

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-10730 and Mitigation Credit	)	PROPOSING APPROVAL OF A
Project MP-124, Crook, Deschutes, and	)	CHANGE IN PLACE OF USE AND
Jefferson Counties	)	CHARACTER OF USE AND
	)	PRELIMINARY AWARD OF
	)	MITIGATION CREDITS

**Authority**

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

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.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

**Applicants**

GRASS BUTTE, LLC  
GREG DANIELS  
1111 MAIN ST SUITE 700  
VANCOUVER WA 98660

PREMIER WEST BANK  
875 SW RIMROCK WAY, SUITE 100  
REDMOND, OREGON 97756

**Findings of Fact**

**Background**

1. On November 21, 2008, The Daniels Group, LLC, filed an application to change the place of use and character of use under Certificates 81601, 83651, and 83732 to instream use. The Department assigned the application number T-10730.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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2. Certificate 81601 has been cancelled and a new Certificate (83857) was issued on May 7, 2008.
3. On August 26, 2009, the Department requested additional supporting information and clarification of the intent of T-10730.
4. On August 28, 2009, the Department received a letter of interest from South Valley Bank and Trust requesting that they be kept informed of the proposed transfer.
5. On September 14, 2009, an additional letter was received from South Valley Bank and Trust identifying that the Bank could not consent to the transfer because conditions for their consent were not met.
6. On September 25, 2009, the applicant clarified that the portion of Certificate 81601 (i.e. Certificate 83857) proposed for transfer to instream use include Irrigation, Livestock and Domestic use consistent with the water right of record. In addition, the applicant submitted additional supporting documentation for T-10730 along with revised transfer maps with clarifying information.
7. On November 9, 2009, the Department requested further clarification of the intent of T-10730 and additional information necessary to complete the application.
8. On March 23, 2010, The Daniels Group requested that a 75% interest in T-10730 and MP-124 be assigned to Realvest Corporation and Premier West Bank and that a 25% interest in T-10730 and MP-124 be assigned to Grass Butte, LLC. On March 23, 2010, Realvest Corporation requested that the 75% interest in T-10730 and MP-124 be assigned to Grass Butte, LLC. On March 23, 2010, Grass Butte, LLC requested that the 25% interest be assigned to Grass Butte, LLC and Premier West Bank.
9. On March 29, 2010, the Department approved the assignment requests and concurred that T-10730 is now in the names of Grass Butte, LLC and Premier West Bank.
10. On November 3, 2010, the applicant clarified that the portion of Certificate 83651 proposed for transfer to instream use include Irrigation, Livestock and Domestic use consistent with the water right of record.
11. On November 3, 2010, the applicant provided further clarification of the intent of T-10730, along with revised transfer maps in support of T-10730.
12. On December 13, 2010, the Department requested further clarification of the intent of T-10730, including priority date and POD clarifications, and correcting of clerical errors.
13. On December 21 and 22, 2010, the applicant provided clarifying information, along with revised transfer maps.

14. The portion of the first right to be transferred is as follows:

- Certificate:** 83857 in the name of PEOPLES IRRIGATION CO. (confirmed by Crooked River Decree)
- Use:** IRRIGATION OF 67.0 ACRES (0.5 acre under the 1898 priority date, 2.5 acres under the 1904/1910 priority date, and 64.0 acres under the 1892 priority date), LIVESTOCK AND DOMESTIC USE
- Priority Dates:** 1892, 1898, and 1904/1910
- Rate:** 0.84 CUBIC FOOT PER SECOND (CFS), being 0.01 CFS under the 1898 priority date, 0.03 CFS under the 1904/1910 priority date, and 0.8 CFS under the 1892 priority date
- 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-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
- Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Points of Diversion:**

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8
2	--	--	--	--	--	LOW LINE DITCH
6	14 S	14 E	WM	29	NE NW	PUMP: 1085 FEET SOUTH AND 970 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 29
7	14 S	14 E	WM	20	SE SE	PUMP: 325 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF SECTION 20

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK, AND DOMESTIC								
Priority Date	POD	Twp	Rng	Mer	Sec	Q-Q	Acres	User
1892	6	14 S	14 E	WM	20	SW SW	10.0	Forrest, Frances
1904/1910	2	14 S	14 E	WM	21	SE SW	2.5	Deschutes Fine Wool Company
1898	7	14 S	14 E	WM	29	NE NE	0.5	McDowell, D.A.
1892	6	14 S	14 E	WM	29	NE NW	5.0	Forrest, Frances
1892	6	14 S	14 E	WM	29	NW NW	35.6	Forrest, Frances
1892	1	14 S	14 E	WM	29	NW NW	2.4	Forrest, Frances
1892	1	14 S	14 E	WM	29	SW NW	3.0	Forrest, Frances
1892	1	14 S	14 E	WM	29	SE NW	8.0	Forrest, Frances

15. For Certificate 83857, information submitted with the application identifies that POD #2, Low Line Ditch, is the same POD as identified for Certificate 83651 as described in Finding of Fact #16. The Department also has additional information identifying that Low Line Ditch and the POD for Certificate 83651 is more accurately located as described in Findings of Fact #16 and #17.

