newspaper on March 26 and April 2, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. On June 17, 2020, it was identified that the applicant would be irrigating through July 31, 2020. The agent, Trout Unlimited has requested that the Final Order and Instream Certificates be issued on August 14, 2020.
12. The first right proposed to be transferred is as follows:
 - Certificate:** 19959 in the name of PAUL WAMPLER (perfected under Permit S-18305)
 - Use:** IRRIGATION AND STOCK
 - Priority Date:** JUNE 26, 1941
 - Rate:** 2.13 CUBIC FEET PER SECOND (CFS), BEING 1.63 CFS FOR IRRIGATION AND 0.50 CFS FOR STOCK
 - Period of Use:** April 1 to October 1 for Irrigation
 - 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-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated prior to July 20, and ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated thereafter and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season from April 1 to October 1, provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.
 - Source:** Crane Creek, tributary to Sevenmile Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	GLot	Measured Distances
34 S	6 E	WM	1	12	Not specified

Authorized Place of Use:

Twp	Rng	Mer	Sec	GLot	Acres
34 S	6 E	WM	1	18	4.40
34 S	6 E	WM	1	19	5.00
34 S	6 E	WM	1	16	19.00
34 S	6 E	WM	1	14	33.20
34 S	6 E	WM	1	15	33.20
34 S	6 E	WM	1	17	35.40
Total Acres					130.20

13. Up to a maximum of 651.0 Acre-Feet (AF) of water may be used annually for irrigation under the existing right.
14. Certificate 19959 does not specify how much water may be used beneficially each year for stock use nor is any information provided with the transfer application.
15. Certificate 19959 does not specify the measured distances for the point of diversion. However, based upon information provided with the transfer application and review of the water right record, consistent with the final proof survey map, the point of diversion on Crane Creek appears to be located as follows:

Twp	Rng	Mer	Sec	GLot	Measured Distances
34 S	6 E	WM	1	12	550 FEET NORTH AND 24 FEET WEST FROM THE SOUTHWEST CORNER OF LOT 11

This POD location is also consistent with the original permit record on file with the Department.

16. However, in review of the transfer application and historic water right records, the Department has identified that the POD for Certificate 19959 may not be the one identified in Finding of Fact No. 15 and that the identified Point of Diversion may actually be a re diversion point. As part of the field survey for the Final Proof map and certificate completed in 1951, the Department's surveyor noted in May of 1951 that the "check" in Crane Creek had been shifted upstream 240 feet from the old one. Checks are structures placed across a ditch or stream to restrict flows, raise the water elevation and/or to back up water. It may be a temporary or permanent structure to raise the upstream water level. According to the Watermaster, if the water user at the time had moved the check, they had also likely moved the Point of Diversion. However, this may not have been a change in point of diversion. The Final Proof Map for Certificate 19959 appears to show the POD on Crane Creek. However, the Final Proof map for Certificate 29534 (issued in 1962) appears to clarify the stream layout and shows that the POD for Certificate 19959 may actually be on a ditch and be a point of re diversion. And the actual POD, being approximately 240 feet upstream, at the same location as that for Certificate 29534, located at:

Twp	Rng	Mer	Sec	GLot	Measured Distances
34 S	6 E	WM	1	12	697 FEET NORTH AND 152 FEET WEST FROM THE SOUTHEAST CORNER OF LOT 12

On December 18, 2019, the Applicant's agent concurred that the POD for Certificate 19959 was the same as that for Certificate 29534.

17. Certificate 19959 does not specify the period of allowed use for stock. However, use of water for stock is assumed to be year-round use unless otherwise specified in the certificate.

