



Oregon

Kate Brown, Governor

Water Resources Department

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May 26, 2016

Applicant

LEGACY RANCHES, LLC
500 W. MONROE ST., SUITE C3
CHICAGO, IL 60661

SUBJECT: Water Right Transfer Application T-11868 / Mitigation Credit Project MP-191

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11868 and Mitigation Credit Project MP-191. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Frontier Advisor newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 9896-0884 or Laura.K.Wilke@state.or.us if I may be of assistance.

Sincerely,

Laura Wilke
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: T-11868
Jeremy Giffin, District 11 Watermaster (*via e-mail*)
John Short, Agent for the applicant (*via e-mail*)
James Lynes, landowner

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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11868, and Mitigation)	PROPOSING APPROVAL OF A
Credit Project MP-191, Klamath County)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE, PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT, 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.

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

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.

Applicant

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500 W. MONROE ST., SUITE C3
CHICAGO, IL 60661

Findings of Fact

1. On July 30, 2014, JAMES LYNES filed an application to change the place of use and character of use under Certificate 86855 to instream use. The Department assigned the application number T-11868.

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. The applicants have provided notification of the proposed action to Klamath, Deschutes, and Jefferson Counties, and the Cities of LaPine and Bend prior to the transfer being received by the Department. The Department provided notice of the proposed transfer to these affected local governments upon receipt of the transfer application.
3. Notice of the application for transfer was published on August 6, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On February 13, 2015, the Department mailed the applicant a deficiency letter requesting additional information to demonstrate that the portion of Certificate 86855 proposed for transfer had been used in the five years prior to submission of the transfer application or was not subject to forfeiture under ORS 540.610. The Department also requested a revised transfer application map. John Short, agent for the applicant, requested that the deadline for submission of the requested information be extended until April 13, 2015.
5. On April 6, 2015, additional use information and a revised application map were received. As part of the information addressing use of the right, the agent provided information to rebut forfeiture under ORS 540.610. Specifically, that the acreage not included in Instream Lease IL-1237 and appurtenant to tax lot 500 is not subject to forfeiture under ORS 540.610(2)(b).
6. A portion of the right proposed for transfer was leased to instream use under Instream Lease IL-1237 from 2012 through 2014. The same portion of Certificate 86855 was also leased to instream use under IL-1444 in 2015.
7. Under ORS 540.610(2)(b) a water right may not be subject to forfeiture if a finding of forfeiture would impair the rights of such cities or towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by an act of the legislature, or which may hereafter be acquired.
8. On September 4, 2015, a revised application map was provided by the agent for the applicant. The revised map identified the number of acres proposed for transfer previously included in Instream Lease IL-1237 (6.12 acres) and the number of acres proposed for transfer not included in Instream lease IL-1237 (1.86 acres). The remaining portion of certificate 86855 not included in this transfer on tax lot 500 is identified as 1.92 acres of irrigation.
9. The Department has determined that the information provided for the acreage proposed for transfer and not included in IL-1237 is not sufficient to demonstrate that a presumption of forfeiture has been rebutted under ORS 540.610(2)(b).
10. The application map provided to the Department on September 4, 2015, identifies 6.12 acres as having been included in Instream Lease IL-1237, which was approved by the Department on July 16, 2012, and ended on October 31, 2014. Instream Lease IL-1237 included 7.35 acres of irrigation, a portion of which is located on the west side of the property and part of the 1.92 acres not included in this transfer. A total of 2.55 acres were not included in the lease of the water right from tax lot 500, a portion of which is also part of the 1.92 acres not included in the transfer. It appears that 1.97 acres of the 2.55 acres not leased instream are

located in the area proposed for transfer. Based upon evaluation of the place of use, the Department has identified that there appear to be 6.01 acres of irrigation available for transfer.

