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09/21/2020 08:34:20 AM

Fee: \$207.00

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

Chrysten Lambert
Trout Unlimited
1453 Esplanade Ave.
Klamath Falls, OR 97601

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**ACCESS EASEMENT
(Wampler Ranches, LLC)**

THIS ACCESS EASEMENT (this "**Easement Agreement**") is made as of this 17th day of September, 2020, by and between **WAMPLER RANCHES, LLC**, an Oregon limited liability company ("**Grantor**"), and **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 Water Rights Option to Transfer Agreement dated as of September 10, 2018, a memorandum of which is recorded in the official records of Klamath County, Oregon as Instrument No. 2018-010968 (the "**Option Agreement**"), pursuant to which Grantee exercised an option to permanently transfer instream 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**"), as reflected in the Water Right Certificate(s) or Final Order(s) attached hereto as Exhibit 2 and incorporated herein by this reference.

C. Subject to the terms and conditions set forth in this Easement Agreement, Grantor desires to grant to Grantee a non-exclusive easement over and across those portions of the Property across which access is reasonably necessary in order for Grantee to accomplish the purpose identified in Section 1 of this Easement Agreement (the "**Easement Area**").

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

Agreement

1. Grant of 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 the stream

segments located on the Property that are identified in the Instream Water Rights (the "**Easement**"). The term "**monitoring**," as used herein, expressly excludes any form of recreational or subsistence fishing, hunting, or other recreational pursuit. In no event shall the Easement be used for recreational or subsistence fishing and/or hunting. Grantor acknowledges that information collected through Grantee's monitoring may be made available to the public.

2. **Use Restriction.** Grantor agrees and covenants that the development of new irrigation permits, rights, or certificates from groundwater or surface water on the Property is strictly prohibited. This provision shall restrict Wampler Ranches and any future water user from applying for or petitioning the State of Oregon to issue new water rights for irrigation of the portion of the Property to which the Option Water Rights were appurtenant as of the Effective Date. Use of groundwater shall be limited to those uses allowed under ORS 537.545. Wampler Ranches shall be allowed to provide for off-channel livestock watering, as allowed under ORS 537.141(f).

3. **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.

4. **Notice.** Grantee may enter the Property only upon 24 hours prior notice to Grantor.

5. **Scope of Easement.** The Easement shall be considered in gross, shall burden the Easement Area, and shall benefit Grantee, and its direct successors.

6. **Indemnity by Grantee.** Grantee shall indemnify, defend and hold harmless Grantor and Grantor's members, managers, agents, employees, contractors, heirs, successors and assigns 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.

7. **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 (i) procure such insurance on behalf of Grantee at Grantee's sole cost and expense, or (ii) refuse to permit Grantee or any of its employees, agents,

Permitted Assignee's, successors or assigns access to the Property until such time as Grantee demonstrates to Grantor's satisfaction that Grantee has obtained the required insurance.

8. Assignment. Except as otherwise provided in this Section 7, 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 a federal agency, a state agency, or a 501(c)(3) entity (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.

9. 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.

10. Perpetual Easement. The Easement granted under this Easement Agreement shall be perpetual and shall be binding on the successors and assigns of Grantor and Grantee.

11. 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.

12. 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.

13. 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.

14. 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 by both Parties, acknowledged and recorded in the real property records of Klamath County, Oregon.

15. 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

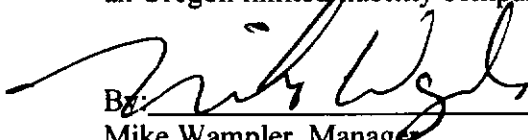
Party against whom the waiver is sought to be enforced. No delay or omission on the part of either Party in exercising any right shall operate as a waiver of the right or any other right. A waiver by any Party of a provision of this Easement Agreement shall not prejudice or constitute a waiver of the 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.

16. 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 day and year first written above.

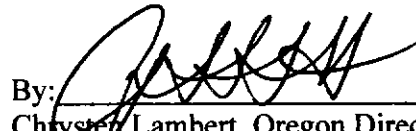
GRANTOR:

WAMPLER RANCHES LLC,
an Oregon limited liability company


By: _____
Mike Wampler, Manager

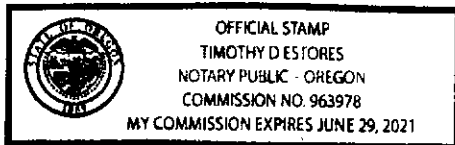
GRANTEE:


TROUT, UNLIMITED,
a Michigan nonprofit corporation


By: _____
Chrysten Lambert, Oregon Director

STATE OF OREGON)
County of Klamath)ss.

