

Instream Transfer

Name Gary SmithAddress 69519 Elgin Cemetery Rd.
Elgin, OR 97827
rangergaryb@gmail.comChange in USE, POWDate Filed 9-12-2024Initial notice date 9-24-2024

DPD issued date

PD issued date 2/25/2025PD notice date 3/4/2025Date of FO 5/8/2025 Vol 134 Page 625-631

C-Date

COBU due date

COBU Received date

Certificate issued

Assignments:

Irrigation District

Agent Trout Unlimited - Jessica Humphreys

CWRE

CC's list Union County ; City of Elgin ; Confederated Tribes of Umatilla Reservation

DESCRIPTION OF WATER RIGHT(S)

Name of Stream Clarks CreekTrib. of Grande Ronde RiverUse Irrigation County Union

Quantity of water (CFS) No. of Acres

Name of ditch

App# S-214 Per # S-132 Cert # 36706 PR Date 8/4/1909App# S-41782 Per # S-31186 Cert # 36696 PR Date 1/13/1966

App# Per # Cert # PR Date

App# Per # Cert # PR Date

App# Per # Cert # PR Date

FEES PAID

Date 9-18-24 Amount \$1,735.00 Receipt # CAC034

FEES REFUNDED

Date Amount Receipt #



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

DATE: MAY 08 2025

Applicant

Gary Smith

69519 Elgin Cemetery Road

Elgin, Oregon 97827

Agent

Trout Unlimited

Attn: Jessica Humphreys

401 NE 1st Street

Enterprise, OR 97828

SUBJECT: Instream Transfer Application T-14531

Enclosed is a copy of the final order approving your instream water right transfer application and copy of the confirming instream certificates.

I want to express appreciation for your participation in this program and cooperation in helping to improve streamflows for fish and aquatic life.

Please do not hesitate to contact me at Sarah.A.Henderson@water.oregon.gov or 503-979-9872 if I may be of assistance.

Sincerely,

Sarah Henderson

Flow Restoration Coordinator

Transfer and Conservation Section

cc: Transfer Application file T-14531
Shad Hattan, District 6 Watermaster (*via e-mail*)
Chris Brun, Trout Unlimited (*via e-mail*)
ODFW (*via e-mail*)
DEQ (*via e-mail*)

encs

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A CHANGE IN
T-14531, Union County)	PLACE OF USE AND CHARACTER OF USE

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant

Gary Smith
69519 Elgin Cemetery Road
Elgin, Oregon 97827

Agent

Trout Unlimited (TU)
Attn: Jessica Humphreys
401 NE 1st Street
Enterprise, OR 97828

Findings of Fact

1. On September 12, 2024, Gary Smith filed an application to change the place of use and character of use under Certificates 36696 and 36706 to instream use. The Department assigned the application number T-14531.
2. Notice of the application for transfer was published on September 24, 2024, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to the Union County Planning Department, the City of Elgin Public Work Department and the Confederated Tribes of the Umatilla Indian Reservation. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Instream Transfer Application T-14531.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On December 24, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14531 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 24, 2025, for the applicant to respond.
5. On January 23, 2025, the applicant's agent responded to the draft preliminary determination and requested changes to the instream rate and period protected instream. Additionally, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. A revised draft preliminary determination was issued to amend the instream rate and period of protection.
7. On January 29, 2025, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-14531 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of February 28, 2025, for the applicant to respond. On January 30, 2025, the applicant requested that the Department proceed with the issuance of a Preliminary Determination.
8. On February 25, 2025, the Department issued a Preliminary Determination proposing to approve Instream Transfer T-14531 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 4, 2025, and in the Eastern Oregonian newspaper on March 5 and 12, 2025, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
9. The first right to be transferred is as follows:

Certificate: 36696 in the name of Peter Westenskow (perfected under Permit S-31186)

Use: Irrigation of 40.0 acres

Priority Date: January 13, 1966

Quantity: **Rate:** 0.50 Cubic Foot per Second (CFS)

Volume: 100.0 Acre-Feet (AF)

Limit: 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 and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Clark's Creek, a tributary of Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER OF NW NE OF SECTION 25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	39 E	WM	24	SE SW	12.6
1 N	39 E	WM	25	NW NE	18.0
1 N	39 E	WM	25	NE NW	9.4
Total Acres					40.0

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

Certificate: 36706 in the name of Peter C. Westenskow (perfected under Permit S-132)

Use: Irrigation of 97.2 acres

Priority Date: August 4, 1909

Quantity: Rate: 1.22 Cubic Feet per Second (CFS)

Limit: 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.

Source: Clark's Creek, a tributary of Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER NW NE OF SECTION 25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	39 E	WM	23	NE SE	15.6
1 N	39 E	WM	23	SE SE	30.0
1 N	39 E	WM	24	NW SW	3.6
1 N	39 E	WM	24	SW SW	40.0
1 N	39 E	WM	24	SE SW	5.0
1 N	39 E	WM	25	NW NW	3.0
Total Acres					97.2

11. Certificate 36706 does not specify a duty limit per acre. However, the Grande Ronde River Decree specifies the duty limit as 3.0 af/acre.
12. Certificates 36696 and 36706 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of this instream transfer, an irrigation season of March 1 through October 31, consistent with OAR 690-250-0070, shall be used to establish when water may be protected instream.

13. For Certificate 36696, a total of 100.0 acre-feet of water may be beneficially used annually under the existing right.
14. For Certificate 36706, a total of 291.6 acre-feet of water may be beneficially used annually under the existing right.
15. Instream Transfer Application T-14531 proposes to change the place of use of the right to create an instream reach from the point of diversion to the mouth of Clark Creek.
16. The original application proposed the quantities of water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
36696	May 15 through September 1	0.50	100.0
36706	May 1 through September 30	1.22	291.6

17. The requested amendment to the proposed period to be protected is as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
36696	May 15 through August 22	0.50	100.0
36706	May 1 through August 29	1.22	291.6

18. There is an existing instream water right, Certificate 73018, within the same reach as that proposed for the new instream water rights.
19. 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)

20. The rights were leased instream under IL-1585 during the irrigation season of 2017 through 2021 and 2023 and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

21. A pump, pipeline, and sprinkler system sufficient to use 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-14531.

22. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

23. The quantities to be transferred and protected instream are as follows:
Clark's Creek, a tributary of Grande Ronde River

Instream Reach: From the POD (as described in Finding of Fact Nos. 9 & 10) to the mouth of Clark's Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
36696	January 13, 1966	0.50	100.0	May 15 through August 22
36706	August 4, 1909	1.22	291.6	May 1 through August 29

24. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by 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.

