

**RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:**

Chrysten Lambert  
Trout Unlimited  
700 Main Street, Suite 201 A  
Klamath Falls, OR 97601

SPACE ABOVE THIS LINE FOR RECORDER'S  
USE

**ACCESS EASEMENT AND BYPASS FLOW COVENANT  
(Deming Ranch)**

THIS ACCESS EASEMENT AND BYPASS FLOW COVENANT (this "**Easement Agreement**") is made as of the date of last signature, by and between the **DEMING RANCH LAND & CATTLE, LLC**, a California limited liability company ("**Grantor**"), and the **Trout Unlimited**, a Michigan nonprofit corporation ("**Grantee**"). Grantor and Grantee are sometimes individually referred to herein as a "**Party**" and collectively referred to herein as the "**Parties**."

**Recitals**

A. Grantor and Grantee are parties to that certain unrecorded Water Rights Option to Transfer Agreement dated as of February 7, 2013, as amended (the "**Option Agreement**"), whereby Grantee agreed to purchase, and Grantor agreed to sell, certain water rights then appurtenant to certain real property owned by Grantor in Klamath County, Oregon, as more particularly described in the legal description attached hereto as Exhibit 1 and incorporated herein by this reference (the "**Property**").

B. Such water rights have been transferred instream pursuant to the Option Agreement (the "**Instream Water Rights**") by virtue of water right Certificates or Final Order attached hereto as Exhibit 2 and incorporated herein by this reference.

C. Pursuant to the terms of this Easement Agreement, Grantor has agreed to grant to Grantee a non-exclusive easement over and across those portions of the Property (the "**Easement Area**") that are reasonable necessary in order for Grantee to monitor and maintain the Instream Water Rights.

D. Additionally, Grantor has agreed to grant to Grantee a Bypass Flow Covenant to ensure a continuous minimum flow in Deming Creek of 2.44 cfs notwithstanding the authorization to divert such flows for storage under Oregon Reservoir Permit No. R-716 / Certificate 21415 and under Reservoir Permit R-1907 / Certificate 30090.

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## Agreement

1. Grant of Assess Easement. Grantor hereby grants to Grantee a non-exclusive easement for ingress and egress over and across the Easement Area for the sole purpose of monitoring (a) water use on the Property, and (b) instream water flow and fisheries habitat within flowing water bodies on the Property (the “**Easement**”). The term “monitoring,” as used herein, expressly excludes any form of fishing, hunting, or recreational pursuit. In no event shall the Easement be used for recreational or subsistence fishing and/or hunting.

2. Grant of Bypass Flow Covenant. Grantor hereby agrees to curtail storage into the reservoir known as Campbell Reservoir Oregon Reservoir Permit No. R-716 / Certificate 21415 and under Reservoir Permit R-1907 / Certificate 30090 from Deming Creek in order to maintain a minimum of 2.44 cfs of flow in the natural channel of Deming Creek channel at all times. Provided, however, that if the unimpaired natural flow of Deming Creek is less than 2.44 cfs, only the unimpaired natural flow should be left instream. Grantor shall not be required to release from the reservoir in order to maintain this flow requirement. Grantor shall have a reasonable grace period [but not more than 3 days] to respond to any rapid decline in the unimpaired natural flow of Deming Creek that would require curtailing diversions under this provision.

3. Grant of Monitoring Easement. Grantor hereby grants and conveys to Grantee an easement to install, operate, maintain, and repair instream monitoring devices or structures to assure that the minimum flow requirement is met. Grantee shall design, construct, and maintain all fixtures that it elects to install in a fashion to minimize noise, bulk, visibility, and other impacts adverse to the use of the Grantor, to the maximum extent that is commercially feasible. Grantee shall be responsible for all expenses related to, and shall perform all installation, maintenance, repair, administration, and operation associated with, use of its easement rights hereunder.

4. Grantor’s Continued Use of the Property. Grantee hereby acknowledges that the Property is currently operated as a working cattle ranch, and (a) agrees to use the Easement in a manner that will not interfere with the ongoing ranching operations, and (b) assumes the ordinary risks associated with use of the Property while such ranching operations are under way.

