

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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11347 and Mitigation Credit)	PROPOSING APPROVAL OF A
Project MP-162, Crook County)	CHANGE IN PLACE OF USE AND
)	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

BUTLER RANCH INC.
5294 NW LONE PINE RD.
TERREBONNE, OR 97760

Findings of Fact

1. On January 27, 2012, Butler Ranch Inc. filed an application to change the place of use and character of use under Certificate 87331 to instream use. Butler Ranch Inc. also requested to cancel the corresponding portion of Certificate 87331 for supplemental irrigation. The Department assigned the application number T-11347.

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 February 7, 2012, 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 proposed action to Jefferson, Crook and Deschutes Counties. Additionally, the Department provided notice of the proposed action to these local governments upon receipt of Transfer Application T-11347.
4. Transfer Application T-11373 was filed on March 19, 2012, by BUTLER RANCH INC. to change the place of use for a portion of Certificates 83850 and 87331. Transfer Application T-11373 is appurtenant to some of the same lands to be modified in Instream Transfer Application T-11347. The two transfers are being processed concurrently.
5. On multiple occasions between October 14, 2015, and September 21, 2016, the Department contacted the applicant's agent by telephone and written correspondence (email) to notify and discuss deficiencies in the application. Clarification was requested for the certificate and its use in a particular quarter-quarter.
6. On June 22, 2015, the agent for the applicant requested that the two cancellation affidavits submitted with the original transfer applications for portions of Certificate 87331 be withdrawn.
7. On September 21, 2016, the applicant's agent clarified the portion of Certificate 87331 to be transferred to instream use. The agent also clarified that a portion of Certificate 2734 should be included as part of the instream transfer application.
8. On January 11, 2017, the Department mailed a copy of the Draft Preliminary Determination (DPD) proposing to approve Transfer Application T-11347 to the applicant. The DPD cover letter set forth a deadline of February 9, 2017, for the applicant to respond. On February 9, 2017, the agent, on behalf of the applicant, requested additional time to respond to the DPD and provide the additional information requested.
9. On December 18, 2017, Philip and Penelope Knight filed permanent Transfer Application T-12795 to change the place of use of a portion of Certificate 87331. The 20 acres of irrigation use proposed for transfer to a new place of use under Transfer Application T-12795 is appurtenant to all but 1.7 acres of irrigation use proposed for transfer to instream use under Transfer Application T-11347. The place of use from which Certificate 87331 is proposed to be moved from under Transfer Application T-12795 also involves a portion of Certificate 2734 proposed for transfer under Transfer Application T-11373. Transfer Application T-12795 is being processed concurrently with this transfer and Transfer Application T-11373.
10. On January 29, 2018, Philip and Penelope Knight also filed Temporary Transfer Application T-12834, which proposes to temporarily transfer the same acreage as requested under Permanent Transfer Application T-12795. This temporary transfer was approved by the Department on April 25, 2018, as evidenced by Special Order Volume 107, Page 1180, and

is to expire on October 31, 2022. The agent (John Short, Water Right Services) for Permanent Transfer Application T-12795 and Temporary Transfer T-12834 is also the agent for Instream Transfer Application T-11347 and Regular Transfer Application T-11373.

11. Both the Permanent Transfer Application T-12795 and Temporary Transfer Application T-12834 conflict with the proposed actions under Instream Transfer Application T-11347 and Permanent Place of Use Transfer Application T-11373.
12. On February 28, 2018, the Department contacted the agent for the applicants for all four transfer applications to resolve the conflict between the applications. On March 16, 2018, the agent submitted a request to amend Instream Transfer Application to only transfer 1.7 acres of primary irrigation under Certificate 87331 and 14.3 acres primary irrigation under Certificate 2734 to instream use. The agent also requested that all three permanent transfer applications be processed concurrently to avoid any inadvertent transfer issues.
13. Amended application materials were received from the applicant's agent on March 31, 2018.
14. Based upon review of materials provided, the Department sent the applicant and their agent an additional deficiency letter on September 26, 2018, requesting additional information and revised application materials necessary to complete the transfer application. Additional information and amended application materials were received on October 9, 2018.
15. A follow up deficiency letter identifying additional revisions needed on the transfer application maps associated with Certificate 87331 was sent to the applicant's agent (via e-mail) on October 22, 2018. The requested materials were received by November 27, 2018.
16. On December 10, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-11347 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of January 18, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the reports of ownership requested by the Department. However, upon review of the reports of ownership, the Department identified several deficiencies in the reports and additional information necessary to complete review.
17. Revised reports of ownership were received by the department on February 28, 2019. The revised reports were sufficient to demonstrate that the applicant is authorized to pursue the transfer.
18. The portion of the first right to be transferred is as follows:
 - Certificate:** 87331 in the name of CLAUDE BUTLER (perfected under Permit S-17167)
 - Use:** PRIMARY IRRIGATION of 1.7 ACRES
 - Priority Date:** JULY 23, 1946
 - Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to

