

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-12439, and Mitigation	)	PROPOSING APPROVAL OF A
Credit Project MP-213, Deschutes and	)	CHANGE IN PLACE OF USE AND
Klamath County	)	CHARACTER OF USE AND
	)	PRELIMINARY AWARD OF
	)	MITIGATION CREDITS

**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.

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**

WANEK RANCH, LLC  
PO BOX 1287  
LA PINE, OR 97739

**Findings of Fact**

1. On July 22, 2016, Wanek Ranch filed an application to change the place of use and character of use under Certificate 90239 to instream use. The Department assigned the application number T-12439.

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. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. 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 City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notice of the proposed action to City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend and the Confederated Tribes of the Warm Springs upon receipt of Transfer Application T-12439.
4. Notice to the Confederated Tribes of the Warm Springs was returned to the Department as undeliverable. On March 30, 2018, the Department sent an additional notice of the proposed instream transfer application to the Confederated Tribes of the Warm Springs through e-mail. No comments were received by the April 28, 2018 deadline.
5. On January 8, 2018, the Department sent the applicant and the applicant's agent (GSI Water Solutions) a deficiency letter to request additional information necessary to complete the transfer application, including a description of the portion of Certificate 90239 to be transferred consistent with the water right of record. On January 9, 11, and 16, GSI Water Solutions and the attorney for the applicant, provided the additional information requested, which resolved the deficiencies identified by the Department.
6. On April 5, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12439 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 4, 2018, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, including additional information requested by the Department on August 21, 2018.
7. Certificate 90239 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots, from which the portion of the right is proposed for transfer, have changed since the original water right was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be transferred is described in Finding of Fact No. 8 is consistent with the water right of record in so far as possible.

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

**Certificate:** 90239 in the name of LA PINE COOPERATIVE WATER ASSOCIATION (confirmed by Deschutes River Decree, of record in Salem, in the Order Record of the Water Resources Director in Volume 16, at Page 185)

**Use:** IRRIGATION of 150.0 ACRES

**Priority Date:** 1897 for 138.5 acres of Irrigation and APRIL 30, 1902 for 11.5 acres of Irrigation

**Rate:** CUBIC FEET PER SECOND (CFS)

Priority Date	April 1 to May 23	May 23 to August 20	August 20 to November 1
1897	1.73	3.46	1.73
April 30, 1902	0.14	0.29	0.14
<b>Totals</b>	<b>1.87</b>	<b>3.75</b>	<b>1.87</b>

**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-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from May 23 to August 20, and ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from April 1 to May 23 and from August 20 to November 1, 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.

**Period of Use:** April 1 to November 1

**Source:** LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner Name on Certificate
<b>1897 Priority Date</b>							
22 S	10 E	WM	22	SE NE	101	16.5	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NE SE	101	20.9	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	SW SE	101	1.4	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	SW SE	103	1.0	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	SE SE	101	5.0	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	SE SE	103	0.6	Wanek, Gordon and Henrietta
22 S	10 E	WM	23	NW SW	2401	8.1	Wanek, Gordon and Henrietta
22 S	10 E	WM	23	SW SW	2401	4.8	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	NE NE	103	7.4	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	NW NE	103	24.8	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	SW NE	103	5.6	Wanek, Gordon and Henrietta
22 S	10 E	WM	27		108	4.8	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	SE NE	103	4.2	Wanek, Gordon and Henrietta
22 S	10 E	WM	27		108	10.1	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	NE SE	108	5.7	Wanek, Gordon and Henrietta
22 S	10 E	WM	27	NW SE	108	17.6	Wanek, Gordon and Henrietta
<b>Total Acres</b>						<b>138.5</b>	
<b>April 30, 1902 Priority Date</b>							
22 S	10 E	WM	22	SW NE	101	0.1	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NW SE	101	3.8	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	SW SE	101	7.6	Wanek, Gordon and Henrietta
<b>Total Acres</b>						<b>11.5</b>	

9. A total of 600.0 Acre-Feet (AF), being 554.0 AF under the 1897 priority date and 46.0 AF under the April 30, 1902 priority date, of water may be beneficially used annually under the existing right.

10. Transfer Application T-12439 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; recreation; pollution abatement; and to establish mitigation credits in the Deschutes Ground Water Study Area.
11. Transfer Application T-12439 proposes to change the place of use of the right to create an instream reach from the point of diversion on the Little Deschutes River, into the mainstem Deschutes River, and down to Lake Billy Chinook.
12. The applicant proposes the quantities water to be transferred instream be protected as follows:

Priority Date	April 1 to May 23	May 23 to August 20	August 20 to November 1	Volume Instream
1897	0.92 CFS	1.85 CFS	0.92 CFS	553.08 AF
April 30, 1902	0.08 CFS	0.15 CFS	0.08 CFS	45.92 AF
<b>Totals</b>	<b>1.00 CFS</b>	<b>2.00 CFS</b>	<b>1.00 CFS</b>	<b>599.00 AF</b>

13. 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)***

14. The portion of the right proposed to be transferred to instream use was leased instream within the last five years under Instream Lease IL-1123 during the period May 12, 2011, to October 31, 2014, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610. A portion of the place of use proposed for transfer under Certificate 90239 is also currently being leased to instream use under Instream Lease IL-1450.
15. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
16. 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-12439.
17. A portion of the water diverted at the POD returns to the Little Deschutes 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.