5. No New Water Rights. Grantor shall be expressly forbidden from applying for or petitioning the State of Oregon to issue new water rights for irrigation purposes, or groundwater uses in excess of those allowed by one well under Oregon’s Domestic Groundwater Exemption or to provide for off-stream stock water on the Property upon which the Instream Water Rights were historically appurtenant.

6. Notice. Grantee may enter the Property only upon 24 hours’ prior written, email or telephone notice to Grantor. Notices shall be delivered to Grantor at the following address:

Deming Ranch Land & Cattle, LLC  
c/o Wildlands  
3855 Atherton Road  
Rocklin, California 95765  
Attention: Daniel Kominek

7. Indemnity by Grantee. Grantee shall indemnify, defend and hold harmless Grantor and Grantor's members and managers from and against any claims, demands, actions, suits, judgments, losses, damages, penalties, fines, costs, or expenses, including reasonable attorneys' fees, arising from or in connection with Grantee's use of the Property and/or breach of this Easement Agreement, including, without limitation, any losses of life, personal or bodily injury or damage to property of third parties resulting from the acts or omissions of Grantee and/or Grantee's employees, agents, contractors, or invitees in connection therewith. The foregoing provisions shall survive any termination of this Easement Agreement.

8. Insurance. Prior to any entry by Grantee on the Property, Grantee shall (i) furnish Grantor with a certificate of Grantee's liability insurance policy, which insurance shall be primary coverage regardless of whether Grantor has other collectible insurance, and evidence coverage in the amount of at least One Million Dollars (\$1,000,000.00) per occurrence against any loss, damage, or injury which may arise from or occur as a result of the entry by Grantee upon the Property and/or any activities thereon, and shall also provide an endorsement which shall name Grantor as an additional insured. Grantee shall maintain such insurance during the term of this Agreement. Should Grantee at any time neglect or refuse to provide such insurance, or should such insurance be canceled, after five (5) business days' notice and failure to obtain such insurance, Grantor shall have the right to procure such insurance on behalf of Grantee at Grantee's sole cost and expense.

9. Assignment. Except as otherwise provided in this Section, Grantee shall not assign this Easement Agreement to any other party without the prior written consent of Grantor, which may be given or withheld in Grantor's sole and absolute discretion. Grantee shall have the right to assign the Easement to Federal and/or State Agencies (each, a "**Permitted Assignee**"), provided that the Permitted Assignee executes an assumption agreement expressly assuming the rights and/or obligations of Grantee under this Easement Agreement and a copy of such fully-executed assignment and assumption agreement is delivered to Grantor.

10. Covenants Running with the Land. The burdens of the Easement shall be construed and considered as a covenant running with the land and appurtenant to the Instream Water Rights. The rights, covenants and obligations contained in this Easement Agreement shall bind, burden and benefit the Parties, their successors, heirs, and permitted assigns. Every purchaser and grantee of any or all of the Property, by acceptance of a deed or other instrument of conveyance thereto, or other document evidencing any interest therein, accepts and agrees to the agreements and covenants herein.

11. Perpetual Easement. The Easement rights and responsibilities set forth in this Easement shall be perpetual and shall be binding on the successors and assigns of Grantor and Grantee.

12. No Public Dedication. Nothing contained in this Easement Agreement shall be deemed to be a gift or dedication of the Property or any portion thereof to the general public or for any public use or purpose whatsoever, it being the intention of the Parties that this Easement Agreement be for the exclusive benefit of Grantee and its permitted successors and assigns.

13. Attorneys Fees. In the event an arbitration proceeding, suit or action is brought for the enforcement of or the declaration of rights pursuant to this Easement Agreement or as the result of any alleged breach of any provision of this Easement Agreement, the prevailing party or parties in such arbitration proceeding, suit or action (including in any bankruptcy proceeding) shall be entitled to recover their costs and expenses, including reasonable investigation, expert witness and attorneys' fees incurred in the arbitration or at trial, upon review for appeal and on appeal, from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

14. Governing Law. This Easement Agreement shall in all respects be governed by the laws of the State of Oregon, without reference to any provisions that may cause the laws of another jurisdiction to be applicable.

15. Modification, Amendment, and Termination. This Easement Agreement may be amended, modified or terminated only by the agreement of both Parties. No such amendment, modification or termination shall be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded by all of such owners in the real property records of Klamath County, Oregon.