ONE-FORTEITH of one cubic foot per second (CFS) per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet (AF) per acre for each acre irrigated during the irrigation season of each year.

Source: CROOKED RIVER, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
14 S	14 E	WM	22	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	22	NW NW	1.7

19. Certificate 87331 does not describe the measured distances of the point of diversion, however information is available from the applicant’s agent and Certified Water Right Examiner (CWRE) indicating that the point of diversion is further described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM THE NE CORNER OF SECTION 22

20. Certificate 87331 is a partially deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 16), the total rate and duty for the water right would be exceeded. However, based upon review of the water right record, Certificate 87331 (previously Certificate 22454) was to provide a full 1/40th CFS per acre for primary irrigation of lands in Section 15. In addition, water use for proposed irrigation in Section 22 was originally intended to be supplemental to Certificate 2734 (priority date of 1911). Certificate 2734 allows the equivalent diversion of 1/80th CFS per acre. Water use under Certificate 87331 could be used to bring the rate of water that may be applied to supplemental acreage in Section 22 up to a full 1/40th CFS per acre with the equivalent of an additional 1/80th CFS per acre.

Based upon the current water right record and Final Proof map for Certificate 22454 (preceding certificate to 87331), there are 103.5 acres of primary irrigation and 101.9 acres of supplemental irrigation under Certificate 87331. Certificate 87331 allows the diversion of up to 3.89 CFS for irrigation and supplemental irrigation but does not specify how much water may be used for each type of irrigation.

It appears that up to 2.59 CFS may be used for primary irrigation (a full 1/40th CFS per acre for irrigation of 103.5 acres) and up to 1.3 CFS for supplemental irrigation (a full additional 1/80th CFS per acre for supplemental irrigation of 101.9 acres).

All acreage proposed for transfer from Certificate 87331 is for primary irrigation. The quantity available for transfer is as described in the table below. This rate and duty are also the quantities by which Certificate 87331 shall be reduced if this transfer is approved.

Rate	Duty
0.04 CFS	6.8 AF

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

Certificate: 2734 in the name of E. D. TIRRILL (perfected under Permit S-823)
Use: IRRIGATION of 14.3 ACRES
Priority Date: AUGUST 24, 1911
Rate: 0.18 CUBIC FOOT PER SECOND (CFS) (*proportioned evenly between all acres under Certificate 2734*)
Source: MAIN CHANNEL OF THE CROOKED RIVER, a tributary of the DESCHUTES RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	22	NW NW	14.3

22. Certificate 2734 does not describe the location of the point of diversion, however information is available from the applicant's agent and Certified Water Right Examiner (CWRE) indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION NO. 47A - 1300 FEET SOUTH FROM THE NE CORNER OF SECTION 22

23. Certificate 2734 does not identify a rate and duty limit (volume) per acre. Based on review of Certificate 2734, this right allows the use of up to an equivalent of 1/80th CFS per acre. The portion of Certificate 2734 proposed for transfer has a supplemental right, being Certificate 87731, which identifies a duty of 4.0 Acre-Feet (AF) per acre. The quantity of water available for transfer is as shown in the table below. This is also the quantities of water by which Certificate 2734 will be reduced if Transfer Application T-11347 is approved.