A portion of the water diverted to the place of use returns to the Little Deschutes River through Long Prairie Slough. Remaining return flows take the form of subsurface return flows. Subsurface returns would also return to the river system in the area of the confluence of Long Prairie Slough and the Little Deschutes River, at approximately River Mile 28.6 (Latitude 43.683198 North, Longitude -121.511551 West).

The proposed instream flows must be reduced at River Mile 28.6 to the consumptive portion of the right to account for both surface and subsurface return flows.

18. The transfer application requests to protect water instream from the Little Deschutes River into the mainstem Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be protected instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Deschutes River.
19. Also, the segment of the reach on the mainstem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the mainstem Deschutes River requires additional modification to prevent injury and enlargement.
20. In addition, at the instream rates protection periods requested (see Finding of Fact No. 12), the maximum seasonal volume would be exceeded. To prevent injury to downstream water users and enlargement of the water right, the rate protected instream beginning at the point of diversion must be modified.
21. Based on Findings of Fact Nos. 17 through 20, the Department proposes to modify the quantities to be transferred and protected instream as follows:

**Instream Reach 1:** From POD (as described in Finding of Fact No. 8) to the confluence of the Little Deschutes River and Long Prairie Slough (approximately River Mile 28.6)

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.913 CFS	1.850 CFS	0.920 CFS	554.0 AF
April 30, 1902	0.077 CFS	0.150 CFS	0.080 CFS	46.0 AF
<b>Totals</b>	<b>0.990 CFS</b>	<b>2.000 CFS</b>	<b>1.000 CFS</b>	<b>600.0 AF</b>

**Instream Reach 2:** From the confluence of the Little Deschutes River and Long Prairie Slough (approximately River Mile 28.6 (Latitude 43.683198 North, Longitude -121.511551 West)) to the mouth of the Little Deschutes River

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.587 CFS	0.587 CFS	0.587 CFS	249.3 AF
April 30, 1902	0.049 CFS	0.049 CFS	0.049 CFS	20.7 AF
<b>Totals</b>	<b>0.636 CFS</b>	<b>0.636 CFS</b>	<b>0.636 CFS</b>	<b>270.0 AF</b>

**Instream Reach 3:** In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.546 CFS	0.546 CFS	0.546 CFS	231.8 AF
April 30, 1902	0.045 CFS	0.045 CFS	0.045 CFS	19.3 AF
<b>Totals</b>	<b>0.591 CFS</b>	<b>0.591 CFS</b>	<b>0.591 CFS</b>	<b>251.1 AF</b>

22. The proposed change, as modified, would not result in enlargement of the right.
23. The proposed change, as modified, would not result in injury to other water rights.
24. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
25. The protection of flows, as modified, within the proposed reach is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point of diversion;
  - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and channel losses have been accounted for within Reach No. 3 (consistent with Finding of Fact No. 19); and
  - d) Return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of diversion and within the reach of the instream water right. Return flows have been accounted for at River Mile 28.6 on the Little Deschutes River (consistent with Finding of Fact No. 17).
26. 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 several additional existing instream water rights 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.
27. 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 Oregon Department of Fish and Wildlife (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 and are 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.

28. The proposed instream use will have priority dates of 1897 and April 30, 1902.
29. 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 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.
30. 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 the Little Deschutes River and the Deschutes River and with priority dates ranging from 1885 to 1961, 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, pollution abatement and recreation.
31. 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.
32. 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.
33. The portion of the instream reach on the Deschutes River is within 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 also on DEQ's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.

34. 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.
35. There is an existing instream lease, IL-1450, currently in effect for a portion of the right proposed for transfer to instream use. The instream lease was approved by the Department on June 19, 2015, as evidenced by Special Order Volume 96, Page 333. The instream lease is scheduled to terminate on November 2, 2019, and includes a condition allowing for early termination of the lease order. This lease must be terminated before Transfer T-12439 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.

#### ***Preliminary Award of Deschutes Basin Mitigation Credits***

36. Wanek Ranch (the applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The applicant has requested that any mitigation credits generated from this project be assigned to Wanek Ranch.
37. The Department assigned this mitigation credit project number MP-213.
38. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on August 30, 2016. No comments were received in response to this notice.
39. 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 30, 2016. No comments were received in response to this notice.
40. As part of the public notice of the mitigation project, the Department identified that the project may result in 270.0 mitigation credits. This preliminary determination was based upon the original proposal to transfer 150.0 acres of irrigation use to instream use with a priority date of 1897 (138.5 acres of irrigation use) and April 30, 1902 (11.5 acres of irrigation use). The Watermaster has identified that any mitigation credits established by this project associated with the 1897 priority date will likely be 100% reliable and with the April 30, 1902 priority date will likely be 98% reliable. Irrigation of 150.0 acres has an average consumptive use of 270.0 acre-feet. However, this volume may only be protected instream to the mouth of the Little Deschutes River, the lower boundary of the Little Deschutes Zone of Impact.