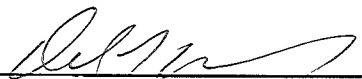
16. Waiver. No party to this Easement Agreement shall be deemed to have waived any rights under this Easement Agreement unless the waiver is given in writing and signed by the party against whom the waiver is sought to be enforced. No delay or omission on the part of either party in exercising any right shall operate as a waiver of the right or any other right. A waiver by any party of a provision of this Easement Agreement shall not prejudice or constitute a waiver of the party's right otherwise to demand strict compliance with that provision or any other provision of this Easement Agreement. No prior waiver by either party shall constitute a waiver of any of such party's other rights or of any of the other party's obligations as to any future transactions.

17. Severability. Invalidation of any provisions of this Easement Agreement shall in no way affect any of the other provisions of this Easement Agreement.

.IN WITNESS WHEREOF, the Parties have executed this Easement Agreement as of the date of last signature below.

**GRANTOR:**


**DEMING RANCH LAND & CATTLE,  
LLC, a Delaware limited liability company**

By:   
Daniel Kominek, Manager

Date: 4/19/2016

**GRANTEE:**

**Trout Unlimited, a Michigan nonprofit  
corporation**

By:   
Chrysten Lambert,  
Director Oregon Water Project

Date: 4-18-2016

13. Attorneys Fees. In the event an arbitration proceeding, suit or action is brought for the enforcement of or the declaration of rights pursuant to this Easement Agreement or as the result of any alleged breach of any provision of this Easement Agreement, the prevailing party or parties in such arbitration proceeding, suit or action (including in any bankruptcy proceeding) shall be entitled to recover their costs and expenses, including reasonable investigation, expert witness and attorneys' fees incurred in the arbitration or at trial, upon review for appeal and on appeal, from the losing party or parties, and any judgment or decree rendered in such proceedings shall include an award thereof.

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**GRANTOR:**

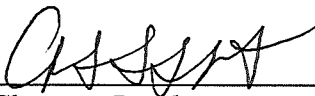
**DEMING RANCH LAND & CATTLE,  
LLC**, a Delaware limited liability company

By: \_\_\_\_\_  
Daniel Kominek, Manager

Date: \_\_\_\_\_

**GRANTEE:**

**Trout Unlimited**, a Michigan nonprofit corporation

By:  \_\_\_\_\_  
Chrysten Lambert,  
Director Oregon Water Project

Date: 4-18-2016

This Notary acknowledgement attached to an Access Easement and Bypass Flow Covenant (Dimming Ranch)

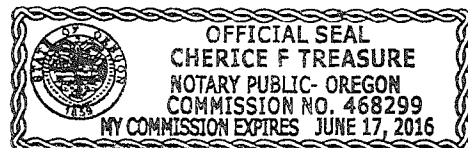
State of Oregon } ss  
County of Klamath }

On this 18 day of April, 2016, before me, Cherice F. Treasure a Notary Public in and for said state, personally appeared Chrysten Lambert, Director Oregon Water Project for Trout Unlimited, a Michigan nonprofit corporation, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Cherice F. Treasure

Notary Public for the State of Oregon  
Residing at: Klamath County  
Commission Expires: 6/17/2016



State of \_\_\_\_\_ } ss  
County of \_\_\_\_\_ }

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, \_\_\_\_\_ a Notary Public in and for said state, personally appeared Daniel Kominek, Manager for Deming Ranch Land & Cattle, LLC, a Delaware limited liability company, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within Instrument and acknowledged to me that he/she/they executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

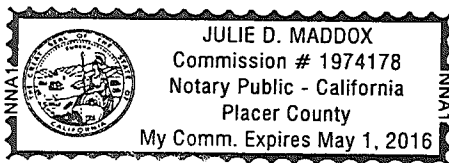
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }  
County of Placer

On April 19, 2016 before me, Julie D. Maddox, Notary Public,  
personally appeared Daniel Kominek

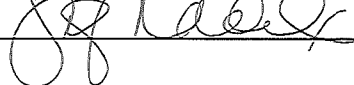
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



Place notary seal above

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature 

-----OPTIONAL-----

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

Title or Type of Document: Access Easement and Bypass Flow Covenant (Derning Ranch)

## EXHIBIT "A"

### PARCEL I:

The NW1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Kiamath, State of Oregon. LESS AND EXCEPT the following:

Beginning at the Northeast corner of the NW1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian; thence 1,000 feet South; thence 420 feet West; thence 1,000 feet North; thence 420 feet East to the point of beginning.