18. The second right proposed to be transferred is as follows:

Certificate: 29534 in the name of PAUL WAMPLER (perfected under Permit S-24530)

Use: IRRIGATION of 291.3 ACRES

Priority Date: DECEMBER 15, 1954

Rate: 3.6 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Crane Creek and Threemile Creek, a tributary of the Klamath River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	GLot	Source	Measured Distances
34 S	6 E	WM	1	12	Crane Creek	None identified
34 S	6 E	WM	1	19	Threemile Creek	None identified

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Source	Acres
34 S	6 E	WM	1		22	Crane Creek	1.20
34 S	6 E	WM	1		19	Crane Creek	30.40
34 S	6 E	WM	1		18	Crane Creek	35.60
Total Acres Irrigated from Crane Creek Only							67.20
34 S	6 E	WM	1		22	Crane Creek and Threemile Creek	32.70
34 S	6 E	WM	1		23	Crane Creek and Threemile Creek	40.00
34 S	6 E	WM	1		24	Crane Creek and Threemile Creek	40.00
34 S	6 E	WM	1	NE SW		Crane Creek and Threemile Creek	31.40
34 S	6 E	WM	1	NE SE		Crane Creek and Threemile Creek	40.00
34 S	6 E	WM	1	NW SE		Crane Creek and Threemile Creek	40.00
Total Acres Irrigated from Crane Creek and Threemile Creek							224.10
Total Acres							291.30

19. A maximum of up to 873.9 AF, being 201.6 AF from Crane Creek only and 672.3 AF from Crane Creek and Threemile Creek, of water may be beneficially used annually for irrigation purposes under the existing right.
20. Certificate 29534 does not specify the irrigation season. However, the Irrigation Season specified in Certificate 19959 and in the Wood River Decree, which covers the general area, is April 1 to October 1.
21. Certificate 29534 does not specify measured distances for the authored points of diversion. However, based upon review of the water right record, transfer application, and additional information provided by the Watermaster, the points of diversion appear to be located as follows:

Crane Creek point of diversion:

Twp	Rng	Mer	Sec	GLot	Measured Distances
34 S	6 E	WM	1	12	697 FEET NORTH AND 152 FEET WEST FROM THE SOUTHEAST CORNER OF LOT 12

Threemile Creek point of diversion:

Twp	Rng	Mer	Sec	GLot	Measured Distances
34 S	6 E	WM	1	19	49 FEET NORTH AND 51 FEET EAST FROM THE SOUTHWEST CORNER OF LOT 19

22. Certificates 19959 and 29534 identifies Crane Creek and Threemile Creek as being tributary to Klamath River and Sevenmile Creek. Crane Creek had been artificially diverted into Sevenmile Creek for decades. The artificial diversion into Sevenmile Creek located near the diversion point on Crane Creek has been removed. Under natural conditions Crane Creek is tributary to Fourmile Creek, which is tributary to Upper Klamath Lake. Threemile Creek, is tributary to Crane Creek. Fourmile Creek is naturally tributary to sloughs of Upper Klamath Lake. Currently, Crane Creek and Fourmile Creek are not connected and are artificially diverted into Fourmile Creek Canal.
23. Transfer Application T-12971 proposes to change the character of use to instream use for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
24. Transfer Application T-12971 proposes to change the place of use of the right to create an instream reach from the points of diversion on Crane Creek and Threemile Creek to the Oregon/California state line.

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

Certificate	Priority Date	Source	Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
19959	6/26/1941	Crane Creek	May 1 through September 30	2.13	646.4
29534	12/15/1954	Crane Creek and Threemile Creek	June 1 through September 30	3.60	871.2
			Total	6.73	1517.6

26. 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)

27. Water has been used within the last five years for irrigation according to the terms and conditions of Certificates 19959 and 29534, and there is no information in the record that would demonstrate that the rights as used for irrigation are subject to forfeiture under ORS 540.610.

28. Water has been used within the five years prior to Instream Transfer Application T-12971 being received for stock use according to the terms and conditions of Certificate 19959, and there and there is no information in the record that would demonstrate that the rights as used for irrigation are subject to forfeiture under ORS 540.610.

29. Diversion structures and ditches sufficient to divert the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Instream Transfer Application T-12971.

30. Certificate 19959 allows the diversion of water from Crane Creek for irrigation and stock. Use of water for irrigation has seasonal volume limit of 651.0 AF. Stock use does not have a defined volume limit under the certificate. Use of water under the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Except for the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total quantity appropriated for the stock use on a year round basis under the existing right proposed for instream transfer would be as follows:

Rate	Volume
0.5 CFS	361.98 AF

However, given the nature of the use authorized under Certificate 19959, the total volume beneficially used, for stock watering, would be less than the full face value 24 hours per day, 365 days per year. Beef cattle need approximately 12 gallons per day of water per head. In reviewing the water right record, there appears to have been as many as 200 head of cattle when Department staff surveyed the property in 1951 as part of the final proof survey. With 200 head of beef cattle consuming up to 12 gallons per day, and assuming year round use, the amount available for transfer appears to be:

Rate	Volume
0.5 CFS	2.69 AF

The agent, on behalf of the applicant concurred with this determination on December 18, 2019.