25. The proposed change, as conditioned, would not result in enlargement of the rights.

26. The proposed change, as conditioned, would not result in injury to other water rights.

27. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

28. The protection of flows within the proposed reach is appropriate, considering:

- The instream water rights begin at the recorded point of diversion;
- The location of confluences with other streams downstream of the point of diversion;
- There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the reach of the instream water rights.

29. The instream rights established by this instream transfer shall replace a portion of instream water rights established pursuant to ORS 537.336 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470. By adding to the

existing instream water right within the same reach during the month of September, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow. The estimated average natural flow may not be exceeded unless criteria for exceeding are met.

30. The Department has determined that the estimated average natural flows may be exceeded due to the following:
- a) There is an existing state agency established instream water right certificate (Certificate 73018) that covers the same reach or portion of the reach to be established by the proposed instream transfer. Filed by the Oregon Department of Fish and Wildlife (ODFW) and;
 - b) The water rights proposed to be transferred are within an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.
31. All other application requirements are met.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-14531 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-14531 are approved.
2. Water right certificates 36696 and 36706 are cancelled. New certificates confirming the instream water rights shall be issued.
3. The quantities to be transferred and protected instream are as follows:
Clark's Creek, a tributary of Grande Ronde River

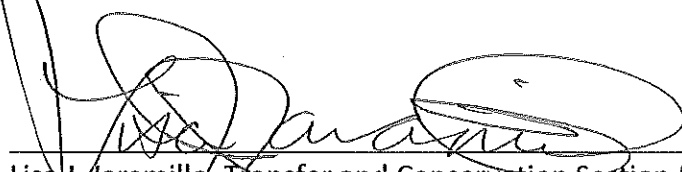
Instream Reach: From the POD (as described in Finding of Fact Nos. 9 & 10) to the mouth of Clark's Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
36696	January 13, 1966	0.50	100.0	May 15 through August 22
36706	August 4, 1909	1.22	291.6	May 1 through August 29

4. 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 point of diversion within the specified stream reach.

5. 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.
6. 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 36696 and 36706 and any related decree.
7. The former place of use of the transferred water rights shall no longer receive water as part of these rights.

Dated at Salem, Oregon this day MAY 08 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

Mailing date: MAY 09 2025

STATE OF OREGON

COUNTY OF UNION

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Clark Creek, a tributary of Grand Ronde River, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-31186. The date of priority is January 13, 1966.

The location of the diversion authorized previously under Certificate 36696 is located approximately at:

Twp	Rng	Mer	Sec	Q Q	Measured Distance
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER OF NW NE OF SECTION 25

The description of the stream reach in which flows are to be maintained is as follows:

Instream Reach: From POD (as described above) to the mouth of Clark Creek

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
January 13, 1966	0.46	100.0	May 15 through September 1

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 water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

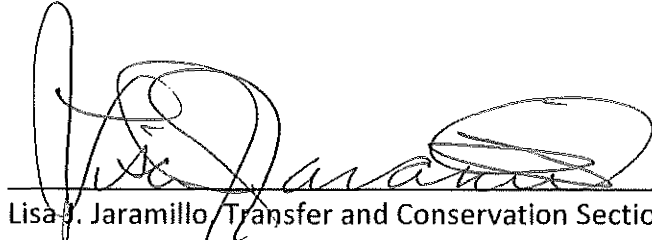
The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

The right is subject to all other terms and conditions of Certificate 36696, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 134, Page 625, approving Transfer T-14531, and supersedes Certificate 36696, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed MAY 08 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

STATE OF OREGON

COUNTY OF UNION

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Clark Creek, a tributary of Grand Ronde River, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was perfected under Permit S-132. The date of priority is August 4, 1909.

The location of the diversion authorized previously under Certificate 36706 is located approximately at:

Twp	Rng	Mer	Sec	Q Q	Measured Distance
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER OF NW NE OF SECTION 25

The description of the stream reach in which flows are to be maintained is as follows:

Instream Reach: From POD (as described above) to the mouth of Clark Creek

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
August 4, 1909	0.96	291.6	May 1 through September 30

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 water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

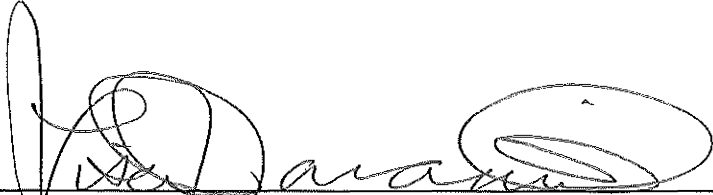
The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

The right is subject to all other terms and conditions of Certificate 36706, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 134, Page 625, approving Transfer T-14531, and supersedes Certificate 36706, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed MAY 08 2025.

A handwritten signature in black ink, appearing to read "Lisa J. Jaramillo", is written over a horizontal line.

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

WATER RIGHT TRANSFER COVER SHEET

Transfer: T-14531

Transfer Specialist: Sarah

Transfer Type: Instream Transfer

Reimbursement Authority? ☐

Applicant: GARY SMITH PO BOX 715 69519 ELGIN CEMETARY RD ELGIN, OR 97827	Agent: JESSICA HUMPHREYS 401 NE 1ST ST ENTERPRISE, OR 97828	Receiving Landowner:
Current Landowner if other than Applicant:	CWRE:	Irrigation District:
Affected Local Gov'ts: Union County	Affected Tribal Gov't:	BOR Notified (date):

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	S-214	S-132	36706	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	S-41782	S-31186	36696	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions (Support Staff)

Rec'd: September 18, 2024	Proposed Action(s): PLACE OF USE; USE	
Fees Pd: 1735.00	Acknowledgement Letter Sent <input checked="" type="checkbox"/>	Basin: 8 Grande Ronde
Initial Public Notice:	County sent cc: of Ack Letter <input checked="" type="checkbox"/>	County: UNION
WM District: 6 Shad L. Hattan	WM Review request sent: 9/18/24	WM Review date received: 10/15/24
ODFW District: n/a	ODFW Review sent: n/a	ODFW Review date received: n/a
Groundwater n/a	GW Review sent: n/a	GW Review date received: n/a

Caseworker Actions: Newspaper & PD Notice:

Newspaper notice needed: <input checked="" type="checkbox"/>	Name of Newspaper: <i>East Oregonian</i>
Newspaper notice sent to coordinator: 1/29/25	Newspaper notice quote requested (NRS1): 1/29/25
Request for news \$ sent: 1/30/25	News \$ received: 1/30/25 (customer account)
Affidavit of publication received:	Last day of publication:

Peer Review:

Document	Drafted	Peer Review	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: 12/23/24 Initials: sarah	Date: 12/24/24 Initials: Corey	Date: 12/24/24 Initials: Corey	Date: 12/24/24 Initials: Sarah	CW Sent: 12/24/24	N/A
PD	Date: 1/30/25 Initials: Sarah	Date: 2/3/24 Initials: Corey	Date: 2/3/24 Initials: Corey	Date: 2/3/24 Initials: Sarah Data Review Date: N/A for instream	Date: <i>2/20/25</i>	Date: <i>2/25/2025</i>
FO	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: <i>4/29/25</i> No. of docs for sig: <i>3</i>	Date: <i>5/8/2025</i>

Special Issues: _____

Special Order Volume: Vol. *134* Pages *625-631*

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **144832**

INVOICE # _____

RECEIVED FROM: Wanek Ranch, LLC

BY: _____

APPLICATION	
PERMIT	
TRANSFER	T-14307

CASH: ☐ CHECK: # 2201 OTHER: (IDENTIFY) ☐ _____

TOTAL REC'D \$ 524.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES <u>46118</u>	\$
<u>0207</u> OTHER: (IDENTIFY) <u>Newspaper Notice</u>	\$ <u>524.00</u>

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES	\$
0410 RESEARCH FEES	\$
0408 MISC REVENUE: (IDENTIFY) _____	\$
TC162 DEPOSIT LIAB. (IDENTIFY) _____	\$
0240 EXTENSION OF TIME	\$

WATER RIGHTS:

0201 SURFACE WATER	EXAM FEE	0202	RECORD FEE
0203 GROUND WATER	\$	0204	\$
0205 TRANSFER	\$		\$

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	EXAM FEE	0219	LICENSE FEE
LANDOWNER'S PERMIT	\$	0220	\$

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE	\$	CARD#	
0210 MONITORING WELLS	\$	CARD#	
OTHER (IDENTIFY) _____			

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FW/WRD)		\$
0231 HYDRO LICENSE FEE (FW/WRD)		\$
HYDRO APPLICATION		\$

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ \$ _____

RECEIPT:

144832

DATED: 3-2-25

BY: [Signature]

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR BAKER/GRANT/MORROW/UMATILLA/UNION/WALLOWA COUNTIES

}AFFIDAVIT OF PUBLICATION

STATE OF OREGON

Counties of Baker/Grant/Morrow/Umatilla/Union/Wallowa} ss

I, Audra Workman being duly sworn, depose and say that I am the principal clerk of the publisher of the East Oregonian, eastoregonian.com, bakercityherald.com, lagrandeobserver.com, hermistonherald.com, bluemountaineagle.com and wallowa.com, a newspaper of general circulation, as defined by ORS 193.010 and 193.020; that the

EO-13618 NOTICE OF PRELIMINARY DETERMINATION FOR WATER RIGHT TRANSFER T-14531 T-14531 FILED BY GARY SMITH 69519 ELGIN CEMETERY ROAD ELGIN OR 97827 PROPOSES A CHANGE IN THE PLACE OF USE AND CHARACTER

a printed copy of which is hereto annexed; was published in the entire issue of said newspaper for 2 successive and consecutive issues in the following issues:

3/05/25, 3/12/25

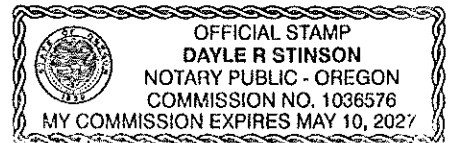
Subscribed and sworn to before me on this 12th day of March, A.D. 2025

Audra Workman
Dayle R Stinson
Notary Public of Oregon

Add: 467617

PO:

Tagline: EO-13618 T-14531



**EO-13618
Notice of Preliminary
Determination for
Water Right Transfer T-14531**

T-14531 filed by Gary Smith, 69519 Elgin Cemetery Road, Elgin, OR 97827, proposes a change in the place of use and character of use to instream use under Certificates 36696 and 36706. Certificate 36696 allows the use of up to 0.50 cubic foot per second (cfs) from Clark Creek in Sec. 24, T1N, R39E, WM for irrigation in Sects. 24 and 25, T1N, R39E, WM. Certificate 36706 allows the use of up to 1.22 cfs from Clark Creek in Sec. 24, T1N, R39E, WM for irrigation in Sects. 23, 24 and 25, T1N, R39E, WM. The applicant proposes to create an instream use in Clark Creek from the point of diversion to the mouth of Clark Creek at a maximum of 0.50 cfs under Certificate 36696 and 1.22 cfs under Certificate 36706. The Water Resources Department proposes to approve the transfer, based on the requirements of ORS Chapter 540 and OAR 690-380-5000 and OAR 690-077-0075.

Any person may file, jointly or severally, a protest or standing statement within 30 days after the last date of newspaper publication of this notice, 03/12/2025. Call (503) 986-0935 to obtain additional information. If no protests are filed, the Department will issue a final order consistent with the preliminary determination. Publish March 5, 12 2025



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

DATE FEB 25 2025

VIA CERTIFIED MAIL AND E-MAIL

Applicant

Gary Smith

69519 Elgin Cemetery Road

Elgin, Oregon 97827

Agent

Trout Unlimited

Attn: Jessica Humphreys

401 NE 1st Street

Enterprise, OR 97828

SUBJECT: Instream Transfer Application T-14531

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve instream application T-14531. 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 Eastern Oregonian 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 503-979-9872 or Sarah.A.Henderson@water.oregon.gov if I may be of assistance.

Sincerely,



Sarah Henderson
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-14531
Shad Hattan, District 6 Watermaster (*via e-mail*)

encs

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-14531, Union County)	PROPOSING APPROVAL OF A CHANGE IN
)	PLACE OF USE AND CHARACTER OF USE

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (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.

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Findings of Fact

1. On September 12, 2024, Gary Smith filed an application to change the place of use and character of use under Certificates 36696 and 36706 to instream use. The Department assigned the application number T-14531.
2. Notice of the application for transfer was published on September 24, 2024, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to the Union County Planning Department, the City of Elgin Public Work Department and the Confederated Tribes of the Umatilla Indian Reservation. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Instream Transfer Application T-14531.
4. On December 24, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14531 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 24, 2025, for the applicant to respond.