11. On December 10, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to partially approve Transfer Application T-11868 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 8, 2016, for the applicant to respond. On January 14, 2016, the agent, on behalf of the applicant, requested that the Department proceed with issuance of a Preliminary Determination. On April 8 and 11, 2016, the necessary information to demonstrate that the applicant is authorized to pursue the transfer was provided.
12. On March 31, 2016, the applicant submitted an affidavit of cancellation for a portion of Certificate 86855.
13. On April 18, 2016, Transfer Application T-11868 was assigned to Legacy Ranches, LLC.
14. Based upon evaluation by the Department, the portion of the right to be transferred is as follows:

Certificate: 86855 in the name of H.P. HOEY (confirmed by Deschutes River (F) Decree in the Order Record of the Water Resources Director in Volume 9, at Page 362)

Use: IRRIGATION of 6.01 ACRES

Priority Date: SEPTEMBER 1, 1898

Quantity: **Rate:**
 April 1 to May 23 and August 20 to November 1: 0.08 Cubic Foot per Second (CFS)
 May 23 to August 20: 0.15 CFS

Limit/Duty: The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purpose and shall not exceed 4 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed One-Fortieth of one cubic foot per second per acre from May 23 to August 20 and One-Eighthieth of one cubic foot per second per acre from April 1 to May 23 and August 20 to November 1.

Source: BIG MARSH CREEK, tributary to CRESCENT CREEK

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	7 E	WM	20	SW NE	6.01

15. The location of the point of diversion is not specified in the certificate. The Deschutes River Decree identifies that water is diverted by dams and ditches but does not specify a specific point of diversion. However, the application identifies that the diversion is through a series of submerged weirs at irregular intervals with the uppermost diversion located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	7 E	WM	20	SW SW	975 FEET NORTH AND 260 FEET EAST FROM THE SW CORNER OF SECTION 20

16. A total of 24.04 acre-feet of water may be beneficially used annually under the existing right.
17. Application T-11868 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.
18. Application T-11868 proposes to change the place of use of the right to create an instream reach from the point of diversion on Big Marsh Creek, into Crescent Creek, into the Little Deschutes River, and into the Deschutes River to Lake Billy Chinook.
19. The applicant proposes the quantities water to be transferred instream be as protected follows:

Period	Rate (cfs)	Volume (acre-feet)
April 1 through May 22	0.10 CFS	10.3 AF
May 23 through July 15	0.20 CFS	21.4 AF
Total		31.7 AF

20. The applicant has requested that an 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 an 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 a more senior priority date.

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

21. The portion of the right to be transferred, as described in Finding of Fact No. 14, has been leased instream within the last five years under IL-1237, as evidenced by Special Order Volume 88, Page 98, beginning in the 2013 irrigation season and terminating on October 31, 2014. An additional instream lease, IL-1444, involving the same portion of Certificate 86855 as in Instream Lease IL-1237, was approved by the Department on April 15, 2015, as evidenced by Special Order Volume 95, Page 569, and by a Reconsideration Final Order, Special Order Volume 95, Page 1042, issued on May 27, 2015. The term for IL-1444 ended

on October 31, 2015. There is no information in the record that would demonstrate that the portion of the right is subject to forfeiture under ORS 540.610.

- 22. 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 Transfer Application T-11868.
- 23. The number of acres of irrigation that may be transferred to instream use has been reduced based on Finding of Fact No. 10. Therefore, the proposed instream use requires modification to prevent enlargement of the water right and injury to other surface water rights.
- 24. The proposed instream use also requires modification to take into account return flows and stream flow losses. Return flows, approximately 10% of the diversion, from the existing use return to Big Marsh Creek immediately below the place of use.

The stretch of Crescent Creek between the confluence with Big Marsh Creek and the mouth is a losing stream reach and loses approximately 2% of its flows.

The stretch of the mainstem of the Deschutes between the confluence with the Little Deschutes River and Lake Billy Chinook is a losing stream and loses approximately 7% of its flows.

