

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING A
Application T-11320, and Mitigation	)	CHANGE IN PLACE OF USE AND
Project MP-160, Deschutes County	)	CHARACTER OF USE AND
	)	WITHDRAWAL OF MITIGATION
	)	PROJECT

**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.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

**Applicant**

DESCHUTES RIVER CONSERVANCY  
700 NW HILL STREET, SUITE 1  
BEND, OREGON 97703

**Findings of Fact**

1. On November 18, 2011, the DESCHUTES RIVER CONSERVANCY filed an application to change the place of use and character of use under Certificates 36137 and 67284 to instream use. The Department assigned the application number T-11320.
2. Notice of the application for transfer was published on November 29, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant has provided notification of the proposed action to the City of Sisters, Deschutes County, Jefferson County, and the Confederated Tribes of Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments and the City of Maupin and Wasco County, upon receipt of Transfer Application T-11320.

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

4. On November 30, 2011, the Department contacted the applicant's agent for clarification on the application and map regarding the mitigation acres. On December 1, 2011, the agent submitted an amended map resolving the deficiency.
5. On January 19, 2016, the Department mailed a copy of the draft Preliminary Determination to the applicant proposing to approve Transfer Application T-11320 with modifications to the proposed instream use. The Department identified that the amount of water that may be transferred from irrigation use, considering beneficial use without waste, to instream use was less than the quantities proposed in the transfer application. The draft Preliminary Determination cover letter set forth a deadline of February 18, 2016, for the applicant to respond.
6. On January 22, 2016, the Department received a comment from the Deschutes River Conservancy (DRC). The DRC requested that the Department approve the transfer application as proposed in the original application. Specifically, the DRC requested that the full rates proposed for instream use at the point of diversion be protected instream within Reach No. 1, being from the point of diversion to River Mile (RM) 16.5. The DRC provided additional information to demonstrate that the full rate allowed is diverted at the point of diversion over the entire irrigation season. The DRC identified that the requested instream rates do not exceed the water right and that the full rate was regularly diverted all season long.
7. On February 29, 2016, the Department emailed a copy of the Revised Draft Preliminary Determination proposing to approve Transfer Application T-11320 to the applicant. The Revised Draft Preliminary Determination included consideration of the comments provided by the DRC and affirmed the findings of the original Draft Preliminary Determination. The revised draft Preliminary Determination email set forth a deadline of March 30, 2016, for the applicant to respond.
8. On March 8, 2016, the DRC submitted additional comments and information for consideration by the Department. The DRC requested that the Department review the additional information provided and the amount of water that could be protected instream within Reach No. 1 and No. 2. The applicant also provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. The Department has considered the additional information and comments provided by the DRC. Based upon continued evaluation, the Department has affirmed the findings of the original Draft Preliminary Determination and determined that the reductions to the quantities that may be protected instream in Reach No. 1 and Reach No. 2, as described in Finding of Fact No. 30, are appropriate. The quantity (volume) of water requested to be protected instream by the applicant in Transfer Application T-11320, is more water than can be used beneficially without waste for the portion of the right proposed for transfer.

Use of water under every water right is subject to the principle of beneficial use without waste in accordance with ORS 536.310. Beneficial use is the measure and the limit of all rights (ORS 540.610). Use of water under Certificates 36137 and 67284 are limited to an amount actually beneficially used consistent with conditions in the water right certificate.

The quantity of water that could legally be diverted includes reasonable losses in the conveyance and application of water; however, it does not include any quantity of water in excess of that needed to satisfy the use in a reasonably efficient manner.

The applicant has requested to change the character of use under Certificates 36137 and 67284 from irrigation use to instream use. All transfer applications are evaluated to determine whether the proposed change would result in injury or enlargement under OAR Chapter 690, Division 380. Changes in character of use through a water right transfer create a potential for enlargement of a water right by transferring more water than could be used beneficially without waste.