31. The transfer applicant has requested to protect water instream as follows (see Finding of Fact No. 25):

Certificate	Priority Date	Source	Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
19959	6/26/1941	Crane Creek	May 1 through September 30	2.13	646.4
29534	12/15/1954	Crane Creek and Threemile Creek	June 1 through September 30	3.60	871.2
			Total	6.73	1517.6

32. For Certificate 19959, the proposed instream use is not broken down between the two originating types of use; irrigation, which is a seasonal use, and stock use, which may be a year round use.
33. Under Certificate 19959, the maximum volume of use authorized for Irrigation is up to 651.0 AF, as identified in Finding of Fact No. 13. However, if water were diverted continuously at the maximum rate (2.13 CFS) during the full irrigation season, April 1 through September 30 (183 days), the maximum volume that could be diverted would be 591.65 AF. And, as identified above in Finding of Fact No. 30, it appears that up to 2.69 AF may be beneficially used for stock use. This is a total annual volume of 594.34 AF, which is 52.06 AF less than the instream volume requested by the applicant. Based upon evaluation of the water right and the proposed instream use, the Department has determined that the proposed instream rate, volume and time period must be modified to maximize the instream use over the full irrigation season and prevent injury and enlargement of the right. The instream use may be as follows:

Certificate	Priority Date	Source	Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
19959	6/26/1941	Crane Creek – Irrigation	April 1 through September 30	1.63	591.65
19959	6/26/1941	Crane Creek - Stock	April 1 through September 30	0.01	2.69
Total				1.64	594.34

The agent, on behalf of the applicant, concurred with the above modification to the proposed instream use resulting from Certificate 19959 on December 18, 2019.

34. For Certificate 29534, the applicant has requested to protect up to 3.6 CFS (871.2 AF) instream over an instream period of June 1 of September 30 (122 days) from Crane Creek and Threemile Creek. However, the applicant has not specified how much water is to be protected instream in each creek and did not provide any additional information in response to the Department’s request made as part of the initial Draft Preliminary Determination to deny issued on November 21, 2019. However, based upon additional review, the Department is able to make the following findings:
- a) Certificate 29534 allows for the diversion of up to 3.6 CFS of water from Crane Creek and Threemile Creek for Irrigation of 291.3 acres with a priority date of December 15, 1954. Of the irrigated acreage, 67.2 acres are exclusively irrigated from Crane Creek. The remaining 224.1 acres may be irrigated from a combination of Crane Creek and Threemile Creek.
 - b) Based on a rate and duty limit of 1/80th CFS per acre and 3.0 AF per acre, up to 0.8 CFS may be diverted from Crane Creek for Irrigation of 67.2 acres, with an annual volume limit of 201.6 AF, during the irrigation season of April 1 through September 30 (183 days).
 - c) Up to 2.8 CFS may be diverted from Crane Creek and/or Threemile Creek, with an annual volume limit of 672.3 AF, for Irrigation of 224.1 acres. However, the water right does not identify or appear to limit how much water may come from each creek source for these acres.
 - d) Based on further review of the water right record, the permit (S-24530) originally allowed the diversion of up to 1.0 CFS of water from Threemile Creek and 4.0 CFS from Crane Creek for Irrigation of 320 Acres. With up to 1.0 CFS allowed from Threemile Creek, the permit holder could irrigate 80 acres from Threemile Creek. When Certificate 29534 was issued, the quantity of water allowed was reduced to 3.6 CFS and the number of acres were also reduced (291.3 acres, being 67.2 acres from Crane Creek only and 224.1 acres irrigated from Crane Creek and/or Threemile Creek) but no limits were put on the amount of water that could be diverted from each source, including Threemile Creek (except by rate and duty limit). Therefore, it appears that the water right holder may still divert up to 1.0 CFS from Threemile Creek and use that

to irrigate up to 80 acres. The water right record also identifies that the entire footprint of the remaining acreage (114.1 acres) could be irrigated entirely from Crane Creek.