- 25. The transfer application requests to protect water instream from Big Marsh Creek into Crescent Creek, then into the Little Deschutes River, and then into the Deschutes River. The reach for an instream water right is typically from the point of diversion on the source stream (Big Marsh Creek) to the mouth of the source stream. However, water may be protected further downstream if the quantity of water is measureable in the receiving stream, in this case Crescent Creek, the Little Deschutes River, and the Deschutes River (OAR 690-077-0015 (8)). The quantity of water proposed to be protected instream from Big Marsh Creek (Reach 2) is measureable into Crescent Creek, the quantity that may be protected instream from Crescent Creek (Reach 3) is measurable into the Little Deschutes River, and the quantity that may be protected instream from the Little Deschutes River (Reach 4) is measurable into the Deschutes River. Therefore, the reach may extend into Crescent Creek, and into the Little Deschutes River, and into the Deschutes River to Lake Billy Chinook
- 26. Based on Findings of Fact Nos. 23 through 25, the Department proposes to modify the quantities to be transferred and protected instream as follows:

Big Marsh Creek, tributary to Crescent Creek

Instream Reach 1: From the POD (as described in Finding of Fact No. 15), to just below the lower end of the place of use, located approximately where the creek crosses the northern boundary of the SW NE of Section 20, T24S, R7E, W.M.

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.074 CFS	24.04 AF
	May 23 through July 16	0.150 CFS	

Instream Reach 2: From just below the lower end of the place of use, located approximately where the creek crosses the northern boundary of the SW NE of Section 20, T24S, R7E, W.M., to the mouth of Big Marsh Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.067 CFS	21.64 AF
	May 23 through July 16	0.135 CFS	

Crescent Creek, tributary to the Little Deschutes River

Instream Reach 3: In Crescent Creek, from the confluence with Big Marsh Creek to the mouth of Crescent Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.065 CFS	21.20 AF
	May 23 through July 16	0.133 CFS	

Little Deschutes River, tributary to the Deschutes River

Instream Reach 4: In the Little Deschutes River, from the confluence with Crescent Creek to the mouth of the Little Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.065 CFS	21.20 AF
	May 23 through July 16	0.133 CFS	

Deschutes River, tributary to the Columbia River

Instream Reach 5: In the mainstem Deschutes River, from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.061 CFS	19.72 AF
	May 23 through July 16	0.123 CFS	

27. The proposed change, as modified, would not result in enlargement of the right.
28. The proposed change, as modified, would not result in injury to other water rights.
29. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
30. 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 known areas of natural loss of streamflow to the river bed downstream from the point of diversion on Crescent Creek and the mainstem Deschutes River that have been accounted for in Finding of Fact No. 26; and
 - d) The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows. Return flows resulting from the exercise of the existing water right re-enter the Big Marsh Creek just below the place of use.
31. Within the proposed reach on Big Marsh Creek there are two existing instream water rights. Certificate 73236, with a priority date of October 11, 1990, was established under ORS 537.341 (state agency application process) for the purposes of migration, spawning, egg incubation, fry emergence and juvenile rearing. Certificate 86854, with a priority date of September 1, 1898, was established under ORS 537.348 (instream transfer process) for the purposes of fish and wildlife habitat.

Within the proposed reach on Crescent Creek there are five existing instream water rights. Certificate 73234, with a priority date of October 11, 1990, established under ORS 537.341 (state agency application process), for the purposes of migration, spawning, egg incubation, fry emergence and juvenile rearing. Certificates 84352, 87440, and 88992, with a priority date of April 7, 1911, were established under ORS 537.470 (allocation of conserved water process) for the purpose of fish and wildlife habitat. The instream reach for Certificate 86854, which begins on Big Marsh Creek, also extends into this reach on Crescent Creek.

Within the reach on the Little Deschutes River there is an existing instream water right, Certificate 73226, with a priority date of October 11, 1990, that was established under ORS 537.341 (state agency application process), for the purpose of fish migration, spawning, egg incubation, fry emergence and juvenile rearing. There are also nine additional existing instream water rights, Certificates 83652, 86020, 86021, 86854, 87047, 87440, 84352, 90238, and 88992, with priority dates ranging from 1897 to April 7, 1911, established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; and recreation.