41. 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.
42. Up to 251.1 AF may be protected instream in the mainstem Deschutes River, as identified in Finding of Fact No. 21. The reach of the instream use described in Finding of Fact No. 21 extends through the lower portion of the Upper Deschutes Zone of Impact and then into the Middle Deschutes Zone of Impact and ending at the General Zone of Impact.
43. Therefore, a maximum of 270.0 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project. 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 Little Deschutes Zone of Impact. Of the 270.0 mitigation credits that may be awarded to this mitigation project, up to 251.1 of those mitigation credits may also be used in the Upper Deschutes, Middle Deschutes, and General Zones of Impact.
44. A maximum of 600.0 AF is proposed to be transferred to instream use and up to 270.0 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.
45. 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.
46. 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. As identified in Finding of Fact No. 35, Instream Lease IL-1450 is currently in effect. Instream Lease IL-1450 is also Mitigation Credit Project MP-196. Mitigation Credit Project MP-196 must be terminated before any credits may be awarded to Mitigation Credit Project MP-213. When mitigation credits are awarded and/or become valid may also be affected by the date on which the existing instream lease and mitigation credit project are terminated.

### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-12439 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 Transfer Application T-12439 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-12439 are approved.
2. Water right certificate 90239 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.
3. The instream water right shall provide for the protection of streamflows as follows:

**Instream Reach 1:** From POD (as described in Finding of Fact No. 8) to the confluence of the Little Deschutes River and Long Prairie Slough (approximately River Mile 28.6)

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.913 CFS	1.850 CFS	0.920 CFS	554.0 AF
April 30, 1902	0.077 CFS	0.150 CFS	0.080 CFS	46.0 AF
<b>Totals</b>	<b>0.990 CFS</b>	<b>2.000 CFS</b>	<b>1.000 CFS</b>	<b>600.0 AF</b>

**Instream Reach 2:** From the confluence of the Little Deschutes River and Long Prairie Slough (approximately River Mile 28.6 (Latitude 43.683198 North, Longitude -121.511551 West)) to the mouth of the Little Deschutes River

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.587 CFS	0.587 CFS	0.587 CFS	249.3 AF
April 30, 1902	0.049 CFS	0.049 CFS	0.049 CFS	20.7 AF
<b>Totals</b>	<b>0.636 CFS</b>	<b>0.636 CFS</b>	<b>0.636 CFS</b>	<b>270.0 AF</b>

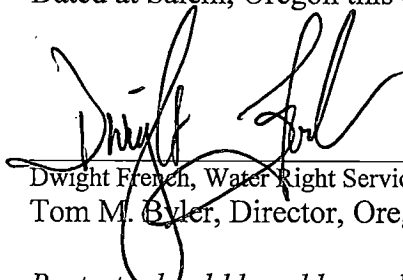
**Instream Reach 3:** In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 thru May 22	May 23 thru August 19	August 20 thru Oct. 31	Volume Instream
1897	0.546 CFS	0.546 CFS	0.546 CFS	231.8 AF
April 30, 1902	0.045 CFS	0.045 CFS	0.045 CFS	19.3 AF
<b>Totals</b>	<b>0.591 CFS</b>	<b>0.591 CFS</b>	<b>0.591 CFS</b>	<b>251.1 AF</b>

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 90239 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 270.0 credits, as described herein, may be awarded to this mitigation project and assigned to Wanek Ranch. 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 Zone of Impact**. Of the 270.0 mitigation credits awarded to this project, up to 251.1 credits may also be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**. 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 a new instream water right.*
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 day of           OCT 30           2018.



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 Dwight French, Water Right Services Division Administrator, for  
 Tom M. Byler, 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 me at 503-986-0888 or [Laura.K.Wilke@oregon.gov](mailto:Laura.K.Wilke@oregon.gov).

87-137-1



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 30, 2018

VIA E-MAIL

**Applicant**

WANEK RANCH, LLC

PO BOX 1287

LA PINE, OR 97739

**SUBJECT:** Water Right Transfer Application T-12439 / Mitigation Credit Project MP-213

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Instream Transfer Application T-12439 and Mitigation Credit Project MP-213. 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 Bend Bulletin 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 503-986-0888 or [Laura.K.Wilke@oregon.gov](mailto:Laura.K.Wilke@oregon.gov) if I may be of assistance.

Sincerely,



Laura Wilke  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer File T-12439

Mitigation Credit Project File MP-213  
Jeremy T. Giffin, District 11 Watermaster *(via e-mail)*  
Owen McMurtrey, Agent for the applicant *(via e-mail)*  
Bruce Brody-Heine, CWRE 78208 *(via e-mail)*  
Barbe Poage, Water Rights Section *(via e-mail)*

encs