### PARCEL 2:

Beginning at the Northeast corner of the NW1/4 of Section 29, Township 36 South, Range 15 East of the Willamette Meridian, in the county of Klamath, State of Oregon; thence 1,000 feet South; thence 420 feet West; thence 1,000 feet North; thence 420 feet East to the point of beginning.

### PARCEL 3:

The E 1/2 NE 1/4 Section 31, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

### PARCEL 4:

The W 1/2 NW 1/4, Section 31, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

### PARCEL 5:

The E 1/2 NW 1/4, Section 35, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

### PARCEL 6:

The W 1/2 NW 1/4, Section 35, Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon.



legal description continued

PARCEL 7:

Township 36 South, Range 14 East of the Willamette Meridian, in the County of Klamath, State of Oregon; Section 23: Beginning at a point 100 feet West of the Southeast corner of the SW1/4 SE 1/4 of Section 23; thence North 200 feet; thence West 200 feet; thence South 200 feet; thence East 200 feet to the point of beginning.

Section 24: All

Section 25: N 1/2 NW1/4 NW 1/4; E 1/2 NW1/4; NE 1/4 SW 1/4; E 1/2 NE 1/4; SE 1/4 Section 26: All

Section 36: NW1/4 NE 1/4

Township 36 South, Range 15 East of the Willamette Meridian, in the County of Klamath, State of Oregon:

Section 16: W 1/2 SW 1/4

Section 17: W 1/2; S 1/2 SE 1/4

Section 18: S 1/2 N 1/2; N 1/2 S 1/2

Section 19: All

Section 20: N 1/2 N 1/2; SE 1/4 NW1/4; NE 1/4 SW1/4; SW1/4 NE 1/4

Section 21: W 1/2; SE 1/4

Section 27: W 1/2; SE 1/4

Section 29: E 1/2; SW 1/4

Section 31: W 1/2 NE 1/4; E1/2 NW1/4; N 1/2 S 1/2

Section 33: W1/2; SE1/4

Section 35: S 1/2

SAVING AND EXCEPTING a strip of land 66 feet in width across the SE 1/4 SE 1/4 of Section 21 and the NE 1/4 SE 1/4 of Section 31, Township 36 South, Range 15 East of the Willamette Meridian, conveyed to Weyerhaeuser Timber Company as described in Parcels I and 2 in deed recorded July 25, 1958 in Book 301 at Page 347, Deed Records of Klamath County, Oregon

ALSO SAVING AND EXCEPTING a strip of land 66 feet in width in the N 1/2 NW1/4 and SW1/4 NE1/4 of Section 33, Township 36 South, Range 15 East of the Willamette Meridian, conveyed to Weyerhaeuser Timber Company by deed recorded January 13, 1959 in Book 308 at Page 577, Deed Record of Klamath County, Oregon.

PARCEL 8:

The W 1/2 NE 1/4, Section 25, Township 36 South, Range 14 East of the Willamette Meridian, in the County of Klamath, State of Oregon.

**Exhibit B**

**Water Right Certificates or Final Order**

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING A
Application T-11810, Klamath County	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE AND PARTIAL
	)	CANCELLATION OF TWO WATER
	)	RIGHTS