16. The portion of the second right to be transferred is as follows:

- Certificate:** 83651 in the name of LOW LINE DITCH CO. (confirmed by Crooked River Decree)

**Use:** IRRIGATION OF 45.0 ACRES, DOMESTIC, AND LIVESTOCK  
**Priority Date:** 1903  
**Rate:** 0.56 CFS  
**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed a reasonable amount for domestic and livestock, and 0.56 cubic feet per second for irrigation, the total quantity being limited to 4.0 acre-feet per acre during each year.  
**Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	24	SE SW	Unspecified by Certificate

**Authorized Place of Use:**

IRRIGATION, LIVESTOCK, AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Name of User through Company's Works
14 S	14 E	WM	28	NW NE	25.0	J. W. Livingston
14 S	14 E	WM	28	NE NW	20.0	J. W. Livingston

17. The Crooked River Decree further describes the POD for Certificate 83651 as the Low Line Ditch. In a prior site visit, Department staff further identified that the POD is more accurately located approximately at Latitude 44.33859 degrees North and Longitude 121.01154 degrees West (see Special Order Volume 73, Page 721, Finding #7).

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

**Certificate:** 83732 in the name of BUTLER RANCH, INC. (confirmed by Crooked River (F) Decree)  
**Use:** IRRIGATION of 11.0 ACRES  
**Priority Date:** 1892  
**Rate:** 0.137 CFS if available at the original point of diversion  
**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-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	20	SE SW	1896 FEET SOUTH AND 1717 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 20

**Original Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	744.2 FEET SOUTH AND 321 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 8

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	20	SW SW	11.00

19. A total of 268.0 acre-feet of water may be beneficially used annually under the portion of existing Certificate 83857 proposed for transfer. A total of 180.0 acre-feet of water may be beneficially used annually under the portion of the existing right for Certificate 83651 proposed for transfer. A total of 44.0 acre-feet of water may be beneficially used annually under the existing right for certificate 83732 proposed for transfer.
20. Certificates 83857, 83651, and 83732 do not specify the irrigation season. The irrigation season is February 1 to December 1, pursuant to the Crooked River Decree.
21. There is a supplemental water right, Certificate 83850, covering a portion of the lands (85.4 acres, being 35.8 acres under Certificate 83651 and 49.6 acres under Certificate 83857) on which the primary water rights are proposed for transfer to instream use. By rule, a supplemental right must be included with the transfer or cancelled. However, consistent with OAR 690-380-2240(5), the applicant is proposing, under transfer application T-10734, to move 85.4 acres of supplemental irrigation under Certificate 83850 to the location of another primary right with similar reliability to the existing primary rights. If T-10734 is approved, no supplemental irrigation will remain for the lands proposed for transfer to instream use under T-10730.
22. Application T-10730 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 to establish mitigation credits in the Deschutes Ground Water Study Area.
23. Application T-10730 proposes to change the place of use of the right to create an instream reach from below the Low Line Ditch Diversion and from below the Crooked River Diversion to the confluence with the Deschutes River.

24. The applicant proposes the quantities of water to be transferred instream to be protected as follows:

Certificate Number	Instream Period	Rate (cfs)	Volume (acre-feet)
83857	Unspecified	0.838	268.0
83651	Unspecified	0.56	180.0
83732	Unspecified	0.138	44.0
	<b>Total</b>	<b>1.536</b>	<b>492.0</b>

25. The applicant proposes 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 also proposes that any instream water right 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 an earlier priority date.

