BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Transfer Application T-14617, Umatilla County	)))	PROPOSED FINAL ORDER APPROVING AN ADDITIONAL POINT OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

J FRANK SCHMIDT AND SON
C/O SAM DOANE
PO BOX 189
BORING, OR 97009

Findings of Fact

1. On February 24, 2025, J Frank Schmidt and Son, c/o Sam Doane filed an application for an additional point of diversion under Certificates 89955 and 89956. The Department assigned the application number T-14617.

2. Notice of the application for transfer was published on March 4, 2025, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

3. On September 3, 2025, the Department sent a copy of the draft Preliminary Determination (further referred to as Initial Review) to the applicant, proposing to deny Transfer Application T-14617. The Initial Review cover letter provided a deadline of October 3, 2025, for the applicant to respond and submit the required information.

4. On September 11, 2025, the Department met with the applicant and applicants' agent to discuss the consent to injury process and the reasons for the application's denial.

Under ORS 540.520(8) and (9) and ORS 536.077(1), any person may file a protest of this Proposed Final Order within 30 days after publication of notice of this Proposed Final Order in the Department's weekly notice. Under ORS 540.520(9) and ORS 536.077(2), if a protest is filed, any person who supports this Proposed Final Order may file a request for party status within 30 days after the deadline for filing a protest. Please refer to the end of this document for further information about filing protests and requests for party status.

5. Review of the application identified 15 instream water rights that may be injured within the stream's reach between the authorized point of diversion and the requested point of diversion. Those Certificates are 89165, 94144, 89167, 94257, 77006, 83295, 94112, 91464, 7707, 91215, 94124, 89163, 94126, 83361, and 81536. The Department recommended pursuing consent to injury for the instream water rights affected.

6. On September 12, 2025, the applicant's agent requested pursuing consent to injury and provided necessary information to demonstrate that the applicant is authorized to pursue the transfer.

7. On December 17, 2025, the Department received communication via email indicating the applicant changed their registered agent to Robert Long and Ian Godwin of CWM H2O LLC.

8. On April 7, 2026, the applicant's agent requested the Department clarify the determination made in the Initial Review. The Department identified the potential for injury in the upstream move of point of diversion within a reach where instream water rights exist.

9. On April 16, 2026, the applicant provided the Department with evidence that the water being used under Certificates 89955 and 89956 have two shared points of diversion and the applicant had been pumping water from the point furthest upstream as identified in the description of the Certificates below as (ORIGINAL POD).

10. On May 12, 2026, the applicant's agent provided evidence indicating the additional point of diversion would not cause injury to the Instream Certificates and should be re-examined.

11. Upon re-examination, the Department determined Transfer Application T-14617 as conditioned would not injure the aforementioned instream rights.

12. On July 26, 2026, the Department sent a copy of the revised Initial Review to the applicant, proposing to approve Transfer Application T-14617. The revised Initial Review cover letter provided a deadline of August 25, 2026, for the applicant to respond and submit the required information. The applicant requested that the Department proceed with issuance of a Proposed Final Order and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate:	89955 in the name of J FRANK SCHMIDT AND SON (perfected under Permit S-1303)
Use:	IRRIGATION OF 93.0 ACRES
Priority Date:	JULY 24, 1912
Rate:	1.16 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.

Source: WALLA WALLA RIVER, tributary of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	ADDITIONAL POD - 1150 FEET SOUTH AND 630 FEET WEST FROM THE N1/4 CORNER OF SECTION 1
5 N	35 E	WM	1	NE SW	ORIGINAL POD - NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	1	NE NE	40.0
5 N	35 E	WM	1	SE NE	40.0
6 N	35 E	WM	36	SE SE	13.0
				TOTAL	93.0

14. Transfer Application T-14617 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the Authorized Points of Diversion in Feet (FT)
5 N	35 E	WM	1	SE NW	PROPOSED POD - 1580 FEET SOUTH AND 475 FEET WEST FROM THE N1/4 CORNER OF SECTION 1	ORIGINAL POD - 2150 FT DOWNSTREAM ADDITIONAL POD - 635 FT UPSTREAM

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

Certificate: 89956 in the name of J FRANK SCHMIDT AND SON (confirmed by Walla Walla River Decree)

Use: IRRIGATION OF 80.09 ACRES

Priority Date: 1897

Rate: 21.66 MINERS' INCHES

Source: WALLA WALLA RIVER, tributary of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	ADDITIONAL POD - 1150 FEET SOUTH AND 630 FEET WEST FROM THE N1/4 CORNER OF SECTION 1
5 N	35 E	WM	1	NE SW	ORIGINAL POD - NONE GIVEN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	1	NW NE	30.20