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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5. On January 23, 2025, the applicant's agent responded to the draft preliminary determination and requested changes to the instream rate and period protected instream. Additionally, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. A revised draft preliminary determination was issued to amend the instream rate and period of protection.
7. On January 29, 2025, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-14531 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of February 28, 2025, for the applicant to respond. On January 30, 2025, the applicant requested that the Department proceed with issuance of a Preliminary Determination.
8. The first right to be transferred is as follows:

Certificate: 36696 in the name of Peter Westenskow (perfected under Permit S-31186)

Use: Irrigation of 40.0 acres

Priority Date: January 13, 1966

Quantity: **Rate:** 0.50 Cubic Foot per Second (CFS)

Volume: 100.0 Acre-Feet (AF)

Limit: 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 and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Clark's Creek, a tributary of Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER OF NW NE OF SECTION 25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	39 E	WM	24	SE SW	12.6
1 N	39 E	WM	25	NW NE	18.0
1 N	39 E	WM	25	NE NW	9.4
Total Acres					40.0

9. The second right to be transferred is as follows:

Certificate: 36706 in the name of Peter C. Westenskow (perfected under Permit S-132)
Use: Irrigation of 97.2 acres
Priority Date: August 4, 1909
Quantity: **Rate:** 1.22 Cubic Feet per Second (CFS)
Limit: 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.
Source: Clark's Creek, a tributary of Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	39 E	WM	24	SE SW	2110 FEET NORTH AND 1780 FEET WEST FROM THE SOUTHEAST CORNER NW NE OF SECTION 25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	39 E	WM	23	NE SE	15.6
1 N	39 E	WM	23	SE SE	30.0
1 N	39 E	WM	24	NW SW	3.6
1 N	39 E	WM	24	SW SW	40.0
1 N	39 E	WM	24	SE SW	5.0
1 N	39 E	WM	25	NW NW	3.0
Total Acres					97.2

10. Certificate 36706 does not specify a duty limit per acre. However, the Grande Ronde River Decree specifies the duty limit as 3.0 af/acre.
11. Certificates 36696 and 36706 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of this instream transfer, an irrigation season of March 1 through October 31, consistent with OAR 690-250-0070, shall be used to establish when water may be protected instream.
12. For Certificate 36696, a total of 100.0 acre-feet of water may be beneficially used annually under the existing right.
13. For Certificate 36706, a total of 291.6 acre-feet of water may be beneficially used annually under the existing right.
14. Instream Transfer Application T-14531 proposes to change the place of use of the right to create an instream reach from the point of diversion to the mouth of Clark Creek.

15. The original application proposed the quantities of water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
36696	May 15 through September 1	0.50	100.0
36706	May 1 through September 30	1.22	291.6

16. The requested amendment to the proposed period to be protected is as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
36696	May 15 through August 22	0.50	100.0
36706	May 1 through August 29	1.22	291.6

17. There is an existing instream water right, Certificate 73018, within the same reach as that proposed for the new instream water rights.
18. 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)

19. The rights were leased instream under IL-1585 during the irrigation season of 2017 through 2021 and 2023 and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A pump, pipeline, and sprinkler system sufficient to use 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-14531.
21. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).

22. The quantities to be transferred and protected instream are as follows:
Clark's Creek, a tributary of Grande Ronde River

Instream Reach: From the POD (as described in Finding of Fact Nos. 8 & 9) to the mouth of
Clark's Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
36696	January 13, 1966	0.50	100.0	May 15 through August 22
36706	August 4, 1909	1.22	291.6	May 1 through August 29

23. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by 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.

24. The proposed change, as conditioned, would not result in enlargement of the rights.
25. The proposed change, as conditioned, would not result in injury to other water rights.
26. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
27. The protection of flows within the proposed reach is appropriate, considering:
- a) The instream water rights begin at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the reach of the instream water rights.
28. The instream rights established by this instream transfer shall replace a portion of instream water rights established pursuant to ORS 537.336 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470. By adding to the existing instream water right within the same reach during the month of September, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow. The estimated average natural flow may not be exceeded unless criteria for exceeding are met.

29. The Department has determined that the estimated average natural flows may be exceeded due to the following:
- a) There is an existing state agency established instream water right certificate (Certificate 73018) that covers the same reach or portion of the reach to be established by the proposed instream transfer. Filed by the Oregon Department of Fish and Wildlife (ODFW) and;
 - b) The water rights proposed to be transferred are within an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.

30. All other application requirements are met.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-14531 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-14531 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-14531 are approved.*
- 2. Water right certificates 36696 and 36706 are cancelled. New certificates confirming the instream water rights shall be issued.*
- 3. The quantities to be transferred and protected instream are as follows:
Clark's Creek, a tributary of Grande Ronde River*

Instream Reach: From the POD (as described in Finding of Fact Nos. 8 & 9) to the mouth of Clark's Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
36696	January 13, 1966	0.50	100.0	May 15 through August 22
36706	August 4, 1909	1.22	291.6	May 1 through August 29

- 4. 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 point of diversion within the specified stream reach.*

5. *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.*
6. *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 36696 and 36706 and any related decree.*
7. *The former place of use of the transferred water rights shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this day FEB 25 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, 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 503-979-9872 or Sarah.A.Henderson@water.oregon.gov

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

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.

Watermaster Review Form: Water Right Transfer



Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

Transfer Application: T-

Review Due Date:

Applicant Name:

Proposed Changes: ☒ POU ☐ POD ☐ POA ☒ USE ☐ OTHERReviewer(s): **Shad Hattan**Date of Review: **10/15/2024**

1. Do you have evidence that the right has not been used in the last 5 years and that the presumption of forfeiture would not likely be rebuttable? ☐ Yes ☒ No If "Yes", attach evidence (e.g. dated aerial photo showing pavement or building on the land for >5 yrs.)
2. Is there a history of regulation on the source that serves this (or these) right(s) that has involved the transferred right(s) and downstream water rights? ☐ Yes ☒ No Generally characterize the frequency of any regulation or explain why regulation has not occurred:
Clark Creek has not been regulated. There are few users and nearly no water after seasonal runoff.
3. Have headgate notices been issued for the source that serves the transferred right(s)?
☐ Yes ☒ No ☐ Records not available.
4. In your estimation, after the proposed change, would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized? ☐ Yes ☒ No If "Yes", explain:
5. In your estimation, if the proposed change is approved, are there upstream water rights that would be affected? ☐ Yes ☒ No If "Yes", describe how the rights would be affected and list the rights most affected:

6. Check here ☐ if it appears that downstream water rights benefit from return flows resulting from the current use of the transferred right(s)? If you check the box, generally characterize the locations where the return flows likely occur and list the water rights that benefit most:

☐ N/A

7. For POD changes and instream transfers, check here if there are channel losses between the old and new PODs or within the proposed instream reach? If you check the box, describe and, if possible, estimate the losses:

Expect losses at 1% per mile to the mouth. Note that for Certificate 36706, the original POD is about 5.4 stream miles above the confluence with Grande Ronde River while the original POD

☐ N/A

8. For instream transfers that propose protection of a reach beyond the mouth of the source stream:

☐ N/A Would the quantity be measureable into the receiving stream consistent with OAR 690-077-0015(8)? ☐ Yes ☐ No

9. For POU changes: ☐ N/A Is it likely the original place of use would continue to receive water from the same source? ☐ Yes ☐ No If "Yes", explain:

10. For POU or USE changes: ☐ N/A In your best judgment, would use of the existing right at "full face value," result in the diversion of more water than can be used beneficially and without waste? ☐ Yes ☐ No If "Yes", explain:

11. For POU changes that involve micro-irrigation: ☐ N/A

- a. Has the applicant made changes (absent a transfer) to convert to micro-irrigation within the current place of use boundary of the water right proposed for transfer, and previously demonstrated to the Department through monitoring and site inspections by the Watermaster that the proposed transfer will not result in injury or enlargement?