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

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

**Applicant**

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

**Findings of Fact**

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

<p>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.</p>
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4. On June 29, 2015, the Department contacted the Klamath Basin Rangeland Trust by written correspondence to notify the applicant's agent that additional information was needed describing the flow of water in Deming Creek from the points of diversion to the South Fork Sprague River.
5. On July 1, 2015, the Department contacted the Klamath Basin Rangeland Trust by written correspondence to notify the applicant's agent of the underlying layered water rights that needed to be cancelled or transferred within the application.
6. On July 2, 2015, the applicant's agent submitted documentation explaining the project to restore the natural connection between Deming Creek and South Fork Sprague River. On December 11, 2015, the Watermaster confirmed that the project is complete and that Deming Creek is once again connected with the South Fork Sprague River.
7. On August 3 and 7, 2015, the applicant's agent submitted cancellation affidavits for the underlying layered water rights to be cancelled within this order and submitted a Permit Amendment application to move additional layered water rights.
8. On December 14, 2015, the Department received clarification from the agent that the stock portions of Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960 and 9961, are being included in the transfer application for the irrigation season only.
9. On December 17, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11810 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 16, 2016, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. On January 21, 2016, the Department issued a Preliminary Determination proposing to approve Transfer T-11810 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 January 26, 2016, and in the Klamath Herald and News newspaper on January 28, 2016 and February 4, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
11. The first right to be transferred is as follows:
 

<b>Certificate:</b>	9952 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)
<b>Use:</b>	IRRIGATION of 105.3 ACRES AND STOCK WATER use during the irrigation season
<b>Priority Date:</b>	1882
<b>Rate:</b>	2.63 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.31 CFS thereafter
<b>Limit/Duty:</b>	The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second

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

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

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion (POD):**

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

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

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

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

**Priority Date:** 1885

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

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

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

**Authorized Place of Use:**

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

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

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

**Authorized Point of Diversion:**

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

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

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

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

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

**Priority Date:** 1886

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

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

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

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9955 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 100.7 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1886  
**Rate:** 2.51 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.25 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.  
**Source:** DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9956 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 14.7 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1889  
**Rate:** 0.36 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.18 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.  
**Source:** DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9957 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 57.5 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1889  
**Rate:** 1.43 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.71 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second



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

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

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

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

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

**Priority Date:** 1889

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

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.

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

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9959 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 10.8 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1892  
**Rate:** 0.27 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.13 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.  
**Source:** DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9960 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 5.9 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1892  
**Rate:** 0.14 CUBIC FEET PER SECOND (CFS) prior to June 15 and 0.07 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per second per acre after June 15<sup>th</sup>, with a total limitation of three acre feet per acre from March 1st to October 1st of each year.  
**Source:** DEMING CREEK, tributary of the SOUTH FORK SPRAGUE RIVER

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

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

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

**Certificate:** 9961 in the name of W. R. CAMPBELL (confirmed by Sprague River Decree)  
**Use:** IRRIGATION of 99.4 ACRES AND STOCK WATER use during the irrigation season  
**Priority Date:** 1903  
**Rate:** 2.49 CUBIC FEET PER SECOND (CFS) prior to June 15 and 1.24 CFS thereafter  
**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE- FORTIETH of a cubic foot per second per acre, prior to June 15<sup>th</sup>, and ONE-EIGHTIETH of a cubic foot per

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

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

**Authorized Place of Use:**

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

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

**Authorized Point of Diversion:**

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

40. A total of 298.2 AF of water may be beneficially used annually under the existing right.
41. Transfer Application T-11810 proposes to change the character of use of these rights to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
42. Transfer Application T-11810 proposes to change the place of use of the rights to create instream reaches from the POD's (as described in Findings of Fact No.'s 12, 15, 18, 21, 24, 27, 30, 33, 36 and 39) to the mouth of Deming Creek on into the South Fork Sprague River to the confluence with the North Fork Sprague River.
43. The applicant proposes the quantities of water to be transferred instream be protected as follows:

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

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

44. 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)***

45. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
46. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11810.
47. The transfer application requests to protect water instream from Deming Creek into the South Fork Sprague River. An instream reach is generally from the point of diversion to the mouth of the source stream (Deming Creek) but may be protected further if measurable in the receiving stream (the South Fork Sprague River) (OAR 690-077-0015 (8)). The quantity that may be transferred instream from Deming Creek is measurable into the South Fork Sprague River and may be protected instream in the South Fork Sprague River.
48. The applicant has requested to protect water instream from the POD's on Deming Creek and into the South Fork Sprague River to its mouth. A portion of the water diverted under each water right returns to the South Fork Sprague River and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the

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

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

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 39) to the POD (as described in Finding of Fact No. 21)