26. The application includes a Land Use Information form completed and signed by a representative of Crook County. Additionally, the Department has provided notification of the proposed action to Crook County, Deschutes County and Jefferson County upon receipt of transfer application T-10730.
27. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
28. On March 15, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10730 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 14, 2011, 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.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

30. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
31. Based upon information provided as part of the application, it appears that while water has been diverted from the Crooked River under each right that a portion of the water diverted under the rights may not have been diverted from the authorized point(s) of diversion. Although water may have been diverted from non-authorized points of diversion, a diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Application T-10730.
32. The applicant requested that water be protected instream beginning from below the Low Line Ditch Diversion and from below the Crooked River Diversion to the confluence with the Deschutes River. Each water right proposed for transfer to instream use has specific points of diversion. The portion of each right proposed for transfer to instream use may be protected instream beginning at the authorized point of diversion. Certificate 83857 has four points of diversion associated with specific portions of the right. The instream use resulting from the transfer of a portion of Certificate 83857 to instream use will begin at each of the respective points of diversion.
33. A portion of the water diverted at each POD returns to the Crooked River below the POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for both surface and 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. 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 above for any subsurface return flows.

The place of use under each right proposed for transfer is located in close proximity to the Crooked River. A portion of the water diverted to the place of use returns to the river system around the points of diversion or close to the place of use (specifically for those lands that receive irrigation water from POD #1 and #2 under Certificate 83857 located some distance upstream from the place of use) as a result of overland flow. Remaining return flows take the form of subsurface return flows. Subsurface returns would also return to the river system in the area of where Lone Pine Road crosses the Crooked River at River Mile 30.

The instream flows at the points of diversion or near the place of use have been reduced by 10% to account for surface return flows and instream flows at Lone Pine Road have been reduced to the consumptive portion of the rights to account for subsurface return flows.

34. The applicant has not specified when water is requested to be protected instream. Based on a calculation using the full rate and duty of the three water rights, water may be protected instream for a period of 161 days. There is a pending instream water right application submitted by the Oregon Department of Fish and Wildlife for anadromous and resident fish rearing. Proposed instream flows for this use would generally not be satisfied June through November. With 161 days, water may be protected instream as a result of this transfer from June 1 through November 8.
35. Based on Finding of Fact #32 through #34, on March 15, 2011, the applicant agreed to modify the quantities to be transferred and protected instream as follows:

Resulting from Certificate 83857

Reach #1: From POD #1 (as described in Finding of Fact #14) to POD #2 (Low Line Ditch) (as described in Findings of Fact #14, #16, & #17).

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.17	53.6	June 1 – Nov. 8

Reach #2: From POD #2 (Low Line Ditch) to River Mile 32.9.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.17	53.6	June 1 – Nov. 8
	1904/1910	0.03	10.0	
<b>Total:</b>		<b>0.20</b>	<b>63.6</b>	

Reach #3: From River Mile 32.9 to POD #7 (as Described in Finding of Fact #14)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
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83857	1892	0.17	53.6	June 1 – Nov. 8
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.197</b>	<b>62.22</b>	

**Reach #4: At POD #7 (as described in Finding of Fact #14)**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.17	53.6	June 1 – Nov. 8
	1898	0.01	2.0	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.207</b>	<b>64.22</b>	

**Reach #5: From just below POD #7 to POD #6 (as described in Finding of Fact #14)**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.17	53.6	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.206</b>	<b>65.09</b>	

**Reach #6: At POD #6 (as described in Finding of Fact #14)**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.80	256.0	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.836</b>	<b>267.49</b>	

**Reach #7: From just below POD #6 to River Mile 30 where Lone Pine Road crosses the Crooked River**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.74	229.92	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.776</b>	<b>241.41</b>	

**Reach #8: From River Mile 30 to to Lake Billy Chinook**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83857	1892	0.37	115.2	June 1 – Nov. 8
	1898	0.003	0.9	
	1904/1910	0.01	4.5	
<b>Total:</b>		<b>0.383</b>	<b>120.6</b>	

**Resulting from Certificate 83651**

**Reach #1: From the POD for Certificate 83651 (as described in Findings of Fact #16 and #17) River Mile 32.9**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83561	1903	0.56	180.0	June 1 – Nov. 8



Reach #2: From River Mile 32.9 to River Mile 30 where Lone Pine Road crosses the Crooked River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83561	1903	0.50	159.67	June 1 – Nov. 8

Reach #3: From River Mile 30 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83561	1903	0.25	81.0	June 1 – Nov. 8

Resulting from Certificate 83732

Reach #1: At POD for Certificate 83732 (as described in Finding of Fact #18)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83732	1892	0.137	44.0	June 1 – Nov. 8

Reach #2: From just below the POD for Certificate 83732 to River Mile 30 where Lone Pine Road crosses the Crooked River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83732	1892	0.12	38.32	June 1 – Nov. 8

Reach #3: From River Mile 30 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
83732	1892	0.06	19.8	June 1 – Nov. 8