☐ Yes ☐ No If "Yes", explain:

- b. Has a temporary transfer of this nature been previously filed and approved on the same lands (or portions thereof) as those lands involved in this transfer?

☐ Yes ☐ No If "Yes", answer the following:

- i. Were there any problems with more acres being irrigated (or wetted) than were authorized under the temporary transfer? ☐ Yes ☐ No If "Yes", explain:
- ii. Did the designated areas that were to remain dry (or not wetted) under the temporary transfer actually remain dry? ☐ Yes ☐ No If "No", explain:
- iii. Did the applicant comply with and meet all of the conditions of the temporary transfer? ☐ Yes ☐ No If "No", explain:
- iv. Do you have any other observations regarding the temporary transfer?
☐ Yes ☐ No If "Yes", describe:
- v. Did the applicant demonstrate to the Department through monitoring and site inspections by the Watermaster that neither injury nor enlargement occurred as a result of the temporary transfer? ☐ Yes ☐ No If "No", explain:

- c. To the best of your knowledge, if this transfer is approved, does it appear that:

i. "Injury" will occur to other water rights that share the same source?
☐ Yes ☐ No If "Yes", explain:

ii. "Enlargement" of the water right being transferred will occur?
☐ Yes ☐ No If "Yes", explain:

12. Are there other issues not identified through the above questions that should be considered in determining whether the change "can be effected without injury to other rights"?

☐ Yes ☐ No If "Yes", explain:

13. What alternatives may be available for addressing any issues identified above:

14. Do conditions need to be included in the transfer order to avoid enlargement of the right or injury to other rights? ☐ No ☐ Yes, as checked and provided below:

☐ For POU changes that involve micro-irrigation, provide the monitoring and reporting conditions necessary to prevent injury/enlargement:

☐ A Headgate should be required prior to diverting water.

☐ Measurement Devices for POD or POA: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install a **totalizing flow meter***, or, with prior approval of the Director, another suitable measuring device, ☐ at each point of diversion/appropriation (new and existing) OR at each new point of diversion/appropriation ☐ with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*

b. The water user shall maintain the meters or measuring devices in good working order.

c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

☐ Reservoir water use measurement: (if this condition is selected, also fill in the top sections of Page 4)

*a. Before water use may begin under this order, the water user shall install **staff gages***, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*

b. Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.

* The following alternative device(s) should be substituted for the bold, underlined device in the above selected condition:

☐

Weir

☐

Submerged Orifice

☐

Parshall Flume

☐

Flow Restrictor

☐

Other: ____

Oregon Water Resources Department
Measurement Condition Information for the Applicant
(To be sent with the Draft Preliminary Determination or Final Order)

Transfer #: T-

☐ In order to avoid enlargement of the right or injury to other rights, a _____ will
 be required to be installed prior to diversion of water, as a condition of this transfer:
☐ at each point of diversion/appropriation (new and existing) **OR**
☐ at each new point of diversion/appropriation.

For additional information, or to obtain approval of a different type of measurement device, the applicant should contact the area Watermaster:

Watermaster name:

District:

Address:

City/State/Zip:

Phone:

Email:

Note: If a device other than the one specified in the Preliminary Determination or Final Order is approved by the Watermaster, fill out and mail the form below to the Salem office.

Approval of an Alternate Measurement Device T-
(to be filled out after consultation with the applicant, or after a site visit)

On behalf of the Director, I authorize use of the following suitable **alternate measurement device**:

 Watermaster signature

 District

 Date

If this form is used for approval of an alternative measurement device, it must be mailed to:

Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-1266

RICHMAN Elyse D * WRD

From: HATTAN Shad L * WRD
Sent: Tuesday, October 15, 2024 11:13 AM
To: WRD_DL_transferreviews
Subject: WMIR for T-14531- Gary Smith
Attachments: T-14531_Smith.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: REVIEWS

Note that due to lack of expansion ability in the form, I was unable to include my entire comment for question 7. The entire comment should be:

Expect losses at 1% per mile from POD's to the mouth. Note that for Certificate 36706, the original POD is about 5.4 stream miles above the confluence with Grande Ronde River while the original POD for Certificate 36696 is 2 miles above the confluence with Grande Ronde River.

Shad Hattan
Watermaster District 6
Oregon Water Resources Dept.
10507 N. McAlister Rd. Ste 6
La Grande, OR 97850

Phone: 541-963-1031
Agency web site <http://www.oregon.gov/OWRD>

WATER RIGHT TRANSFER COVER SHEET

Transfer: T-14531

Transfer Specialist: Sarah

Transfer Type: Instream Transfer

Reimbursement Authority? ☐

Applicant: GARY SMITH PO BOX 715 69519 ELGIN CEMETARY RD ELGIN, OR 97827	Agent: JESSICA HUMPHREYS 401 NE 1ST ST ENTERPRISE, OR 97828	Receiving Landowner:
Current Landowner if other than Applicant:	CWRE:	Irrigation District:
Affected Local Gov'ts: Union County	Affected Tribal Gov't:	BOR Notified (date):

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	S-214	S-132	36706	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	S-41782	S-31186	36696	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions (Support Staff)

Rec'd: September 18, 2024	Proposed Action(s): PLACE OF USE; USE	
Fees Pd: 1735.00	Acknowledgement Letter Sent <input type="checkbox"/>	Basin: 8 Grande Ronde
Initial Public Notice:	County sent cc: of Ack Letter <input type="checkbox"/>	County: UNION
WM District: 6 Shad L. Hattan	WM Review request sent:	WM Review date received:
ODFW District:	ODFW Review sent:	ODFW Review date received:
Groundwater	GW Review sent:	GW Review date received:

Caseworker Actions: Newspaper & PD Notice:

Newspaper notice needed: <input type="checkbox"/>	Name of Newspaper:
Newspaper notice sent to coordinator:	Newspaper notice quote requested (NRS1):
Request for news \$ sent:	News \$ received:
Affidavit of publication received:	Last day of publication:

Peer Review:

Document	Drafted	Peer Review	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	CW Sent: _____ WM Sheet <input type="checkbox"/> ODFW Sheet: <input type="checkbox"/>	N/A
PD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____ Data Review Date: _____	Date: _____	Date: _____
FO	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ No. of docs for sig: _____	Date: _____

Special Issues: _____

Special Order Volume: Vol. _____ Pages _____



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

September 18, 2024

GARY SMITH
PO BOX 715
69519 ELGIN CEMETARY RD
ELGIN, OR 97827

Reference: Instream Transfer T-14531

On September 18, 2024, we received your water right Transfer application. The application fees of \$1735.00 were deducted from Trout Unlimited's customer account.