The foregoing instrument is acknowledged before me this 4th day of September, 2020, by Mike Wampler as Manager of Wampler Ranches, LLC.

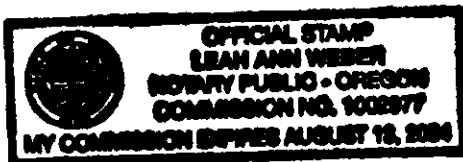


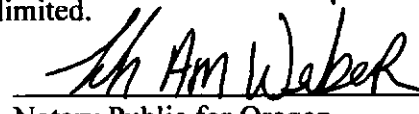


Notary Public for Oregon
Commission No.: 963978
My commission expires: 6/29/2021

STATE OF OREGON)
County of Jackson)ss.

The foregoing instrument is acknowledged before me this 17th day of Sept, 2020, by Chrysten Lambert as Oregon Director of Trout, Unlimited.





Notary Public for Oregon
Commission No.: 1002977
My commission expires: 08/18/24

Exhibit A

Legal Description of Property

TRS	Taxlot
34.00S-6.00E-1	500
34.00S-6.00E-1	600
34.00S-6.00E-1	700

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 CHANGE IN
Application T-12971, Klamath County)	PLACE OF USE AND CHARACTER OF USE

Authority

Oregon Revised Statute (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 Rule (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
Mike Wampler
Wampler Ranches, LLC
PO Box 5144
Klamath Falls, OR 97601

Agent
Chrysten Lambert
Trout Unlimited
PO Box 2809
White City, OR 97503

Findings of Fact

1. On July 13, 2018, Mike Wampler, Wampler Ranches, LLC, filed an application to change the place of use and character of use under Certificates 19959 and 29534 to instream use. The Department assigned the application number T-12971.
2. Notice of the application for transfer was published on July 24, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The application includes a Land Use Information form completed and signed by a representative of the Klamath County. Additionally, the Department provided notice of the proposed application to Klamath County, consistent with land use requirements, upon receipt of this instream transfer application.
4. Review of the transfer application revealed several application deficiencies that needed to be addressed to complete the transfer application and allow the transfer application process to move forward favorably. The specific deficiencies were detailed in the cover

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.

letter accompanying the Draft Preliminary Determination issued by the Department on November 21, 2019 proposing to deny the instream transfer application. The deficiencies included:

- a) Additional information needed to support evidence of use for stock use under Certificate 19959.
 - b) Additional information needed to demonstrate beneficial use for stock watering.
 - c) Break down the amount of water that may be transferred instream and is proposed to be protected instream under Certificate 29534 from Crane Creek and Threemile Creek associated with 224.1 acres of Irrigation.
 - d) Address requested changes to the transfer application map consistent with application map requirements.
 - e) Additional time for the Department to develop flow data for water in Fourmile Creek if the applicant would like to pursue extending the instream reach beyond the mouth of Crane Creek.
 - f) Without additional flow data for Fourmile Creek and without clarification on how water is to be protected instream between Crane Creek and Threemile Creek under certificate 29534, the Department is unable to determine for protection of flows in Threemile Creek, Crane Creek, and Fourmile Creek:
 - i) Whether instream flows from Crane Creek are measurable into Fourmile Creek.
 - ii) The Estimated Average Natural Flows of Fourmile Creek and whether those flows would be exceeded or not.
 - iii) Whether estimated average natural flows in Crane Creek or Threemile Creek would be exceeded.
 - iv) Whether protection of additional flows in Fourmile Creek would provide sufficient flows to meet the amount needed to provide increased public benefit and whether the amount, timing, and location of the proposed instream water rights would serve a public use or uses
5. On December 18, 2019, the Applicant's agent submitted revised application materials and the majority of the information requested by the Department in the cover letter to the Draft Preliminary Determination. The Applicant's agent also provided the necessary information to demonstrate that the applicant is authorized to pursue this instream transfer application.
6. As part of their December 18, 2019 response, the Applicant's agent did not specify how much water should be protected instream from each source under Certificate 29534. However, the Department was able to identify, based on review of the water right of record, how much water may be available for instream use from each source. Department staff discussed this breakdown with the Applicant's agent on February 7, 2020, and the agent concurred.