36. The proposed changes, as modified, would not result in enlargement of the right.
37. The proposed changes, as modified, would not result in injury to other water rights.
38. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water rights.
39. The protection of flows within the proposed reaches is appropriate, considering:
  - a) The instream water rights will begin at the recorded points of diversion;
  - b) The location of confluences with other streams downstream of the points of diversion;
  - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Return flows resulting from the exercise of the existing water right would re-enter the river within the proposed reaches and have been accounted for at appropriate points within each proposed reach.
40. There is an instream lease, IL-1081, currently in effect for a portion of the water rights proposed for transfer, specifically Certificates 83857 and 83732, to instream use. The instream lease was approved by the Department on July 27, 2010, as evidenced by Special Order Volume 81, Page 474. A correction order was issued on July 30, 2010, and supersedes

the original order, as evidenced by Special Order Volume 81, Page 546. This instream lease is scheduled to terminate on November 30, 2013, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer T-10730 may be approved. Also, the date on which this instream transfer may be approved may be affected by the date on which the existing instream lease is terminated to prevent injury and enlargement.

41. There are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) within the same reach as that proposed for each of the new instream water rights, which include the use of water for fish and wildlife habitat, aquatic life, recreation, and pollution abatement. There presently are no instream water rights within the proposed reach created as a result of ORS 537.346 (minimum flow conversion) or ORS 537.341 (state agency instream water right application process). However, 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 Bowman Dam to Lake Billy Chinook for anadromous and resident fish rearing, which if approved will have a priority date of May 11, 1990. Requested flows for this pending instream water right application are at times not available during the instream period identified in Finding of Fact #35.
42. By adding to other water rights leased or transferred instream at the same location or created through the conserved water statutes, the instream right will provide protection for additional streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values.
43. By replacing a portion of any instream rights created at the request of state agency or under the minimum streamflow conversion process, the instream right will provide protection for streamflows previously identified as necessary for anadromous and resident fish rearing under earlier priority dates.
44. During the period June 1 through November 8, 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 by an order approving a new instream water right under these statutes.
45. 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 Award of Deschutes Basin Mitigation Credits***

46. The mitigation project was originally submitted by the Daniels Group, LLC. However, on March 29, 2010, the application was assigned to Grass Butte, LLC, and PremierWest Bank. Grass Butte, LLC, and PremierWest Bank (the Applicants) have requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water

Study Area. The Applicants have also requested that any mitigation credits generated from this project be assigned to Grass Butte, LLC, and Premier West Bank.

47. The Department assigned this mitigation credit project number MP-124.
48. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on March 10, 2009. No comments were received in response to this notice.
49. 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 March 10, 2009. No comments were received in response to this notice.
50. No changes were made to the instream transfer as a result of public notice or consultation with the above named agencies.
51. The proposed transfer of 123.0 acres of irrigation (67.0 acres under Certificate 83857, 45.0 acres under Certificate 83651, and 11.0 acres under Certificate 83732) to instream use will provide 221.4 acre-feet of mitigation water (120.6 AF from Certificate 83857, 81.0 AF from Certificate 83651, and 19.8 AF from Certificate 83732). Therefore, 221.4 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to Grass Butte, LLC, and Premier West Bank. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Crooked River Zone of Impact and the General Zone of Impact.
52. A total of 492.0 AF is proposed to be transferred to instream use and 221.4 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
53. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of certificates for the proposed instream water right shall result in completion of the project and verification that the project is complete.
54. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application.

### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-10730 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. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

This mitigation project appears to result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

*If application T-10730 is approved, the final order will include the following:*

1. *The changes in character of use and place of use to instream use proposed in application T-10730 are approved.*
2. *Water right certificates 83857, 83651, and 83732 are cancelled. New certificates confirming the instream water rights shall be issued. New certificates will be issued describing that portion of Certificates 83857 and 83651 not affected by this transfer.*
3. *The instream water rights shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River as follows:*

Resulting from Certificate 83857

*Reach #1: From POD #1 (as described in Finding of Fact #14) to POD #2 (Low Line Ditch) (as described in Findings of Fact #14, #16, & #17).*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.17	53.6	June 1 – Nov. 8

*Reach #2: From POD #2 (Low Line Ditch) to River Mile 32.9.*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.17	53.6	June 1 – Nov. 8
	1904/1910	0.03	10.0	
<b>Total:</b>		<b>0.20</b>	<b>63.6</b>	