- e) Therefore, the Department proposes that water from Crane Creek and Threemile Creek be protected instream as follows:

Certificate	Priority Date	Source	Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
29534	12/15/1954	Crane Creek only	June 1 through September 30	0.8	201.6
29534	12/15/1954	Crane Creek	June 1 through September 30	1.8	432.3
29534	12/15/1954	Threemile Creek	June 1 through September 30	1.0	240.0
Total Instream				3.6	873.9

- f) In a meeting with Department staff on February 7, 2020, the agent for the Applicant concurred with the above assessment of Certificate 29534 for purposes of this instream transfer.

35. The applicant has requested that water originating from each right (Certificates 19959 and 29534) and each source (Crane Creek and Threemile Creek) be protected instream as far downstream as possible, down to the Oregon state line.

- a) By rule, an instream reach is generally from the point of diversion to the mouth of the source stream (Crane Creek or Threemile Creek) but may be protected further if measurable in the receiving stream (Threemile Creek is tributary to Crane Creek and Crane Creek, under natural conditions, is tributary to Fourmile Creek) (OAR 690-077-0015 (8)). And it can be protected further downstream into other receiving streams if the quantities continue to be measurable into those receiving streams. Or it may be protected at a point or shorter distance if needed to account for return flows or to prevent injury.
- b) To determine whether the instream quantity is measurable into the receiving stream the Department must know what the flows are instream receiving stream. The Department has sufficient flow data available on Threemile Creek, which is tributary to Crane Creek. Minimal flow data is available on Crane Creek, which is currently tributary to Fourmile Canal and historically, under natural conditions, tributary to Fourmile Creek. The Department has identified minimal flow data on Fourmile Creek, which is currently artificially tributary to Fourmile Canal and historically, under natural conditions, tributary to marshes of Upper Klamath Lake.
- c) The quantity of water that may be protected instream from Threemile Creek (the source stream) is measurable into Crane Creek (the receiving stream) and may be protected instream into Crane Creek.

d) However, flows protected instream in Crane Creek may not be protected into Fourmile Creek. The extent of the proposed reach shall end at the mouth of Crane Creek. As noted above, Crane Creek and Fourmile Creek are not currently connected and both are currently diverted into Fourmile Canal.

36. The Watermaster has identified that there are no streamflow losses within the stream reaches on Crane Creek and Threemile Creek.
37. There are also no return flows associated with the original uses under Certificates 19959 and 29534 that need to be accounted for to prevent injury to downstream users or enlargement of the water rights within the instream reaches on Threemile Creek and Crane Creek.
38. Based upon the above findings, the Department has determined that water may be protected instream as follows:

Threemile Creek, tributary to Crane Creek

Instream Reach No. 1: At POD (as described in Finding of Fact No. 21) (at the mouth of Threemile Creek)

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
29534	12/15/1954	June 1 through September 30	1.0	240.0

Crane Creek, tributary to Fourmile Creek

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 16 and 21), to the confluence with Threemile Creek

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
19959	6/26/1941	April 1 through September 30	1.64	594.34
29534	12/15/1954	June 1 through September 30	2.60	633.90
Total Instream			4.24	1228.24

Instream Reach No. 3: From the confluence with Threemile Creek to the mouth of Crane Creek

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
19959	6/26/1941	April 1 through September 30	1.64	594.34
29534	12/15/1954	June 1 through September 30	3.60	873.90
Total Instream			5.24	1468.24

39. It has been identified to the Department that the applicant has been irrigating in the 2020 Irrigation Season and intends to irrigate through July 31, 2020. The agent has requested that the Final Order for Instream Transfer Application T-12971 be issued on August 14, 2020. Upon issuance of the Final Order, the Department is required to issue the instream water right certificates confirming the instream use (OAR 690-077-0075 (5)). Once the instream water right certificates are issued the instream use as described in Finding of Fact

No. 38 goes into effect and is subject to regulation. Instream water rights may be protected instream, based on their priority date, for their full instream period, 24 hours per day.