By copy of this letter, we are asking the Watermaster for a report regarding the potential for injury to existing water rights which may be caused by the requested change.

This application may require publication of a notice for two consecutive weeks in a newspaper with general circulation in the area where the water right is located. If it is determined that newspaper notice will be required, the Department will prepare the notice and notify you of the cost. You will be responsible for submitting payment to the Department prior to publication of the notice.

Except as provided under ORS 540.510(3) for municipalities, you may not use water for the new use or in the new place of use until a final order approving the transfer application has been issued by the Department.

In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

If the land is sold before the application is approved, the buyer's consent to the application will be required unless a recorded deed or other legal document clearly established that the water right was not conveyed in the sale.

Refer to the following page for a chart showing the steps and expected timelines for the processing of your application.

If you have any questions, please contact the Transfer Section at (503) 986-0935.

Cc: Watermaster Dist. #6 (via email)
Jessica Humphreys, Agent
Union County
City of Elgin
Confederated Tribes of the Umatilla Reservation

Enclosure

Application for Water Right Instream Transfer

Part 1 of 6 – Minimum Requirements Checklist



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

This transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.

For questions, please call (503) 986-0900, and ask for Transfer Section.

FOR ALL INSTREAM TRANSFER APPLICATIONS

Check all items included with this application. (N/A = Not Applicable)

Received

SEP 12 2024

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- ☒ Part 1 – Completed Minimum Requirements Checklist.
- ☒ Part 2 – Completed Map Checklist.
- ☒ Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at:
http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator. If you have questions, call Customer Service at (503) 986-0801.

Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.

- ☒ Part 4 – Completed Applicant Information and Signature.
- ☒ Part 5 – Completed Instream Use Information.
- ☒ Part 6 – Information about the Transferred Water Rights: How many water rights are to be transferred? 2 List them here: **36706; 36696**
Please include a separate Part 6 for each water right. (See instructions on page 8)

Attachments:

- ☒ Completed Instream Transfer Application Map.
- ☒ Completed Evidence of Use Affidavit and supporting documentation.
- ☐ ☒ N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
- ☐ ☒ N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- ☒ Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application.

(For Staff Use Only)

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- ☐ Application fee not enclosed/insufficient ☐ Map not included or incomplete
- ☐ Land Use Form not enclosed or incomplete
- ☐ Additional signature(s) required ☐ Part _____ is incomplete

Other/Explanation _____

Staff: _____ 503- _____ Date: ____/____/____

Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- ☒ ☐ N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see http://apps.wrd.state.or.us/apps/wr/cwre_license_view/.
- OR**
- ☐ ☒ N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department's Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- ☐ ☒ N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- ☒ Permanent quality printed with dark ink on good quality paper.
- ☒ The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- ☒ A north arrow, a legend, and scale.
- ☒ The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- ☒ Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- ☒ Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- ☒ Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- ☒ Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- ☒ Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- ☒ Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

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Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
2	Number of water rights included in transfer <u>2 (2a)</u> Subtract 1 from the number in 2a above: <u>1 (2b)</u> <i>If only one water right, this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » »	2	610
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>1.72 (3a)</u> Subtract 1.0 from the number in 3a above: <u>.72 (3b)</u> If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: <u>1(3c)</u> and multiply 3c by \$410, then enter on line 3 » » » » » » » »	3	410
4	Add entries on lines 1 through 3 above » » » » » » » » » Subtotal:	4	3470
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » »	5	1735
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » Transfer Fee:	6	1735

*Example for Line 3a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

1. For irrigation calculate cfs for each water right involved as follows:
 - a. Divide total authorized cfs by total acres in the water right (*for C12345, 1.25 cfs ÷ 100 ac*); then multiply by the number of acres to be transferred to get the transfer cfs (*x 45 ac = 0.56 cfs*).
 - b. If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (*For C87654, 45.0 ac x 0.0125 cfs/ac = 0.56 cfs*)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each “on the ground” acre included in the transfer. (*In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0*).

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Part 4 of 6 – Applicant Information and Signature

Is this a ☒ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

Applicant Information

APPLICANT/BUSINESS NAME Gary Smith			PHONE NO. 928-961-3370	ADDITIONAL CONTACT NO.
ADDRESS 69519 Elgin Cemetery Rd.			FAX NO.	
CITY Elgin	STATE Oregon	ZIP 97827	E-MAIL rangergaryb@gmail.com	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME Jessica Humphreys / Trout Unlimited			PHONE NO. 541-913-3750	ADDITIONAL CONTACT NO.
ADDRESS 401 NE 1st St.			FAX NO.	
CITY Enterprise	STATE Oregon	ZIP 97828	E-MAIL Jessica.humphreys@tu.org	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

Explain in your own words what you propose to accomplish with this transfer application, and why: Legally transfer the entirety of our two water surface irrigation rights to OWRD for an instream water right to protect surface flows from the point of diversion to the mouth of Clark Creek. The goal is to restore summer habitat in Clark Creek for steelhead and Chinook salmon and restoration of the aquatic ecosystem.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

☐ Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

Check one box

- ☒ By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- ☐ I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- ☐ I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: Eastern Oregonian.

I (we) affirm that the information contained in this application is true and accurate.

 _____ Applicant Signature	GARY SMITH (Landowner) Print Name (and Title if applicable)	_____ Date
_____ Applicant Signature	_____ Print Name (and Title if applicable)	_____ Date

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Part 4 of 6 – Applicant Information and Signature.

Is this a ☒ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

Applicant Information

APPLICANT/BUSINESS NAME Gary Smith		PHONE NO. 928-961-3370	ADDITIONAL CONTACT NO.
ADDRESS 69519 Elgin Cemetery Rd.		FAX NO.	
CITY Elgin	STATE Oregon	ZIP 97827	E-MAIL rangergaryb@gmail.com
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

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AGENT/BUSINESS NAME Jessica Humphreys / Trout Unlimited		PHONE NO. 541-913-3750	ADDITIONAL CONTACT NO.
ADDRESS 401 NE 1st St.		FAX NO.	
CITY Enterprise	STATE Oregon	ZIP 97828	E-MAIL Jessica.humphreys@tu.org
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.			

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- ☐ I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; OR
- ☐ I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: Eastern Oregonian.

I (we) affirm that the information contained in this application is true and accurate.