*Reach #3: From River Mile 32.9 to POD #7 (as Described in Finding of Fact #14)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.17	53.6	June 1 – Nov. 8
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.197</b>	<b>62.22</b>	

*Reach #4: At POD #7 (as described in Finding of Fact #14)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.17	53.6	June 1 – Nov. 8
	1898	0.01	2.0	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.207</b>	<b>64.22</b>	

*Reach #5: From just below POD #7 to POD #6 (as described in Finding of Fact #14)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.17	53.6	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.206</b>	<b>65.09</b>	

*Reach #6: At POD #6 (as described in Finding of Fact #14)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.80	256.0	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.836</b>	<b>267.49</b>	

*Reach #7: From just below POD #6 to River Mile 30 where Lone Pine Road crosses the Crooked River*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.74	229.92	June 1 – Nov. 8
	1898	0.009	2.87	
	1904/1910	0.027	8.62	
<b>Total:</b>		<b>0.776</b>	<b>241.41</b>	

*Reach #8: From River Mile 30 to to Lake Billy Chinook*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83857	1892	0.37	115.2	June 1 – Nov. 8
	1898	0.003	0.9	
	1904/1910	0.01	4.5	
<b>Total:</b>		<b>0.383</b>	<b>120.6</b>	

*Resulting from Certificate 83651*

*Reach #1: From the POD for Certificate 83651 (as described in Findings of Fact #16 and #17) River Mile 32.9*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83561	1903	0.56	180.0	June 1 – Nov. 8

*Reach #2: From River Mile 32.9 to River Mile 30 where Lone Pine Road crosses the Crooked River*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83561	1903	0.50	159.67	June 1 – Nov. 8

*Reach #3: From River Mile 30 to Lake Billy Chinook*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83561	1903	0.25	81.0	June 1 – Nov. 8

Resulting from Certificate 83732

*Reach #1: At POD for Certificate 83732 (as described in Finding of Fact #18)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83732	1892	0.137	44.0	June 1 – Nov. 8

*Reach #2: From just below the POD for Certificate 83732 to River Mile 30 where Lone Pine Road crosses the Crooked River*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83732	1892	0.12	38.32	June 1 – Nov. 8

*Reach #3: From River Mile 30 to Lake Billy Chinook*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
83732	1892	0.06	19.8	June 1 – Nov. 8

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 identified in a subsequent order establishing 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 83857, 83651, and 83732 and any related decree.*
8. *The former place of use of the transferred water shall no longer receive water as part of these rights.*
9. ***Preliminary Award of Mitigation Credits: Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of 221.4 credits, as described herein, may be awarded to this mitigation project and assigned to Grass Butte, LLC and PremierWest Bank. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the Crooked River Zone of Impact and the General Zone of Impact.***
10. *Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground*

*Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under each of the new instream water rights.*

- 11. The instream certificates created as a result of the approval of this transfer shall be identified as a mitigation credit project. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this 13 day of April, 2011.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Laura Wilke at (503) 986-0884 or [Laura.K.Wilke@wrds.state.or.us](mailto:Laura.K.Wilke@wrds.state.or.us).

*Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice of Preliminary Determination for  
Water Right Transfer T-10730 / Mitigation Project MP-124**

T-10730 filed by GRASS BUTTE, LLC (1111 MAIN STREET, SUITE 700, VANCOUVER WA, 98660) and by PREMIER WEST BANK (875 RIMROCK WAY, SUITE 100, REDMOND OR, 97756) proposes a change in place of use and character of use under Certificates 83857, 83651, and 83732. The first right allows the use of 0.84 CUBIC FEET PER SECOND (CFS) (priority dates 1898, 1904/1910, and 1892) from the CROOKED RIVER in Sec.8, T15S, R16E, and Secs. 20, 24, and 29, T14S, R14E, W.M. for IRRIGATION in Secs. 20, 21, and 29. The second right allows the use of 0.56 CFS (priority date 1903) from the CROOKED RIVER in Sec. 24, T 14S, R 14E, W.M. for IRRIGATION in Sec. 28. The third right allows the use of 0.137 CFS (priority date 1892) from the CROOKED RIVER in Sec. 20, T14S, R14E, W.M. for IRRIGATION in Sec. 20. The applicant proposes to create an instream use in the Crooked River (from each point of diversion to Lake Billy Chinook) at a maximum of 1.536 CFS, and to establish mitigation credits in the Crooked River and General Zones of Impact. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000. The Department has also concluded that the proposed transfer appears to result in mitigation credits pursuant to OAR 690-521-0300 & OAR 690-521-0400.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is [INSERT DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.