Within the proposed instream reach on the mainstem Deschutes River, there are numerous existing instream water rights. There is one instream water right, Certificate 59777, established under ORS 537.346 (minimum streamflow conversion) for the purpose of supporting aquatic life and minimizing pollution, from the confluence of the Little Deschutes River to the confluence with Spring River. There is another instream water right, Certificate 59778, also established under ORS 537.346 for the purpose of supporting aquatic life and minimizing pollution, from the confluence with Spring River to the Central Oregon Irrigation District (COID) North Canal Dam. There is also a pending instream water right application, IS-70695, filed by the ODFW pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right from the COID North Canal Dam to Lake Billy Chinook. These existing and pending instream water rights have priority dates ranging from 1983 to 1990. The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470

(allocation of conserved water process). Most of these instream rights are located between the Central Oregon Canal and Lake Billy Chinook and have priority dates ranging from 1885 to 1961.

32. The existing instream water rights, established under and ORS 537.341 (state agency application process) and ORS 537.346 (minimum streamflow conversion), within the proposed reach on Big Marsh Creek, Crescent Creek, the Little Deschutes River, and the Deschutes River are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, 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 anadromous and resident fish habitat under an earlier priority date.
33. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer and instream lease process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach on Big Marsh Creek, Crescent Creek, the Little Deschutes River and the Deschutes River, 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.
34. During the period April 1 through July 16, 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.
35. Within the reach on the Little Deschutes River, the Little Deschutes River is on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams for a variety of water quality concerns
36. The portion of the instream reach on the Deschutes River, the Deschutes River is a designated State Scenic Waterway. The State Scenic Waterway designation provides for protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat, and recreation, which is a matter of statutory policy. In addition to flows for the designated Scenic Waterway, which are not always met during the requested period for instream protection, this segment of the Deschutes River is on DEQ's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.
37. The total monthly quantities of water proposed to be protected under the existing and proposed instream rights in the reach, as modified, will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Preliminary Award of Deschutes Basin Mitigation Credits

38. James Lynes (the Applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area.

39. The Department assigned this mitigation credit project number MP-191.
40. On April 18, 2016, the instream transfer and mitigation credit project were assigned to Legacy Ranches, LLC. The agent (John Short) for the applicant requested that any mitigation credits generated from this project be assigned to Legacy Ranches LLC.
41. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on August 12, 2014. No comments were received in response to this notice.
42. 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 August 12, 2014. No comments were received in response to this notice.
43. This mitigation credit project will potentially provide mitigation for groundwater permit applications G-17415, G-17445, and G-17465. In a 2013 letter from ODFW to the Department, ODFW identified that mitigation originating from Big Marsh Creek needed to be protected instream between April 1 and July 15. Instream quantities resulting from instream transfers on Big Marsh Creek need to result in up to 3.4 AF of mitigation.
44. As part of the public notice of the mitigation project, the Department identified that the project may result in 14.4 mitigation credits. This preliminary determination was based upon the original proposal to transfer 7.98 acres of irrigation use to instream use with a priority date of September 1, 1898. Since the public notice, the transfer application has been amended and the Department has determined that 6.01 acres of irrigation are available for transfer to instream use. Irrigation of 6.01 acres has an average consumptive use of 10.8 AF. The volume of water that may be protected instream throughout the proposed reach is greater than the amount of consumptive use (see Finding of Fact No. 26). Therefore, 10.8 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to Legacy Ranches LLC.
45. As part of the public notice of the mitigation project, the Department also identified that mitigation credits may be available for use in the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact.
46. On February 12, 2014, John Short (Water Right Services), agent for the applicant, clarified that the applicant requests that any mitigation credits from the proposed use be available, at minimum, in the Little Deschutes and Upper Deschutes Zones of Impact.
47. The 10.8 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 Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact Zones of Impact.

48. A maximum of 24.04 AF may be transferred to instream use and up to 10.8 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.
49. 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 a certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete.
50. 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.