The Department has identified that the quantity described in Finding of Fact No. 30 is an amount that could be reasonably diverted for beneficial use without waste and without enlarging the original water right.

10. On May 5, 2016, the Department issued a Preliminary Determination proposing to approve Transfer T-11320 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 May 10, 2016, and in the Nugget newspaper on May 11, 18, and 25, 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:

**Certificate:** 36137 in the name of PETE F. LEITHAUSER (confirmed by Squaw Creek [Whychus Creek] Decree)  
**Use:** IRRIGATION of 21 1/3 ACRES  
**Priority Date:** 1883  
**Rate:** 0.43 CUBIC FOOT PER SECOND (CFS)  
**Source:** WHYCHUS CREEK (formally Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	4	NW SE	21.33

12. Certificate 36137 does not describe 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	Measured Distances
15 S	10 E	WM	9	SE NW	BUCHANAN DITCH - 2050 FEET SOUTH AND 1250 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 9

- 13. Certificate 36137 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree.
- 14. Certificate 36137 does not specify a duty limit per acre nor is one specified by Decree.
- 15. The portion of the second right to be transferred is as follows:

**Certificate:** 67284 in the name of FRANK L. SHAW (confirmed by Squaw Creek [Whychus Creek] Decree)  
**Use:** IRRIGATION of 12.0 ACRES  
**Priority Date:** 1883  
**Rate:** 0.24 CFS  
**Source:** WHYCHUS CREEK (formally Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	9	SE NW	BUCHANAN DITCH - 2050 FEET SOUTH AND 1250 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 9

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	4	NW SE	12.0

- 16. On December 12, 2011, a groundwater permit application G-17515 was submitted pending the approval of Transfer Application T-11320. Groundwater Permit G-17067 was issued on July 12, 2013, prior to Transfer Application T-11320 being processed by the Department. While a portion of Permit G-17067 now exists on the same lands as the portion of Certificate 67284 proposed for transfer under T-11320; it was not the intent to layer these rights.
- 17. Certificate 67284 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree.
- 18. Certificate 67284 does not specify a duty limit per acre nor is one specified by Decree.
- 19. The applicants are not the owners of the lands to which the water right described in Findings of Fact Nos. 11 and 15 are appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed to DRC from each landowner described in the table below. The portion of the right to be transferred was appurtenant to lands owned by the identified land landowners at the time interest in the water right was conveyed through a Quit Claim deed, a water right conveyance agreement.

Landowner	Water Right Interest Holder	Twp	Rng	Sec	Q-Q	Tax Lot at time of Conveyance	Acres
EEL, LLC	DRC	15 S	10 E	4	NW SE	1202	32.73
Edith E. Leithauser Trust of Feb. 9, 1994	DRC	15 S	10 E	4	NW SE	1203	0.60
Total Acres							33.33

20. Transfer Application T-11320 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, and recreation.
21. Transfer Application T-11320 also proposed to use 1.8 acres under Certificate 67284 proposed for transfer to instream use to establish mitigation credits in the Deschutes Groundwater Study Area.
22. The applicant proposes the quantities of water to be transferred instream be protected as follows:

**Instream Reach No. 1 (Restoration and Mitigation flows):** From the POD (as described in Findings of Fact Nos. 12 and 15) to the mouth of Whychus Creek then into the Deschutes River to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Period Protected Instream			
		April 1 through May 15		May 16 through October 31	
		Instream Rate (cfs)	Instream Volume Acre Feet(AF)	Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.67	59.7	0.56	188.6
67284					

**Instream Reach No. 2 (Restoration flows only):** From Lake Billy Chinook (RM 120) to the mouth of the Deschutes River

Certificate	Priority Date	Period Protected Instream	
		April 1 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.13	56.8
67284			

23. Following issuance of the Preliminary Determination, the applicant requested to withdraw the proposal to use 1.8 acres under Certificate 67284 to generate mitigation credits. The applicant has requested that instream flows be protected only for restoration purposes. Instream flows resulting from the transfer of this portion of Certificate 67284 are proposed to be protected instream only to Lake Billy Chinook on the Deschutes River.
24. 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)***