Rate	Duty
0.18 CFS	57.2 AF

24. Certificates 87331 and 2734 do not specify the irrigation season. The irrigation season is February 1 to December 1, pursuant to the Crooked River Decree.
25. Instream Transfer Application T-11347 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. Application T-11347 also proposes to establish mitigation credits in the Deschutes Ground Water Study Area.

26. Instream Transfer Application T-11347 proposes to change the place of use of the right to create an instream reach in the Crooked River from the authorized POD (described in Finding of Fact Nos. 19 and 22) to Lake Billy Chinook.
27. The original transfer application proposes the quantities of water to be transferred instream be protected as follows:

Certificate	Instream Period	Rate (cfs)	Volume (AF)
87331	July 1 to October 15	0.71	144.0

28. Based upon revised application materials received from the applicant’s agent on October 9, 2018, the amended transfer application proposes the quantities of water to be transferred instream be protected as follows:

Certificate	Instream Period	Rate (CFS)	Volume (AF)
87331	Requested determination by Department	0.02	6.8
2734		0.36	57.2

29. On June 22, 2016, the Applicant’s agent clarified that 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 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 an earlier priority date.

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

30. The portions of Certificates 87331 and 2734 proposed for transfer to instream use have been leased to instream use within the five years prior to Transfer Application T-11347 being submitted to the Department. Instream Lease IL-1204 was approved by the Department on June 28, 2012, as evidenced by Special Order Volume 87, Page 885. The term of this lease terminated on November 30, 2016. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
31. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-11347.
32. A portion of the water diverted at the 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.

A portion of the water diverted to the place of use returns to the Crooked River through subsurface return flows. Immediately below the point of diversion, return flows begin to show back up in the river system. Approximately ten percent return just below the point of diversion and all return flows are back in the river system by RM 30.

Because the return flows do not occur at a definite point, all return flows will be accounted for below the point of diversion consistent with OAR 690-077-0075(2)(b)(A). The instream flows just below the point of diversion have been reduced to the consumptive portion of the right to account for return flows and prevent injury and enlargement.

33. At the amended full instream rate and volume requested for Certificate 2734 (0.36 CFS and 57.2 AF), the maximum rate of 0.18 CFS would be exceeded. Therefore, to prevent enlargement of the right and injury to downstream water right holders, the requested instream use requires modification. The Department has reduced the requested instream rate to 0.18 CFS (the maximum CFS allowed), which will allow water to be protected instream over a 161 day period day period.
34. At the amended full instream rate and volume requested for Certificate 87331 (0.02 CFS and 6.8 AF), water may be protected instream over a 161 day period. To maximize the instream use and protect water instream, the Department recommends that water be protected instream over the same 161 day period as instream quantities originating from Certificate 2734.
35. Based on Finding of Fact Nos. 32 through 34, the quantities to be transferred and protected instream, have been modified as follows:

Reach No. 1: At the authorized POD (as described in Finding of Fact Nos. 19 and 22)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
87331	7/23/1946	0.02	6.80	May 8 through October 15
2734	8/24/1911	0.18	57.20	
Instream Totals		0.20	64.00	

Reach No. 2: From immediately below the authorized POD to Lake Billy Chinook.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
87331	7/23/1946	0.01	3.06	May 8 through October 15
2734	8/24/1911	0.08	25.74	
Instream Totals		0.09	28.80	

36. The proposed changes, as modified, would not result in enlargement of the rights.
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 is allowable within the limits and use of the original water right.
39. 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 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 reach and have been accounted for immediately below the point of diversion.
40. 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 the instream water right, which include the use of water for fish and wildlife habitat, aquatic life, recreation, and pollution abatement. These existing instream water rights have priority dates ranging from 1892 to 1968. 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 (IS-70354) 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 requested by the applicant.
41. By adding to other instream water rights established through instream transfer and allocation of conserved water processes within the same reach, an instream right established by this instream transfer 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.