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

**Instream Reach No. 2:** From the POD (as described in Finding of Fact No. 21) to the POD (as described in Finding of Fact No. 18)

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

**Instream Reach No. 3:** From the POD (as described in Finding of Fact No. 18) to the POD (as described in Finding of Fact No. 27)

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

**Instream Reach No. 4:** From the POD (as described in Finding of Fact No. 27) to the POD (as described in Finding of Fact No. 30)

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

**Instream Reach No. 5:** From the POD (as described in Finding of Fact No. 30) to the POD (as described in Finding of Fact No. 24)

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

**Instream Reach No. 6:** From the POD (as described in Finding of Fact No. 24) to the POD (as described in Finding of Fact No. 33)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
<b>Totals</b>		<b>4.30</b>	<b>785.2</b>	<b>1.19</b>	<b>288.1</b>

**Instream Reach No. 7:** From the POD (as described in Finding of Fact No. 33) to the POD (as described in Finding of Fact No. 36)

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

**Instream Reach No. 8:** From the POD (as described in Finding of Fact No. 36) to the POD's (as described in Finding of Fact No.'s 12 and 15)

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



**Instream Reach No. 9:** From the POD's (as described in Finding of Fact No.'s 12 and 15) to the mouth of Deming Creek

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

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

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

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

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

52. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
53. The protection of flows within the proposed reach is appropriate, considering:
- a) The instream water rights begin at the recorded points of diversion;
  - b) The location of confluences with other streams downstream of the points of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
  - d) There are return flows resulting from the exercise of the existing water rights that re-enter the South Fork Sprague River within the reach of the instream water right. The quantity of water to be protected instream in Reach No. 10 has been reduced to account for return flows.
54. Within the proposed reach on Deming Creek and on into the South Fork Sprague River, there are two pending instream water right applications filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341 to establish instream water rights. Application IS-70808 is an application to establish an instream water right on Deming Creek from the headwaters to Rocky Flat Creek and, if approved, will have a priority date of October 26, 1990. Application 70802 is an application to establish an instream water right on the South Fork Sprague River from Ish Tish Creek to the mouth of South Fork Sprague River and, if approved, will also have a priority date of October 26, 1990. Both applications propose to establish instream uses for migration, spawning, egg incubation, fry emergence, and juvenile rearing.
55. Presently there are no instream water rights on Deming Creek or the South Fork Sprague River established under the instream transfer and allocation of conserved water processes. However, by adding to any instream water rights, established in the future pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
56. Application IS-70808, if approved, is within the same reach as that proposed for the new instream water rights under this transfer application on Deming Creek (Instream Reaches 1-8). During the months of July and August, the quantities proposed to be protected instream from this instream transfer within reaches 4 through 8 exceed the quantities requested in Application IS-70808. However, the Department has identified that this instream transfer will provide an additional public purpose. The Department has identified that the quantities protected instream may replace the quantities protected instream under any instream water right resulting from IS-70808 during the period March 1 through September 30 with an earlier priority date. The instream right established by this transfer may also be additive to any instream water right established by IS-70808 within reaches 4 through 8 during the

period July 1 through August 31, unless otherwise specified in an order approving a new instream water right under ORS 537.341.

57. Application IS-70802 is within the same reach as that proposed for the new instream water rights under this transfer application on the South Fork Sprague River (Instream Reach 10). Any instream water right established by this transfer may replace a portion of any instream water right established by Application IS-70802 with an earlier priority date.
58. During the period March 1 through September 30, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
59. In addition, during the period July 1 through August 31, any instream water right established by this transfer application within reach 4 through 8 may in addition to any instream water right established pursuant to ORS 537.341, unless otherwise specified in an order approving a new instream water right under this statute or ORS 537.346, ORS 537.348, or ORS 537.470
60. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

#### ***Partial Cancellation of a Water Right***

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

<b>Certificate:</b>	21416 in the name of W. R. CAMPBELL, ET AL. (perfected under Permit S-13015)
<b>Use:</b>	IRRIGATION of 3.9 ACRES and SUPPLEMENTAL IRRIGATION OF 153.1 ACRES
<b>Priority Date:</b>	AUGUST 17, 1937
<b>Rate:</b>	2.41 CFS
<b>Limit/Duty:</b>	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated prior to June 15, and ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated after June 15, of each year and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season from March 1, to

October 1, and shall be still further limited to a total diversion of not to exceed 25.0 second-feet.