25. The rights were leased instream under IL-1164 during the period July 15, 2011 through October 31, 2015 and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
26. 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-11320.
27. Use of water under the existing right is subject to beneficial use without waste in accordance with ORS 536.310. The applicant has requested an instream volume that would be equivalent to a duty of 7.45 AF per acre. The Department has identified that this is more water that can be used beneficially without waste and that the transfer to instream use would result in enlargement of the water right unless the instream quantity was reduced. Based upon additional information provided by the Watermaster, an appropriate equivalent volume per acre, considering the quantity of water that could be used beneficially and without waste is 5.5 AF per acre. A total of 183.3 AF.
28. A portion of the water diverted at the point of diversion returns to Whychus Creek around RM 16.5 as a result of sub-surface flow. To prevent injury and enlargement, the quantity of water that may be protected instream in Reach No. 2 has been adjusted to account for return flows at RM 16.5.

When evaluating for return flows, the Department generally considers the place of use as a whole and where the majority of return flows occur based upon the presence of surface return flows (overland flow) and the factors described below for any subsurface return flows.

The hydrogeologic evaluation of where subsurface return flows occur is generally based on the following information: 1) the local shallow and regional ground water elevations, 2) the shallow and regional head gradient (i.e. ground water flow direction), 3) elevation of nearby streams, 4) elevation of closest gaining stream reaches, 5) distance from nearby streams and gaining stream reaches, and 6) local geologic information.

The place of use under each right proposed for instream use is located in close proximity to Whychus Creek. A portion of the water diverted to the place of use returns to the creek system around RM 16.5 as a result of sub-surface flow.

The instream flows at RM 16.5 have been reduced to the consumptive portion of the rights to account for subsurface return flows.

29. The transfer application requests to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantities that may be transferred instream into Whychus Creek are measurable into the Deschutes River and may be protected instream in the Deschutes River.
30. Based on Findings of Fact Nos. 23, 27 through 29, the instream use has been modified from the original request and the quantities to be transferred and protected instream are as follows:

**Instream Reach No. 1 (Restoration):** From the POD (as described in Findings of Fact Nos. 12 and 15) to RM 16.5 on Whychus Creek

Certificate	Priority Date	Period Protected Instream			
		April 1 through May 15		May 16 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)	Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.43	38.38	0.24	78.93
67284	1883	0.24	21.42	0.13	44.58
Totals		0.67	59.80	0.37	123.51

**Instream Reach No. 2 (Restoration):** From RM 16.5 to the mouth of Whychus Creek and then into the Deschutes River to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Period Protected Instream	
		April 1 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.09	38.39
67284	1883	0.05	21.60
Totals		0.14	59.99

**Instream Reach No. 3 (Restoration):** From Lake Billy Chinook (RM 120) to the mouth of Deschutes River

Certificate	Priority Date	Period Protected Instream	
		April 1 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.09	38.39
67284	1883	0.04	18.36
Totals		0.13	56.75

31. The proposed changes, as modified, would not result in enlargement of the right.
32. The proposed changes, as modified, would not result in injury to other water rights.
33. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