Applicant Signature

GARY SMITH (Landowner)
Print Name (and Title if applicable)

9/5/24
Date

Applicant Signature

Print Name (and Title if applicable)

Date

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Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located? ☒ Yes ☐ No *If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.*

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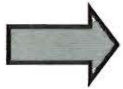
Check the following boxes that apply:

- ☐ Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

- ☐ Check here if water for any of the rights is supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME Union County	ADDRESS 1001 Fourth St.	
CITY La Grande	STATE Oregon	ZIP 97850

ENTITY NAME City of Elgin	ADDRESS 790 S. 8th Ave.	
CITY Elgin	STATE Oregon	ZIP 97827

ENTITY NAME Confederated Tribes of Umatilla Reservation	ADDRESS 46111 Timine Way	
CITY Pendleton	STATE Oregon	ZIP 97801

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP

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Part 5 of 6 – Proposed Instream Use Information

Identify the Public Use for which the instream right is requested (check at least one box):

- ☒ Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- ☐ Recreation
- ☐ Navigation
- ☐ Pollution Abatement

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Instream use proposed to be created by the instream transfer:

Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
36706	08/04/1909	Clark Creek	May 1 through Sept. 30	1.22	291.6
36696	01/13/1966	Clark Creek	May 15 through Sept. 1	0.5	100
TOTAL VOLUME					391.6

***Tip:** To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

****Tip:** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Additional Information: _____.

Identify the location of the proposed instream water right.

- ☐ Water is requested to be protected at a point.
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1): _____.
- ☒ Water is requested to be protected within a reach:
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach): From POD to mouth of Clark Creek.

Recommendations for conditions on the instream use to avoid taking away or impairing existing water rights.

- ☒ None
- ☐ Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels): _____.

Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof?

☐ No ☒ Yes (identify other instream water rights): 73018.

Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

☒ Yes ☐ No. If no, please explain your intent: _____.

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?

☒ No; OR

☐ Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); OR

☐ Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:

☐ The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, and

☐ For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; or

☐ The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

For a Time Limited Instream Transfer, please answer the following:

☐ The time-limited instream transfer is for a specific number of years:
_____ Begin Year to _____ End Year

☐ Time-limited instream transfer is to terminate based upon other conditions:
Conditions: _____.

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Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

CERTIFICATE # 36706

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SEP 12 2024

Name on Certificate: Peter C. Westenskow

Date(s) of Priority: August 4, 1909

Source(s) of Water to be Affected by the Transfer: Clark Creek (tributary to Grande Ronde River)

Description of Water Delivery System

System capacity: 1.22 cubic feet per second (cfs) OR
 ___ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. Submersible draft connected to a 125hp electric pump inside a permanent pumphouse used to withdraw water from Clark Cr and pump 240 ft uphill through 8" in dia mainline to 5,662 ft of 8" distribution buried piping with 4" risers. The point of diversion has multiple rights associated with it – both Certificates 36706 and 36696, having a capacity of 1.72 cfs total.

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☒ Yes ☐ No

If YES, list the certificate, water use permit, or ground water registration numbers: 36696.


 Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

Table 1. Location of Authorized Point(s) of Diversion (POD)

(Note: If the POD name is not specified on the certificate, assign it a name or number here.

Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
1		1	N	39	E	24	SE	SW		2,110 feet North and 1,780 feet West from the Southeast corner NWNE of Section 25

Will the proposed instream transfer affect the entire water right?

☒ Yes Then Table 2 on Page 10 does not need to be completed.

☐ No Then complete all of Table 2 to describe the portion of the water right to be changed.

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Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

Table 2. Description of Change to Water Right Certificate # _____

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

Twp		Rng		Sec	¼ ¼		Tax Lot	Gov't Lot or DLC	Acres If Applicable	Type of USE listed on Certificate	Priority Date (if not the same for all acres or type of use)	POD(s) (name or number from Table 1)
2	S	9	E	14	NE	NW	100		15.0	Irrigation	4/1/1900	POD #1 POD #2
"	"	"	"	"	"	"	"	"	EXAMPLE	"	"	"
TOTAL ACRES												

Additional remarks: _____

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CERTIFICATE # 36696

Name on Certificate: Peter Westenskow

Date(s) of Priority: January 13, 1996

Source(s) of Water to be Affected by the Transfer: Clark Creek

Description of Water Delivery System

System capacity: 0.5 cubic feet per second (cfs) OR
__ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. Submersible draft connected to a 125 hp electric pump inside a permanent pumphouse used to withdraw water from Clark Cr and pump 240 ft uphill through 8 in dia mainline to 4" dia hand lines with sprinkler. The point of diversion has multiple rights associated with it – both Certificates 36706 and 36696, having a capacity of 1.72 cfs total.

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☒ Yes ☐ No

If YES, list the certificate, water use permit, or ground water registration numbers: 36706.


 Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

Table 1. Location of Authorized Point(s) of Diversion (POD)

(Note: If the POD name is not specified on the certificate, assign it a name or number here.

Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov't Lot	Measured Distances (from a recognized survey corner)
		1	N	39	E	24	SE	SW		2,110 feet North and 1,780 feet West from the Southeast corner NWNE of Section 25

Will the proposed instream transfer affect the entire water right?

☒ Yes Then Table 2 on Page 10 does not need to be completed.

☐ No Then complete all of Table 2 to describe the portion of the water right to be changed.

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Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

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List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

Twp		Rng		Sec		¼ ¼		Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date (if not the same for all acres or type of use)	POD(s) (name or number from Table 1)
2	S	9	E	14	NE	NW		100		15.0	Irrigation	4/1/1900	POD #1 POD #2
"	"	"	"	"	"	"	"	"	"	EXAMPLE	"	"	"
TOTAL ACRES													

Additional remarks: _____

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Application for Water Right Transfer Evidence of Use Affidavit



Oregon Water Resources Department
125 Summer Street NE, Suite A
Salem, Oregon 97301-1266
503) 986-0900
www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing.
Supporting documentation must be attached.

State of Oregon)
County of UNION) ss

I, GARY SMITH, in my capacity as LANDOWNER,
mailing address PO BOX 715, ELGIN, OR.,

telephone number (928)961-3370, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one):

Personal observation

Professional expertise

2. I attest that:

Water was used during the previous five years on the **entire** place of use for
Certificate # 36706 AND 36696; **OR**

My knowledge is specific to the use of water at the following locations within the last five years:

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)
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OR

Confirming Certificate # has been issued within the past five years; **OR**

Part or all of the water right was leased instream at some time within the last five years. The
instream lease number is: IL-1588 (Note: If the entire right proposed for
transfer was not leased, additional evidence of use is needed for the portion not leased instream.);
OR

The water right is not subject to forfeiture and documentation that a presumption of forfeiture for
non-use would be rebutted under ORS 540.610(2) is attached.

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OWRD

Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # _____ (For Historic POD/POA Transfers)

(continues on reverse side)

Received

SEP 12 2024

OWRD

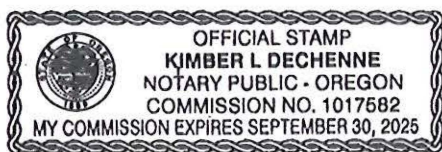
3. The water right was used for: (e.g., crops, pasture, etc.):

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

Gary Smith
Signature of Affiant

Date August 19, 2024

Signed and sworn to (or affirmed) before me this 19th day of August, 2024.