40. Since water has already been used for irrigation during the 2020 Irrigation Season and the agent is requesting that Final Order for Instream Transfer Application T-12971 be issued before the end of the 2020 Irrigation Season, which runs April 1 to October 1, there is the potential for injury to other water rights and enlargement of the water rights proposed for transfer during the 2020 period of authorized use (irrigation season/instream use period).
41. On June 25, 2020, the agent for the applicant provided the Department with an estimate of the amount of water used under each right to date and the amount of water likely to be used prior to July 31, 2020, when the applicant intends to stop using irrigation water.

Certificate	Estimated AF Used	Estimated AF To Be Used	Total AF Used
19959	65.1	65.1	130.2
29534	145.7	145.7	291.4

42. Based on review of the amount of water used for irrigation through July 31, 2020, and the amount of water that would be protected instream beginning August 14, 2020 through September 30, 2020, there would be no enlargement under Certificates 19959 and 29534 when converted to instream use.

Certificate	Irrigation AF Used	Instream AF To Be Used	Total AF Used	Total AF/Duty Remaining
19959	130.2	156.14	286.34	364.66
29534	291.4	342.74	634.14	239.76

43. On Crane Creek and Threemile Creek, there are only two other water rights. These two rights, Certificates 10928 and 10929, are located upstream on Crane Creek, are senior in priority date (1888 and 1891 consecutively) and are currently leased to instream use under Instream Lease IL-1258. They are also proposed to be transferred to instream use under Instream Transfer Application T-12951. Neither of these rights would be injured by issuance of a Final Order approving Instream Transfer Application T-12971 on August 14, 2020, including consideration of the irrigation use through July 31, 2020, under Certificates 19959 and 29534
44. The proposed change, as modified in Finding of Fact No. 38 and as determined in Finding of Fact No 43, would not result in enlargement of the right.
45. The proposed change, as modified in Finding of Fact No. 38 and as determined in Finding of Fact No. 43, would not result in injury to other water rights.
46. The amount and timing of the proposed instream flow, as modified in Finding of Fact No. 38, is allowable within the limits and use of the original water right.

47. The protection of flows, as modified in Finding of Fact No. 38, within the proposed reach is appropriate, considering:
- a) The instream water right begins at the recorded point 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 stream beds within the modified instream reach; and
 - d) Any return flows resulting from the exercise of the existing water rights would re-enter the stream channel downstream of the reach of the instream water rights.
48. The transfer applicant has requested that water be protected instream for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
49. According to Oregon Department of Fish and Wildlife (ODFW) and Trout Unlimited (TU), Threemile Creek provides habitat to one of the threatened Bull Trout populations in the Upper Klamath Basin. And Crane Creek could provide suitable habitat for Bull Trout.
- a. TU provided information identifying that Redband Trout are thought to be extirpated or nearly extirpated in Threemile Creek and Crane Creek. This instream transfer application, along with Transfer Application T-12951 and other restoration activities are intended to assist in the improvement of habitat for Redband Trout.
 - b. ODFW also identified that there may also be benefits to other native endemic species such as slender sculpin, Klamath Speckled Dace, Klamath marbled sculpin, and Pit-Klamath Brook Lamprey. The entire Fourmile Creek system, including Crane Creek and Threemile Creek, may be important in the future for recolonization of anadromous fish such as Steelhead and Chinook salmon.
50. There are no existing permanent instream water rights on Crane Creek. There is a temporary Instream Lease IL-817, which protects water in Crane Creek. Instream Lease IL-817 is currently in place through October 1, 2022, as evidenced by Special order Volume 105, Page 611. And Instream Lease IL-1258, a portion of which protects water in Crane Creek, which is intended to be replaced by pending permanent instream transfer application T-12951, for Sevenmile Creek Ranch.
51. There are two Klamath Claims on Threemile Creek, KA-552 (priority date June 4, 1897) and KA-553 (priority date June 4, 1897). Neither of these are intended for fish and wildlife habitat purposes. Rather one is for fire protection and the other is for general instream flows. These have not yet been adjudicated and are not intended to be additive with any other instream water right.