34. The protection of flows 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 river bed downstream from the point of diversion; and
  - d) Return flows resulting from the exercise of the existing water right would re-enter the river downstream of RM 16.5 on Whychus Creek and have been accounted for in Reach No. 2.
35. Within the proposed reach on Whychus Creek, there are several existing instream water rights established under ORS 537.336 (state agency application process), ORS 537.348 (instream transfer process), and ORS 537.470 (allocation of conserved water process). There are two instream water rights established under ORS 537.336 within the proposed reach, being Instream Water Right Certificates 73223 and 73224 both with a priority date of October 11, 1990. The instream reach for Certificate 73223 extends from Indian Ford Creek at RM 19.5 to the mouth of Whychus Creek. The instream reach for Certificate 73224 extends from the South Fork Whychus Creek at river mile 35.0 to Indian Ford Creek at RM 19.5. Both instream rights are to provide streamflows for migration, spawning, egg incubation, fry emergency, and juvenile rearing. The remaining instream rights on Whychus Creek were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) for fish and wildlife habitat and pollution abatement. These other instream rights are senior in priority date to Certificates 73223 and 73224.
36. Within the proposed reach on the Deschutes River, there are several existing instream water rights. There is a pending instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341 to establish an instream water right from North Canal Dam to Lake Billy Chinook, which if approved will have a priority date of September 24, 1990. Below Lake Billy Chinook, there are two other instream water rights, Certificates 73188 and 73237, with priority dates of October 2, 1989 and January 16, 1996, respectively. These instream water rights were established pursuant to ORS 537.341, the state agency instream water right application process, and are located from the Pelton Regulation Dam on the Deschutes River to the mouth. These instream rights are for protection of instream flows for various fish life stages, recreation and aesthetics. The remaining instream water rights are senior in priority date and were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process, for fish and wildlife habitat, recreation, and pollution abatement.
37. In addition, within the proposed reach, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat and recreation is a matter of statutory policy. Within the proposed reach, flows for the designated Scenic Waterway are at times not met during the requested periods for instream protection.



38. Instream water rights, with senior priority dates, established through the instream transfer and allocation of conserved water processes generally replace portions of other instream water rights, which carry junior priority dates established through the minimum flow conversion (ORS 537.346) or the state agency application process for establishing new instream water rights.
39. Within the proposed instream reach on Whychus Creek above the confluence with Indian Ford Creek, during the months of April through September, the total quantities of water to be protected within the proposed reach under the existing instream rights, established under ORS 537.348 and ORS 537.470, and the proposed instream right will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73224, which was created under ORS 537.341, the state agency instream water right application process. However, the original instream flows established under Certificate 73224 were based on flow needs for resident redband trout and did not account for flows necessary to support reintroduction of Mid-Columbia summer steelhead trout and spring Chinook salmon.

The current instream flows on Whychus Creek under Certificate 73224 are insufficient for the reintroduction of anadromous runs of Mid-Columbia summer steelhead trout and spring Chinook salmon. Summer steelhead trout are listed as threatened under the federal Endangered Species Act. The additional flows beyond the established state agency instream water rights are necessary and will provide a public benefit as follows:

- a. Adult upstream migration. For steelhead (September-January) and for Chinook (May-August) flows need to be higher than the instream water rights for: 1) physical passage of large fish upstream over riffles and shallow bars, and 2) migration cues – relatively high flows to stimulate upstream movement to spawning grounds.
  - b. Spawning. Habitat Suitability Criteria for steelhead trout and Chinook salmon spawning indicate that the anadromous fish prefer water about 0.5 ft. deeper and 0.8 ft./sec. faster than resident rainbow trout. This equates to a much higher recommended flow for anadromous vs. resident spawning.
  - c. Outmigration. Outmigrating juvenile steelhead trout (March-June) and Chinook salmon (February-March) will benefit greatly from higher flows to facilitate emigration of juveniles downstream to the mainstem Deschutes.
  - d. The proposed instream right is located in an ODFW flow restoration priority watershed.
40. Within the proposed reach on Whychus Creek above the confluence with Indian Ford Creek, during the months of April through September, by adding to other instream water rights established pursuant to ORS 537.341 (state agency application process), ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), 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.