7. On January 9, 2020, the Watermaster's office obtained minimal flow data from an outside source for Fourmile Creek and also, subsequently, clarified that Crane Creek and Fourmile Creek are not currently connected. Both creeks, through different ditches, are diverted into Fourmile Canal.
8. On January 29, February 7, and February 18, 2020, additional information to complete the transfer application was provided by the Applicant's agent.
9. On February 20, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12971 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of March 18, 2020 (misidentified in the cover letter as February 18, 2020), for the applicant to respond. On February 24, 2020, the applicant's agent requested that the Department proceed with issuance of a Preliminary Determination.
10. On March 19, 2020, the Department issued a Preliminary Determination proposing to approve Instream Transfer Application T-12971 and mailed a copy to the applicant and their agent. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 24, 2020, and in the Klamath Herald and News newspaper on March 26 and April 2, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

11. The first right proposed to be transferred is as follows:

Certificate: 19959 in the name of PAUL WAMPLER (perfected under Permit S-18305)

Use: IRRIGATION AND STOCK

Priority Date: JUNE 26, 1941

Rate: 2.13 CUBIC FEET PER SECOND (CFS), BEING 1.63 CFS FOR IRRIGATION AND 0.50 CFS FOR STOCK

Period of Use: April 1 to October 1 for Irrigation

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated prior to July 20, and ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated thereafter and shall be further limited to a diversion of not to exceed 5 acre feet per acre for each acre irrigated during the irrigation season from April 1 to October 1, provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.

Source: Crane Creek, tributary to Sevenmile Creek

Authorized Point of Diversion (POD):

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

Authorized Place of Use:

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

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

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

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

15. However, in review of the transfer application and historic water right records, the Department has identified that the POD for Certificate 19959 may not be the one identified in Finding of Fact No. 14 and that the identified Point of Diversion may actually be a re diversion point. As part of the field survey for the Final Proof map and certificate completed in 1951, the Department's surveyor noted in May of 1951 that the "check" in Crane Creek had been shifted upstream 240 feet from the old one. Checks are structures placed across a ditch or stream to restrict flows, raise the water elevation and/or to back up water. It may be a temporary or permanent structure to raise the upstream water level. According to the Watermaster, if the water user at the time had moved the check, they had also likely moved the Point of Diversion. However, this may not have been a change in point of diversion. The Final Proof Map for Certificate 19959 appears to show the POD on Crane Creek. However, the Final Proof map for Certificate 29534 (issued in 1962) appears to clarify the stream layout and shows that the POD for Certificate 19959 may actually be on a ditch and be a point of re diversion. And the actual POD, being approximately 240 feet upstream, at the same location as that for Certificate 29534, located at:

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

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

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

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

Certificate: 29534 in the name of PAUL WAMPLER (perfected under Permit S-24530)
Use: IRRIGATION of 291.3 ACRES
Priority Date: DECEMBER 15, 1954
Rate: 3.6 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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

Authorized Points of Diversion:

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

Authorized Place of Use:

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

18. A maximum of up to 873.9 AF, being 201.6 AF from Crane Creek only and 672.3 AF from Crane Creek and Threemile Creek, of water may be beneficially used annually for irrigation purposes under the existing right.

19. Certificate 29534 does not specify the irrigation season. However, the Irrigation Season specified in Certificate 19959 and in the Wood River Decree, which covers the general area, is April 1 to October 1.
20. Certificate 29534 does not specify measured distances for the authored points of diversion. However, based upon review of the water right record, transfer application, and additional information provided by the Watermaster, the points of diversion appear to be located as follows:

Crane Creek point of diversion:

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

Threemile Creek point of diversion:

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

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

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

25. 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)