42. By replacing a portion of any instream rights established under the state agency application process and/or the minimum streamflow conversion process, an instream right established by this instream transfer will provide protection for streamflows previously identified as necessary for anadromous and resident fish rearing under earlier priority dates.
43. During the period May 8 through October 15, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
44. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Mitigation Project Review Criteria

45. Butler Ranch Inc. (the Applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Groundwater Study Area. The applicant has requested that any mitigation credits generated by this project be assigned to Butler Ranch Inc.
46. The Department assigned this mitigation project number MP-162.
47. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on June 28, 2016. No comments were received in response to this notice.
48. The Department consulted with representatives from the ODFW, Oregon Department of Environmental Quality (DEQ), Oregon Parks and Recreation Department, Oregon Department of State Lands, Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 505-0615 (7) and OAR 690-505-0630 (2) on June 21, 2016. No comments were received in response to this notice.
49. In its original notice of the proposed mitigation project, the Department identified that the project may result in up to 64.8 mitigation credits from the transfer of 36 acres of irrigation use under Certificate 87331 to instream use. The transfer application, as identified in Finding of Fact Nos. 7 and 12, was amended to clarify the portion of Certificate 87331 to be transferred to instream use and that a portion of Certificate 2734 should be included as part of the transfer application. The portion of each certificate proposed for transfer to instream use is described in Finding of Fact Nos. 18 and 21.
50. The proposed transfer of 1.7 acres of irrigation under Certificate 87331 and 14.3 acres of irrigation under Certificate 2734 to instream use will provide 28.8 AF of mitigation water. (3.1 AF from Certificate 87331 and 25.7 AF from Certificate 2734). Therefore, 28.8 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 Crooked River and General Zones of Impact.

51. A maximum of 64.0 AF is proposed to be transferred to instream use and 28.8 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.
52. 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(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11347 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 pursuant to ORS 537.746 and OAR 690-505-0610.

If Transfer Application T-11347 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-11347 are approved.*
2. *Water right certificates 2734 and 87331 are cancelled upon approval of Transfer Application T-11347. New certificates confirming the instream water right shall be issued. New certificates will also be issued describing those portions of each right not affected by this transfer and Transfer Applications T-11373 and T-12795.*
3. *The instream water right shall provide for the protection of streamflows from the authorized POD (as described in Finding of Fact Nos. 19 and 22) to Lake Billy Chinook. The quantities of water to be protected under the instream water right are:*

Reach No. 1: At the authorized POD (as described in Finding of Fact Nos. 19 and 22)

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
87331	7/23/1946	0.02	6.80	<i>May 8 through October 15</i>
2734	8/24/1911	0.18	57.20	
<i>Instream Totals</i>		<i>0.20</i>	<i>64.00</i>	

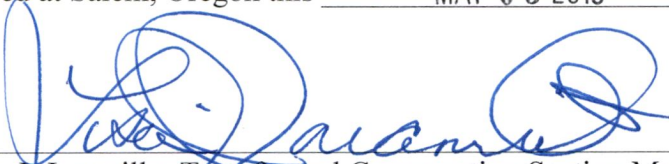
Reach No. 2: From immediately below the authorized POD to Lake Billy Chinook.

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (CFS)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
87331	7/23/1946	0.01	3.06	May 8 through October 15
2734	8/24/1911	0.08	25.74	
<i>Instream Totals</i>		0.09	28.80	

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 87331 and 2734 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 **28.8 credits**, as described herein, may be awarded to this mitigation project. 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 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 certificates 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 MAY 03 2019 ,



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas 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, please contact Laura Wilke, she may be reached at 503 986-0888 or Laura.K.Wilke@oregon.gov.



Oregon
Kate Brown, Governor

Water Resources Department
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(503) 986-0900
Fax (503) 986-0904

May 3, 2019

Applicant

BUTLER RANCH INC.
5294 NW LONE PINE RD
TERREBONNE, OR 97760

SUBJECT: Instream Transfer Application T-11347 / Mitigation Credit Project MP-162

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11347 and mitigation credit project MP-162. 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 if I may be of assistance.

Sincerely,

Laura Wilke
Transfer Specialist
Transfer and Conservation Section

cc: File T-11347 and MP-162
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)
Linda Lee Miller, CWRE # 47708 (via e-mail)
US Bureau of Reclamation (via e-mail)

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