

3. On May 1, 2018, consistent with land use requirements, prior to submitting the Instream Transfer Application, the applicant provided notification of the intent to file the instream transfer application to Jefferson County. Additionally, the Department provided notice of the proposed action to Jefferson County upon receipt of Instream Transfer Application T-13098.
4. The instream transfer application was originally submitted to provide mitigation under the Deschutes Groundwater Mitigation Program as a direct Mitigation Project, no mitigation project number was assigned. The original groundwater application was submitted on December 31, 2018 and returned because it was submitted on the incorrect application form. On March 6, 2019, a new groundwater application G-18796 was submitted and withdrawn on July 26, 2019. Therefore, this Instream Transfer Application will be used for instream flow restoration purposes only.
5. On September 17, 2020, Certificate 95247 was issued and superseded Certificate 87472.
6. On April 14, 2021, the Department provided notification to the applicants' agent of discrepancies and deficiencies identified in Instream Transfer Application T-13098. On April 22, 2021, the applicants' agent responded resolving a few of the deficiencies.
7. On August 2, 2021, the Department provided notification to the applicants' agent of discrepancies in the application map and the fee submitted with the application. On August 27, 2021, the applicants' agent submitted a new application map and on December 20, 2021, additional fees were submitted resolving all deficiencies.
8. On December 29, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-13098 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 28, 2022, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
9. On March 14, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13098 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on March 15, 2022, and in the Bend Bulletin newspaper on March 17, 2022 and March 24, 2022 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
10. The portion of the right proposed to be transferred is as follows:
 - Certificate:** 95247 in the name of MARTIN HANSEN and CECIL W. AND SALLY A. DRINKWARD (confirmed by the Deschutes River Decree). The decree is of record at Salem in the Order Record of the Water Resources Director in Volume 9, at Page 362)
 - Use:** Irrigation, Livestock and Domestic use on 2.0 acres

Priority Date: 1888

Rate: 0.022 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to 3.0 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed 1/60th cubic foot per second per acre during the irrigation season from May 1 to September 15, or its equivalent in case of rotation, measured at the point of diversion from the source.

Period of Use: May 1 to September 15, for irrigation

Source: LAKE CREEK, tributary to the METOLIUS RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	16	SE NE	POD 2: 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SE SE	2.0

11. A total of 6.0 Acre-Feet (AF) of water may be beneficially used annually under the existing right during the irrigation season.
12. Certificate 95247 identifies the source of water as Lake Creek. However, Lake Creek, as it flows out of Suttle Lake, branches into the North, Middle, and South Forks of Lake Creek. The Middle Fork Lake Creek rejoins the South Fork just below River Mile 2 on the South Fork. South Fork Lake Creek then flows into the Metolius River. The North Fork flows into the Metolius River upstream from the confluence of the South Fork with the Metolius River. Water for the place of use involved in Instream Transfer Application T-13098 is diverted from South Fork Lake Creek.
13. Transfer Application T-13098 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.
14. Transfer Application T-13098 proposes to change the place of use of the right to create an instream reach from the POD to the mouth of South Fork Lake Creek at the confluence with the Metolius River.
15. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Instream Period	Instream Rate (CFS)	Instream Volume (AF)
May 1 to September 15	0.033	6.0

16. 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)

- 17. Water has been used within the last five years, prior to submittal of the application, according to the terms and conditions of the portion of the right proposed for transfer, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 18. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Instream Transfer Application T-13098.
- 19. At the full instream rate and volume requested (as identified in Finding of Fact No. 14), water may only be protected instream for 90 days. The full instream period requested by the applicant, May 1 through September 15, is 138 days. To prevent enlargement of the right, the requested instream use requires modification. To maximize the instream use, the Department recommends reducing the instream rate to protect water over the full irrigation season (May 1 through September 15). The recommended instream use is as follows:

Instream Reach: From the POD (as described in Finding of Fact No. 10) on the South Fork of Lake Creek to the mouth at the confluence with the Metolius River

Certificate	Priority Date	Rate Instream (CFS)	Volume Instream (AF)	Instream Period
95247	1888	0.022	6.0	May 1 through September 15

- 20. The proposed change, as modified, would not result in enlargement of the right.
- 21. The proposed change, as modified, would not result in injury to other water rights.
- 22. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
- 23. 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) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
24. Within the proposed reach on South Fork Lake Creek, there are several existing instream water rights.
- a) Certificate 76416 was established under ORS 537.341 (state agency application process) for the purposes of providing required stream flow for Rainbow and Brown Trout, Kokanee Salmon, and White Fish for migration, spawning, egg incubation, fry emergence, and juvenile rearing and carries a priority date of October 11, 1990.
 - b) Certificate 59797 was established under ORS 537.346 (conversion of minimum perennial streamflows), for supporting aquatic life and carries a priority date of February 20, 1962.
 - c) Certificate 93368 was established under ORS 537.348 (instream transfer process) and has a priority date of 1888.
 - d) Certificate 95492 was established under ORS 537.348 (instream transfer process) and has a priority date of 1888.
25. Instream water rights established by instream transfer are generally additive to any existing instream water rights within the same reach established by other instream transfers and/or the allocation of conserved water program that also generally carry senior priority dates. In addition, instream water rights established by instream transfer also generally replace portions of any existing instream rights established by the state agency application process and/or minimum perennial streamflow conversion that usually have junior priority dates.
26. The proposed instream use, given a priority date of 1888, may be additive to Certificates 93368 and 95492, which also carry an 1888 priority date. In addition, the proposed instream use may replace a portion of Certificates 74146 and 59797, with an earlier priority date, which carry priority dates of October 11, 1990, and February 20, 1962, respectively.
27. Certificate 76416 was established under Instream Water Right Application IS-70751 filed by the Oregon Department of Fish and Wildlife (ODFW). As part of the instream water right application, ODFW requested higher flows than what were granted during the months of July, August, and September. ODFW has also identified Lake Creek (including its forks) as an area needing flow restoration for recovery of salmonids during the summer months.
28. The South Fork of Lake Creek is tributary to the Metolius River, which is a state designated Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Metolius River for fish and wildlife habitat, and recreation is a matter of statutory policy.

29. 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.
30. By replacing a portion of other instream water rights, established pursuant to ORS 537.341 (state agency application process) and ORS 537.346 (conversion of minimum perennial streamflows), any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and providing streamflows for various fish species and fish life stages under an earlier priority date.
31. During the period May 1 through September 15, 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.
32. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-13098 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

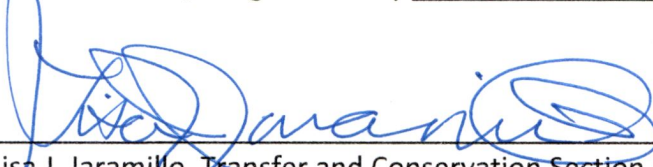
1. The changes in character of use and place of use to instream use proposed in application T-13098 are approved.
2. Water right certificate 95247 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will also be issued describing that portion of the right not affected by this transfer.
3. The instream right shall provide for the protection of streamflows as follows:

Instream Reach: From the POD (as described in Finding of Fact No. 10) on the South Fork Lake Creek to the mouth at the confluence with the Metolius River

Certificate	Priority Date	Rate Instream (CFS)	Volume Instream (AF)	Instream Period
95247	1888	0.022	6.0	May 1 through September 15

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. 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 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 Certificate 95247 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this day **MAY 09 2022** .



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Tom M. Byler, Director, Oregon Water Resources Department

Mailing date: **MAY 10 2022**