52. The proposed instream use, if approved, under this Instream Transfer Application T-12971 will have priority dates of June 26, 1941 (Certificate 19959) and December 15, 1954 (Certificate 29534).
53. While there are currently no 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 Crane Creek or Threemile Creek for fish life and habitat, there may be in the future and those flows may not always be met since they will likely have junior priority dates. By replacing a portion of those instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values under earlier priority dates.
54. There is currently one other pending permanent Instream Transfer, T-12951, for Sevenmile Creek Ranch, which also involves Crane Creek. This transfer application includes very senior adjudicated water rights ranging in priority dates from 1888 to 1891. By adding to other instream water rights, established 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. During the period April 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.
56. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed instream reach will provide for a beneficial purpose and do not exceed the estimated average natural flows.
57. Portions of Threemile Creek and Crane Creek have been channelized and no longer flow in their historic natural channels. For example, Threemile Creek, approximately 1.5 miles above its mouth, has been channelized from a natural channel to a canal and is tributary to the Crane Creek Canal rather than the historic natural channel of Crane Creek. Crane Creek, starting at the Crane Creek points of diversion for Certificates 29534 and 19959 has been channelized (upstream from the confluence with Threemile Creek). Crane Creek Canal is currently diverted into Fourmile Canal.
58. Under natural conditions, Threemile Creek is tributary to Crane Creek and Crane Creek is tributary to Fourmile Creek and Fourmile Creek is tributary to the marshes of Upper Klamath Lake.

59. This instream transfer is part of a larger restoration project involving another instream transfer application, T-12951 in the name of Sevenmile Creek Ranch. Both transfers are connected to a related project to reconnect Crane Creek with Fourmile Creek and restore Threemile Creek and Crane Creek to their natural channels along with improving streamflows in both creeks.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-12971 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-12971 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-12971 are approved.*
2. *Water right certificates 19959 and 29534 are cancelled. New certificates confirming the instream water rights shall be issued.*
3. *The quantities of water to be protected under the instream water right are:*

Threemile Creek, tributary to Crane Creek

Instream Reach No. 1: *At POD (as described in Finding of Fact No. 21) (at the mouth of Threemile Creek)*

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
29534	12/15/1954	June 1 through September 30	1.0	240.0

Crane Creek, tributary to Fourmile Creek

Instream Reach No. 2: *From the POD (as described in Finding of Fact No. 16 and 21), to the confluence with Threemile Creek*

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
19959	6/26/1941	April 1 through September 30	1.64	594.34
29534	12/15/1954	June 1 through September 30	2.60	633.90
Total Instream			4.24	1228.24

Instream Reach No. 3: *From the confluence with Threemile Creek to the mouth of Crane Creek*

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Rate Volume (AF)
19959	6/26/1941	April 1 through September 30	1.64	594.34
29534	12/15/1954	June 1 through September 30	3.60	873.90
Total Instream			5.24	1468.24

4. *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 point 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 point of diversion.*
6. *During the period April 1 through September 30, the instream rights 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 specified by an order approving 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 19959 and 29534 and any related decree.*
8. *The former place of use of the transferred water shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this 1st day of July 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Tom M. Byler, Director, Oregon Water Resources Department

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

This Revised Preliminary Determination was prepared by Laura Wilke. If you have questions about the information in this document, you may reach me at 503-986-0888 or Laura.K.Wilke@oregon.gov.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 30, 2020

VIA E-MAIL

Applicant

Mike Wampler

Wampler Ranches, LLC

PO Box 5144

Klamath Falls, OR 97601

SUBJECT: Instream Transfer Application T-12971

Please find enclosed the Revised Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12971. 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 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 Department's notice.

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 503-986-0888 or Laura.K.Wilke@oregon.gov if I may be of assistance. If you are unable to reach me, please contact Sarah Henderson. She may be reached at 503-986-0884 or Sarah.A.Henderson@oregon.gov.

Sincerely,

A handwritten signature in blue ink that reads "Laura Wilke". The signature is written in a cursive style.

Laura Wilke
Transfer Specialist
Transfer and Conservation Section

cc: T-12971
Danette M. Watson, District 17 Watermaster (*via e-mail*)
Chrysten Lambert, Trout Unlimited, Agent (*via e-mail*)
Daniel B. Scalas, CWRE #88332 (*via e-mail*)
Gail McGarry, Bureau of Reclamation (*via email*)

encs