26. Water has been used within the last five years for irrigation according to the terms and conditions of Certificates 19959 and 29534, and there is no information in the record that would demonstrate that the rights as used for irrigation are subject to forfeiture under ORS 540.610.
27. Water has been used within the five years prior to Instream Transfer Application T-12971 being received for stock use according to the terms and conditions of Certificate 19959, and there and there is no information in the record that would demonstrate that the rights as used for irrigation are subject to forfeiture under ORS 540.610.
28. Diversion structures and ditches sufficient to divert the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Instream Transfer Application T-12971.
29. Certificate 19959 allows the diversion of water from Crane Creek for irrigation and stock. Use of water for irrigation has seasonal volume limit of 651.0 AF. Stock use does not have a defined volume limit under the certificate. Use of water under the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Except for the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total quantity appropriated for the stock use on a year round basis under the portion of the existing right proposed for instream transfer would be as follows:

Rate	Volume
0.5 CFS	361.98 AF

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

Rate	Volume
0.5 CFS	2.69 AF

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

30. The transfer applicant has requested to protect water instream as follows (see Finding of Fact No. 24):

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

31. For Certificate 19959, the proposed instream use is not broken down between the two originating types of use; irrigation, which is a seasonal use, and stock use, which may be a year round use.
32. Under Certificate 19959, the maximum volume of use authorized for Irrigation is up to 651.0 AF, as identified in Finding of Fact No. 12. However, if water were diverted continuously at the maximum rate (2.13 CFS) during the full irrigation season, April 1 through September 30 (183 days), the maximum volume that could be diverted would be 591.65 AF. And, as identified above in Finding of Fact No. 29, it appears that up to 2.69 AF may be beneficially used for stock use. This is a total annual volume of 594.34 AF, which is 52.06 AF less than the instream volume requested by the applicant. Based upon evaluation of the water right and the proposed instream use, the Department has determined that the proposed instream rate, volume and time period must be modified to maximize the instream use over the full irrigation season and prevent injury and enlargement of the right. The instream use may be as follows:

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

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

33. For Certificate 29534, the applicant has requested to protect up to 3.6 CFS (871.2 AF) instream over an instream period of June 1 of September 30 (122 days) from Crane Creek and Threemile Creek. However, the applicant has not specified how much water is to be protected instream in each creek and did not provide any additional information in response to the Department's request made as part of the initial Draft Preliminary

Determination to deny issued on November 21, 2019. However, based upon additional review, the Department is able to make the following findings:

- a) Certificate 29534 allows for the diversion of up to 3.6 CFS of water from Crane Creek and Threemile Creek for Irrigation of 291.3 acres with a priority date of December 15, 1954. Of the irrigated acreage, 67.2 acres are exclusively irrigated from Crane Creek. The remaining 224.1 acres may be irrigated from a combination of Crane Creek and Threemile Creek.
- b) Based on a rate and duty limit of 1/80th CFS per acre and 3.0 AF per acre, up to 0.8 CFS may be diverted from Crane Creek for Irrigation of 67.2 acres, with an annual volume limit of 201.6 AF, during the irrigation season of April 1 through September 30 (183 days).
- c) Up to 2.8 CFS may be diverted from Crane Creek and/or Threemile Creek, with an annual volume limit of 672.3 AF, for Irrigation of 224.1 acres. However, the water right does not identify or appear to limit how much water may come from each creek source for these acres.
- d) Based on further review of the water right record, the permit (S-24530) originally allowed the diversion of up to 1.0 CFS of water from Threemile Creek and 4.0 CFS from Crane Creek for Irrigation of 320 Acres. With up to 1.0 CFS allowed from Threemile Creek, the permit holder could irrigate 80 acres from Threemile Creek. When Certificate 29534 was issued, the quantity of water allowed was reduced to 3.6 CFS and the number of acres were also reduced (291.3 acres, being 67.2 acres from Crane Creek only and 224.1 acres irrigated from Crane Creek and/or Threemile Creek) but no limits were put on the amount of water that could be diverted from each source, including Threemile Creek (except by rate and duty limit). Therefore, it appears that the water right holder may still divert up to 1.0 CFS from Threemile Creek and use that to irrigate up to 80 acres. The water right record also identifies that the entire footprint of the remaining Crane Creek/Threemile Creek acreage (114.1 acres) could be irrigated entirely from Crane Creek.
- e) Therefore, the Department proposes that water from Crane Creek and Threemile Creek be protected instream as follows:

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

- f) In a meeting with Department staff on February 7, 2020, the agent for the Applicant concurred with the above assessment of Certificate 29534 for purposes of this instream transfer.
34. The applicant has requested that water originating from each right (Certificates 19959 and 29534) and each source (Crane Creek and Threemile Creek) be protected instream as far downstream as possible, down to the Oregon state line.
- a) By rule, an instream reach is generally from the point of diversion to the mouth of the source stream (Crane Creek or Threemile Creek) but may be protected further if measurable in the receiving stream (Threemile Creek is tributary to Crane Creek and Crane Creek, under natural conditions, is tributary to Fourmile Creek) (OAR 690-077-0015 (8)). And it can be protected further downstream into other receiving streams if the quantities continue to be measurable into those receiving streams. Or it may be protected at a point or shorter distance if needed to account for return flows or to prevent injury.
 - b) To determine whether the instream quantity is measurable into the receiving stream the Department must know what the flows are instream receiving stream. The Department has sufficient flow data available on Threemile Creek, which is tributary to Crane Creek. Minimal flow data is available on Crane Creek, which is currently tributary to Fourmile Canal and historically, under natural conditions, tributary to Fourmile Creek. The Department has identified minimal flow data on Fourmile Creek, which is currently artificially tributary to Fourmile Canal and historically, under natural conditions, tributary to marshes of Upper Klamath Lake.
 - c) The quantity of water that may be protected instream from Threemile Creek (the source stream) is measureable into Crane Creek (the receiving stream) and may be protected instream into Crane Creek.
 - d) However, flows protected instream in Crane Creek may not be protected into Fourmile Creek. The extent of the proposed reach shall end at the mouth of Crane Creek. As noted above, Crane Creek and Fourmile Creek are not currently connected and both are currently diverted into Fourmile Canal.
35. The Watermaster has identified that there are no streamflow losses within the stream reaches on Crane Creek and Threemile Creek.
36. There are also no return flows associated with the original uses under Certificates 19959 and 29534 that need to be accounted for to prevent injury to downstream users or enlargement of the water rights within the instream reaches on Threemile Creek and Crane Creek.

37. Based upon the above findings, the Department has determined that water may be protected instream as follows:

Threemile Creek, tributary to Crane Creek

Instream Reach No. 1: At POD (as described in Finding of Fact No. 20) (at the mouth of Threemile Creek)

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

Crane Creek

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 14 and 20), to the confluence with Threemile Creek

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

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

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

38. The proposed change, as modified, would not result in enlargement of the right.
39. The proposed change, as modified, would not result in injury to other water rights.
40. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
41. The protection of flows, as modified, within the proposed reach is appropriate, considering:
- a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the stream beds within the modified instream reach; and
 - d) Any return flows resulting from the exercise of the existing water rights would re-enter the stream channel downstream of the reach of the instream water rights.

42. The transfer applicant has requested that water be protected instream for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
43. According to Oregon Department of Fish and Wildlife (ODFW) and Trout Unlimited (TU), Threemile Creek provides habitat to one of the threatened Bull Trout populations in the Upper Klamath Basin. And Crane Creek could provide suitable habitat for Bull Trout.
- a. TU provided information identifying that Redband Trout are thought to be extirpated or nearly extirpated in Threemile Creek and Crane Creek. This instream transfer application, along with Instream Transfer Application T-12951 and other restoration activities are intended to assist in the improvement of habitat for Redband Trout.
 - b. ODFW also identified that there may also be benefits to other native endemic species such as slender sculpin, Klamath Speckled Dace, Klamath marbled sculpin, and Pit-Klamath Brook Lamprey. The entire Fourmile Creek system, including Crane Creek and Threemile Creek, may be important in the future for recolonization of anadromous fish such as Steelhead and Chinook salmon.
44. There are no existing permanent instream water rights on Crane Creek. There is a temporary Instream Lease IL-817, which protects water in Crane Creek. Instream Lease IL-817 is currently in place through October 1, 2022, as evidenced by Special order Volume 105, Page 611. And Instream Lease IL-1258, a portion of which protects water in Crane Creek, which is intended to be replaced by pending permanent instream transfer application T-12951, for Sevenmile Creek Ranch.
45. There are two Klamath Claims on Threemile Creek, KA-552 (priority date June 4, 1897) and KA-553 (priority date June 4, 1897). Neither of these are intended for fish and wildlife habitat purposes. Rather one is for fire protection and the other is for general instream flows. These have not yet been adjudicated and are not intended to be additive with any other instream water right.
46. The proposed instream use, if approved, under this Instream Transfer Application T-12971 will have priority dates of June 26, 1941 (Certificate 19959) and December 15, 1954 (Certificate 29534).
47. While there are currently no existing instream water rights established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process) within the proposed reach on Crane Creek or Threemile Creek for fish life and habitat, there may be in the future and those flows may not always be met since they will likely have junior priority dates. By replacing a portion of those instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values under earlier priority dates.