41. Within the proposed reach on Whychus Creek during the month of October above the confluence with Indian Ford Creek and during the months of April through October below the confluence with Indian Ford Creek, the proposed instream use may add to other instream water rights established by ORS 537.348 and ORS 537.470. In addition, during the month of October above the confluence with Indian Ford Creek and during the months of April through October below the confluence with Indian Ford Creek the proposed instream use may replace a portion of Certificates 73224 and 73223, established under ORS 537.341, with an earlier priority date.
42. Within the proposed reach on the Deschutes River, the existing instream water rights, established under ORS 537.341 (state agency application process), are sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but are not always met and have priority dates junior in comparison to other water rights on the Deschutes River. The proposed instream use will have a priority date of 1883. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; and recreation under an earlier priority date.
43. Within the proposed reach on the Deschutes river, 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; and recreation.
44. 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.

***Preliminary and Final Award of Deschutes Basin Mitigation Credits***

45. The Deschutes River Conservancy (DRC) requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The DRC had requested that any mitigation credits generated from this project be assigned to the Deschutes River Conservancy.
46. The Department assigned this mitigation credit project number MP-160.
47. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on December 6, 2011. No comments were received in response to this notice.
48. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on December 19, 2011. Comments were received from the Oregon

Parks and Recreation Department, stating that the increase in flow will likely result in improved aquatic conditions for fish and wildlife and will provide a resource benefit within the zone of impact.

49. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
50. On May 10, 2016, the DRC requested that the Department withdraw the Mitigation Project MP-160 from this Instream Transfer Application T-11320.

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in application T-11320 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

This mitigation project has been withdrawn and, therefore, does not result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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

1. The changes in character of use and place of use to instream use proposed in application T-11320 are approved.
2. Water right Certificate 36137 is cancelled. A new certificate confirming the instream water right shall be issued.
3. Water right certificate 67284 is cancelled. A new certificate confirming the instream water right shall be issued. A portion of the right not affected by this transfer is also being transferred under Transfer Application T-11358; a new certificate will be issued describing the portion not being transferred by either T-11320 or T-11358.
4. The instream water right shall provide for the protection of streamflows as follows:

**Instream Reach No. 1 (Restoration):** From the POD (as described in Findings of Fact Nos. 12 and 15) to RM 16.5 on Whychus Creek

Certificate	Priority Date	Period Protected Instream			
		April 1 through May 15		May 16 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)	Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.43	38.38	0.24	78.93
67284	1883	0.24	21.42	0.13	44.58
Totals		0.67	59.80	0.37	123.51

**Instream Reach No. 2 (Restoration):** From RM 16.5 to the mouth of Whychus Creek and then into the Deschutes River to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Period Protected Instream	
		April 1 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.09	38.39
67284	1883	0.05	21.60
Totals		0.14	59.99

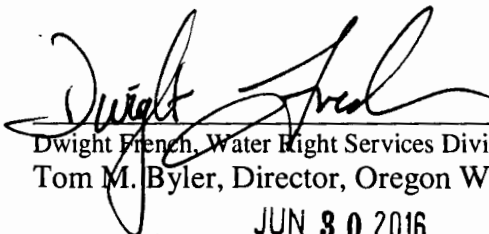
**Instream Reach No. 3 (Restoration):** From Lake Billy Chinook (RM 120) to the mouth of Deschutes River

Certificate	Priority Date	Period Protected Instream	
		April 1 through October 31	
		Instream Rate (cfs)	Instream Volume (AF)
36137	1883	0.09	38.39
67284	1883	0.04	18.36
Totals		0.13	56.75

5. 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.
6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.
7. Within the instream reach on Whychus Creek above the confluence with Indian Ford Creek, during the period April 1 through September 30, any instream water right established by this transfer application may be in addition to instream water rights established pursuant to ORS 537.341, ORS 537.346, ORS 537.348 and ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes. During the month of October, 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.
8. Within the reach on Whychus Creek below the confluence with Indian Ford Creek, during the period April 1 through October 31, 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. Within the reach on the Deschutes River, during the period April 1 through October 31, 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.
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 36137 and 67284 and any related decree.
11. The former place of use of the transferred water shall no longer receive water as part of these rights.
12. **Final Award of Mitigation Credits:** Mitigation Project MP-160 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 27 day of June, 2016.



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

Mailing date: JUN 30 2016