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

**Authorized Point of Diversion:**

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

**Authorized Place of Use to be Cancelled:**

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

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

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

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

**Use:** SUPPLEMENTAL IRRIGATION of 179.1 ACRES

**Priority Date:** MAY 9, 1961

**Rate:** 1.76 CFS

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to

exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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

**Authorized Point of Appropriation:**

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

**Authorized Place of Use to be Cancelled:**

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

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in application T-11810 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned rights should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in application T-11810 are approved. The portions of the rights that have been abandoned are cancelled.
2. Water right Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued describing those portions of the rights not affected by the transfer.
3. The described portions of water right Certificates 21416 and 33926 are cancelled. New certificates will be issued describing those portions of the rights not affected by the cancellations.
4. The instream water right shall provide for the protection of streamflows from the POD's (as described in Finding of Fact No's 12, 15, 18, 21, 24, 27, 30, 33, 36 and 39) to the mouth of Deming Creek and into the South Fork Sprague River to the confluence with the North Fork Sprague River.
5. The quantities of water to be protected under the instream water rights are:

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 39) to the POD (as described in Finding of Fact No. 21)

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

**Instream Reach No. 2:** From the POD (as described in Finding of Fact No. 21) to the POD (as described in Finding of Fact No. 18)

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

**Instream Reach No. 3:** From the POD (as described in Finding of Fact No. 18) to the POD (as described in Finding of Fact No. 27)

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

**Instream Reach No. 4:** From the POD (as described in Finding of Fact No. 27) to the POD (as described in Finding of Fact No. 30)

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

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

**Instream Reach No. 5:** From the POD (as described in Finding of Fact No. 30) to the POD (as described in Finding of Fact No. 24)

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

**Instream Reach No. 6:** From the POD (as described in Finding of Fact No. 24) to the POD (as described in Finding of Fact No. 33)

Certificate	Priority Dates	Periods Protected Instream			
		March 1 through May 31		June 1 through September 30	
		Rate Instream (CFS)	Volume Instream (AF)	Rate Instream (CFS)	Volume Instream (AF)
9961	1903	1.19	217.7	0.33	80.0
9955	1886	1.21	220.5	0.33	81.0
9954	1886	0.69	125.3	0.19	46.0
9957	1889	0.69	125.9	0.19	46.3
9958	1889	0.34	62.6	0.10	23.0
9956	1889	0.18	33.2	0.05	11.8
<b>Totals</b>		<b>4.30</b>	<b>785.2</b>	<b>1.19</b>	<b>288.1</b>

**Instream Reach No. 7:** From the POD (as described in Finding of Fact No. 33) to the POD (as described in Finding of Fact No. 36)

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

**Instream Reach No. 8:** From the POD (as described in Finding of Fact No. 36) to the POD's (as described in Finding of Fact No.'s 12 and 15)

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



**Instream Reach No. 9:** From the POD's (as described in Finding of Fact No.'s 12 and 15) to the mouth of Deming Creek

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

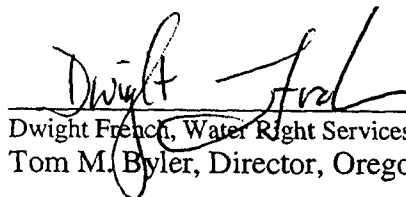
**Instream Reach No. 10:** From the mouth of Deming Creek into the South Fork Sprague River to the confluence with the North Fork Sprague River

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

- Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original points of diversion.

7. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.
8. During the period March 1 through September 30, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
9. In addition, during the period July 1 through August 31, any instream water right established by this transfer application within reach 4 through 8 may in addition to any instream water right established pursuant to ORS 537.341, unless otherwise specified in an order approving a new instream water right under this statute or ORS 537.346, ORS 537.348, or ORS 537.470
10. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 9952, 9953, 9954, 9955, 9956, 9957, 9958, 9959, 9960, and 9961 and any related decree.
11. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this 19 day of April, 2016.

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

APR 25 2016

Mailing date: \_\_\_\_\_