48. There is currently one other pending permanent Instream Transfer Application, T-12951, for Sevenmile Creek Ranch, which also involves Crane Creek. This transfer application includes very senior adjudicated water rights ranging in priority dates from 1888 to 1891. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
49. During the period April 1 through September 30, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
50. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed instream reach will provide for a beneficial purpose and do not exceed the estimated average natural flows.
51. Portions of Threemile Creek and Crane Creek have been channelized and no longer flow in their historic natural channels. For example, Threemile Creek, approximately 1.5 miles above its mouth, has been channelized from a natural channel to a canal and is tributary to the Crane Creek Canal rather than the historic natural channel of Crane Creek. Crane Creek, starting at the Crane Creek points of diversion for Certificates 29534 and 19959 has been channelized (upstream from the confluence with Threemile Creek). Crane Creek Canal is currently diverted into Fourmile Canal.
52. Under natural conditions, Threemile Creek is tributary to Crane Creek and Crane Creek is tributary to Fourmile Creek and Fourmile Creek is tributary to the marshes of Upper Klamath Lake.
53. This instream transfer is part of a larger restoration project involving another Instream Transfer Application T-12951 in the name of Sevenmile Creek Ranch. Both transfers are connected to a related project to reconnect Crane Creek with Fourmile Creek and restore Threemile Creek and Crane Creek to their natural channels along with improving streamflows in both creeks.

Conclusions of Law

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

Threemile Creek, tributary to Crane Creek

Instream Reach No. 1: At POD (as described in Finding of Fact No. 20) (at the mouth of Threemile Creek)

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

Crane Creek

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 14 and 20), to the confluence with Threemile Creek

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

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

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

4. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
6. During the period April 1 through September 30, the instream rights established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

7. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 19959 and 29534 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this day AUG 18 2020.



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

Mailing date: AUG 19 2020

STATE OF OREGON

COUNTY OF KLAMATH

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Crane Creek and Threemile Creek, tributary to Crane Creek, 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-24530. The date of priority is December 15, 1954. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed:

Threemile Creek

Instream Reach	Instream Period	Instream Rate (CFS)
Reach No. 1	June 1 through September 30	1.0

Crane Creek

Instream Reach	Instream Period	Instream Rate (CFS)
Reach No. 2	June 1 through September 30	2.6
Reach No. 3		3.6

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

Instream Reach No. 1: At the location of the diversion authorized previously under Certificate 29534 on Threemile Creek, located approximately at the mouth of Threemile Creek:

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

Instream Reach No. 2: At the location of the diversion authorized previously under Certificate 29534 on Crane Creek, located approximately at:

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.

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

To the confluence with Threemile Creek.

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

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

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

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.

The right is subject to all other terms and conditions of Certificate 29534, 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 117, Page 321, approving Transfer T-12971, and supersedes Certificate 29534, State Record of Water Right Certificates.

AUG 18 2020

WITNESS the signature of the Water Resources Director, affixed _____.



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

STATE OF OREGON

COUNTY OF KLAMATH

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of Crane Creek 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-18305. The date of priority is June 26, 1941. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 1.64 Cubic Feet per Second, or its equivalent in case of rotation, measured at the original point of diversion, from April 1 through September 30.

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

From the location of the diversion authorized previously under Certificate 19959 and clarified by Special Order Volume 117, Page 321, located approximately at:

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

To the mouth of Crane Creek.

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

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.

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 19959, 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 117, Page 324, approving Transfer T-12971, and supersedes Certificate 19959, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed AUG 18 2020.

A handwritten signature in cursive script, appearing to read "Dwight French", written over a horizontal line.

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