Partial Cancellation of a Water Right

51. On March 31, 2016, James Lynes (property owner) submitted an affidavit to voluntarily cancel a portion of Certificate 86855. The portion of Certificate 86855 to be cancelled is as follows:

Certificate: 86855 in the name of H.P. HOEY (confirmed by Deschutes River (F) Decree in the Order Record of the Water Resources Director in Volume 9, at Page 362)

Use: IRRIGATION of 1.97 ACRES

Priority Date: SEPTEMBER 1, 1898

Quantity: **Rate:**
 April 1 to May 23 and August 20 to November 1: 0.02 Cubic Foot per Second (CFS)
 May 23 to August 20: 0.05 CFS

Limit/Duty: The amount of water to which this right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purpose and shall not exceed 4 acre-feet per acre, measured at the point of diversion from the stream, which may be diverted at a rate not to exceed One-Fortieth of one cubic foot per second per acre from May 23 to August 20 and One-Eighthieth of one cubic foot per second per acre from April 1 to May 23 and August 20 to November 1.

Source: BIG MARSH CREEK, tributary to CRESCENT CREEK

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	7 E	WM	20	SW NE	1.97

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11868 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 and the abandoned right should be cancelled. 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 Transfer Application T-11868 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-11868 are approved.
2. Water right certificate 86855 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate will be issued describing that portion of the right not affected by this transfer and partial cancellation.
3. The instream water right shall provide for the protection of streamflows as follows:

Big Marsh Creek, tributary to Crescent Creek

Instream Reach 1: From the POD (as described in Finding of Fact No. 15), to just below the lower end of the place of use, located approximately where the creek crosses the northern boundary of the SW NE of Section 20, T24S, R7E, W.M.

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.074 CFS	24.04 AF
	May 23 through July 16	0.150 CFS	

Instream Reach 2: From just below the lower end of the place of use, located approximately where the creek crosses the northern boundary of the SW NE of Section 20, T24S, R7E, W.M., to the mouth of Big Marsh Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.067 CFS	21.64 AF
	May 23 through July 16	0.135 CFS	

Crescent Creek, tributary to the Little Deschutes River

Instream Reach 3: In Crescent Creek, from the confluence with Big Marsh Creek to the mouth of Crescent Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.065 CFS	21.20 AF
	May 23 through July 16	0.133 CFS	

Little Deschutes River, tributary to the Deschutes River

Instream Reach 4: In the Little Deschutes River, from the confluence with Crescent Creek to the mouth of the Little Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.065 CFS	21.20 AF
	May 23 through July 16	0.133 CFS	

Deschutes River, tributary to the Columbia River

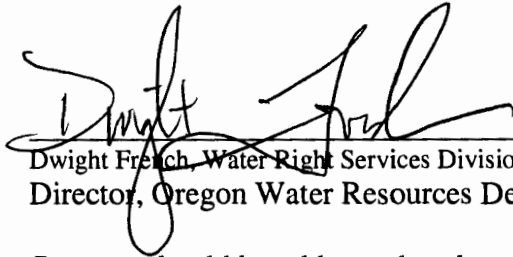
Instream Reach 5: *In the mainstem Deschutes River, from the confluence with the Little Deschutes River to Lake Billy Chinook*

<i>Priority Date</i>	<i>Instream Period</i>	<i>Rate Instream</i>	<i>Volume Instream</i>
9/1/1898	April 1 through May 22	0.061 CFS	19.72 AF
	May 23 through July 16	0.123 CFS	

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. 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.*
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 86855 and any related decree.*
8. *The former place of use of the transferred water shall no longer receive water as part of this right.*
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 10.8 credits, as described herein, may be awarded to this mitigation project and assigned to Legacy Ranches LLC. 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 Little Deschutes, Upper Deschutes, Middle Deschutes, and General Zones 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.*

11. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. 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 24 day of May, 2016.



Dwight French, Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

This Preliminary Determination was prepared by Laura Wilke. If you have questions about the information in this document, you may reach Laura Wilke at 503-986-0884 or Laura.K.Wilke@wrdd.state.or.us.