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	1	SW NE	39.90
5 N	35 E	WM	1	NE NW	2.80
5 N	35 E	WM	1	SE NW	7.19
				TOTAL	80.09

16. Transfer Application T-14617 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from the Authorized Points of Diversion in Feet (FT)
5 N	35 E	WM	1	SE NW	PROPOSED POD - 1580 FEET SOUTH AND 475 FEET WEST FROM THE N1/4 CORNER OF SECTION 1	ORIGINAL POD - 2150 FT DOWNSTREAM ADDITIONAL POD - 635 FT UPSTREAM

17. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-0100(14), OAR 690-380-4010(2), and OAR 690-380-2110(2)]

18. Water has been used within the five-year period prior to submittal of Transfer Application T-14617 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

19. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-14617.

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

21. The proposed additional point of diversion diverts water from the same source of surface water as the authorized points of diversion, as required by OAR 690-380-2110(2).

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

23. The proposed change, as conditioned, would not result in the injury of other existing rights.

24. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion, as proposed in Transfer Application T-14617, appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-14617 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-14617 is approved.*

2. *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 89955, 89956 and any related decree.*

3. *Approval of this transfer application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of diversion.*

4. *Water right Certificates 89955 and 89956 are cancelled.*

5. *For Certificate 89955, the quantity of water diverted at the new additional point of diversion (Proposed POD), together with that diverted at the authorized points of diversion (Original POD and Additional POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Original POD).*

6. *For Certificate 89956, the quantity of water diverted at the new additional point of diversion (Proposed POD), together with that diverted at the authorized points of diversion (Original POD and Additional POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Original POD).*

7. *Water shall be acquired from the same source of surface water as the original points of diversion.*

8. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*

   Water use measurement conditions:

   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 (new and existing).

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.

9. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

   The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before* ***October 1, 2028****. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

11. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on 9/17/2026

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This proposed final order was prepared by Dante Luongo. If you have questions about the information in this document, you may reach me at 971-304-5006 or Dante.J.Luongo@water.oregon.gov.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by October 22, 2026, **and the Department does not withdraw this Proposed Final Order on or before November** 24, 2026**, this Proposed Final Order is a final order without any further action by the Department on November** 24, 2026**.**

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 540.520(8) and (9) and ORS 536.077(1), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.d.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **October** 22, 2026.

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;
- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant's interest in the Proposed Final Order, and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonably available arguments that support the protestant's position;
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;

- If the protestant is the applicant, include a protest fee of $720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of $1,425 required by ORS 536.050.

Requests for Party Status: Under the provisions of ORS 540.520(9) and ORS 536.077(2), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than **November** 23, 2026.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requestor and any organization the requestor represents;
- Name, address, and email address of the requestor's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of $1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 690-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of Right to Pursue Approval of Transfer through Consent to Injury Process after Contested Case Hearing: If after a contested case hearing on this Proposed Final Order the Department issues a proposed 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 OAR 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under OAR 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 OAR 690-380-5030 to 690-380-5050.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. 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 137-003-0555, an "authorized representative" as defined at OAR 137-003-0555(1)(b) may represent a partnership, corporation, association, governmental subdivision or public or private organization 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 to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. 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 a request for party status, or if you have previously filed a protest or a request for party status 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.

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

September17, 2026

VIA CERTIFIED MAIL AND E-MAIL

J FRANK SCHMIDT AND SON
C/O SAM DOANE
PO BOX 189
BORING, OR 97009

SUBJECT: Water Right Transfer Application T-14617

Please find enclosed the Proposed Final Order indicating that, based on the information available, the Department intends to approve application T-14617. 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 East Oregonian newspaper, simultaneously with issuance of the Proposed Final Order. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Proposed Final Order or a request for party status supporting the Department's decision. The protest period will end 30 days after the Department's notice.

The Proposed Final Order will become a Final Order 33 days after the protest period ends without any further action by the Department, as a matter of law, if no protest is filed.

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 Proposed Final Order to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 971 304-5006 or Dante.J.Luongo@water.oregon.gov, if I may be of assistance.

Sincerely,

Dante Luongo
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-14617
Luke C. Martin, District 23 Watermaster *(via e-mail)*
Robert Long, Ian Godwin, Agents for the applicant *(via e-mail)*