Kimber L. DeChenne
Notary Public for Oregon

My Commission Expires: 9/30/2025

Supporting Documents

Examples

Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)

Copy of **confirming** water right certificate that shows issue date

Copies of receipts from sales of irrigated crops or for expenditures related to use of water

- Power usage records for pumps associated with irrigation use
- Fertilizer or seed bills related to irrigated crops
- Farmers Co-op sales receipt

Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers

- District assessment records for water delivered
- Crop reports submitted under a federal loan agreement
- Beneficial use reports from district
- IRS Farm Usage Deduction Report
- Agricultural Stabilization Plan
- CREP Report

Aerial photos containing sufficient detail to establish location and date of photograph

Multiple photos can be submitted to resolve different areas of a water right.

If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.

Sources for aerial photos:

OSU – www.oregonexplorer.info/imagery

OWRD – www.wrd.state.or.us

Google Earth – earth.google.com

TerraServer – www.terra-server.com

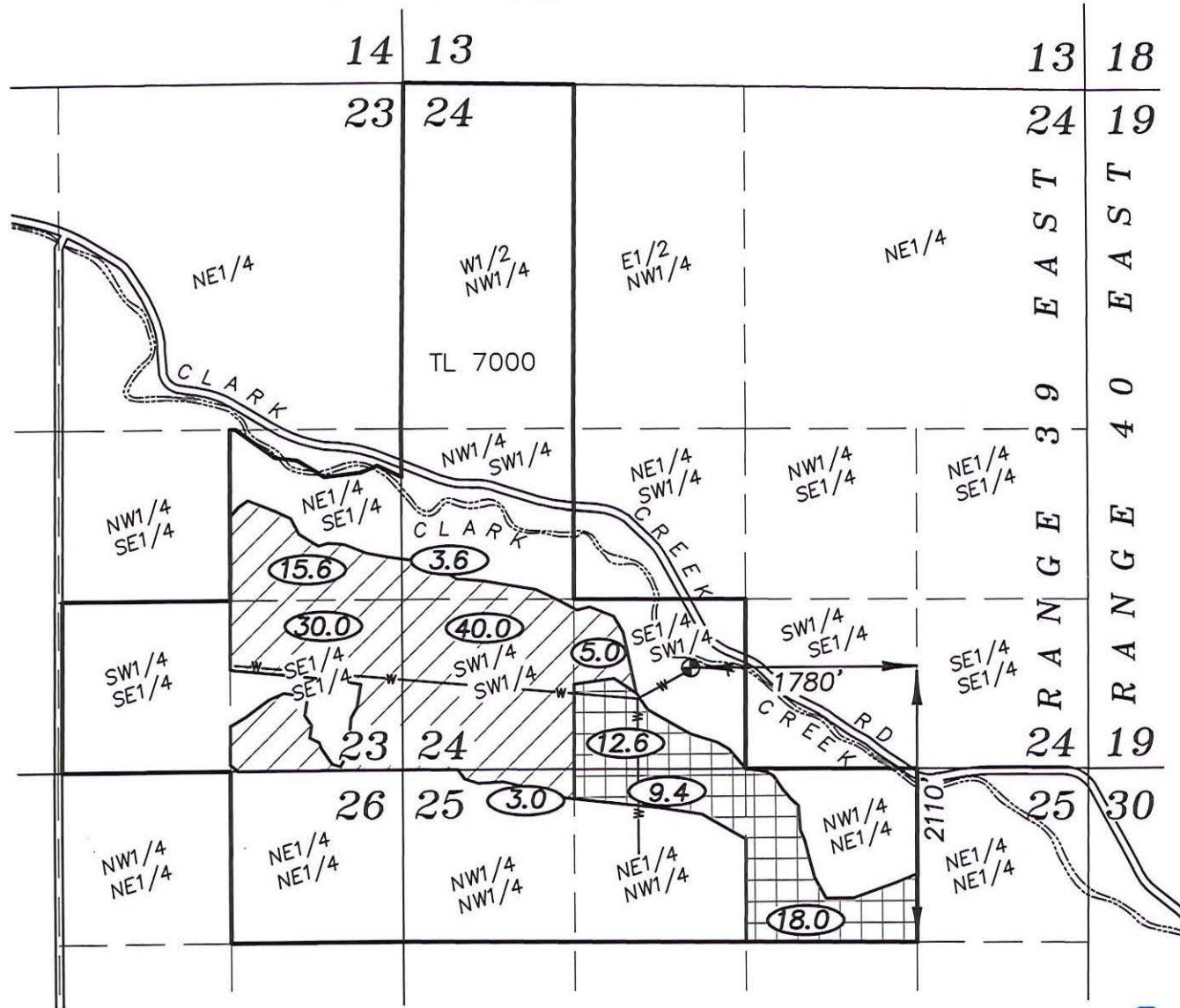
Approved Lease establishing beneficial use within
the last 5 years

Copy of instream lease or lease number

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OWRD

API

TOWNSHIP 1 NORTH RANGE 39 EAST



Received

SEP 12 2

OWRI



Received
SEP 12 2024
OWRD

September 9, 2024

To: Sarah Henderson
Flow Restoration Coordinator
Oregon Water Resources Department
725 Summer Street NE Suite A
Salem, Oregon

From: Chris Brun
Catherine Creek/Umatilla Basin Flow Restoration Project Manager
Trout Unlimited
Enterprise, Oregon

RE: Smith Application for Water Right Instream Transfer

Trout Unlimited is submitting the enclosed Application for Water Right Instream Transfer and supporting materials on behalf of the water right holder – Gary Smith of Elgin Oregon. Charge all application fees to Trout Unlimited Customer Account #0034. Please include myself on all correspondence related to this application and instream water right transfer. Thank you for your assistance.

CHRIS BRUN
(541) 891-3699
chris.brun@tu.org

Enclosures:

- Application for Water Right Instream Transfer
- Transfer Application Map
- Evidence of Use Affidavit
- Land Use Notice

OREGON WATER RESOURCES DEPARTMENT

ACCOUNT ACTIVITY RECORDAccount Name: TU – Trout Unlimited– CA0034Activity Date: September 18, 2024*Please complete and leave at the WRIG counter.*

Transaction Description		Project Name	Customer contact name	Department personnel providing service	Amount of Activity
Deposit to account					
Copying					
Other: Instream Transfer Application	1	T-14531-Smith-TU: 1 @\$1,735.00 ea.	Chris Brun	Stacy Phillips For Sarah Henderson	Total: \$1,735.00