

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-11508, and Mitigation	)	PROPOSING APPROVAL OF A
Credit Project MP-176, Klamath 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**

Diamond Meadows #1384 Homeowners  
Association, Inc.  
PO Box 1083  
Crescent Lake, OR 97733

**Agent**

John Short,  
Water Right Services, LLC  
PO Box 1830  
Bend, OR 97709

**Findings of Fact**

1. On December 21, 2012, Diamond Meadows #1384 Homeowners Association, Inc. filed an application to change the place of use and character of use under Certificate 91836 to instream use. The Department assigned the application number T-11508.
2. Notice of the application for transfer was published on January 8, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. Consistent with land use requirements, prior to submitting the transfer application, the applicant provided notification of the intent to file the instream transfer application to City of Bend, Deschutes County, Jefferson County, Klamath County, and City of LaPine. Additionally, the Department provided notice of the proposed action to these cities and counties upon receipt of Transfer Application T-11508.
4. On March 13, 2013, the Department received a request to modify the proposed instream use to be consistent with a letter from the Oregon Department of Fish and Wildlife (ODFW) dated March 1, 2013.
5. On March 20, 2019, the Department issued a Draft Preliminary Determination (DPD) proposing to deny the transfer application but included provisions under which the transfer could be approved. As part of the DPD, the Department identified several application deficiencies that needed to be addressed to complete the transfer application and allow the transfer application process to move forward favorably. The deficiencies included:
  - a) Incomplete applicant contact information.
  - b) The transfer application did not include a map meeting current mapping standards. The map also needs to be updated to reflect a portion of the right removed under a previous transfer application.
  - c) Information showing that Tami Minnick was authorized to sign the transfer application on behalf of the transfer applicant.
  - d) A complete description of the delivery system.
6. On April 17, 2019, John Short, Water Right Services (agent for the applicant), provided the information requested by the Department to resolve the deficiencies. The information provided by the agent included a report of ownership prepared by a title company, an updated description of the delivery system used to get water from the source (Big Marsh Creek) to the place of use, a revised transfer application map, and a copy of a water right conveyance agreement between James Lynes (apparent landowner) and the transfer applicant, and complete contact information for the transfer applicant.
7. The agent, however, did not provide information to demonstrate that Tami Minnick was authorized to sign the transfer application on behalf of Diamond Meadows #1384 Homeowners Association (HOA). However, the Department, through its own review, was able to verify to its satisfaction that she was authorized to sign the transfer application on behalf of the HOA.
8. As part of the information provided by the agent and to resolve application deficiencies, a request was also submitted to change the place of use/footprint of the portion of Certificate 91836 proposed for transfer off of Tax Lot 500. In follow up correspondence, received on May 29, 2019, the agent also submitted a revised evidence of use affidavit, consent to transfer signed by James Lynes and another revised transfer application map. Following

submission of the updated and revised transfer application materials, the Department continued evaluation of the transfer application.

9. On July 19, 2019, the Watermaster conducted a site visit with the agent for the transfer applicant. During that site visit, the Watermaster identified 0.25 acres out of 0.85 acre footprint of the revised place of use proposed for transfer that did not appear to have been irrigated beneficially in more than five years. The Watermaster provided a revised evaluation of the transfer application on July, 22, 2019. The documentation, along with feedback from the Watermaster, provided with the evidence of use affidavit is not sufficient to support that water was used on the full 0.85 acre proposed for transfer as of May 29, 2019. Therefore, the Department has determined that there only appears to be 0.6 acre available for transfer from the 0.85 acre proposed for transfer under Certificate 91836, provided that sufficient documentation is provided to support beneficial use of that acreage within the five years prior to amending the transfer application on May 29, 2019.
10. As part of continued evaluation of the transfer application and review of updated and revised transfer application materials, the Department identified additional deficiencies that must be addressed to allow the transfer application process to move forward favorably. On September 5, 2019, the Department mailed a copy of a revised DPD proposing to deny the transfer application to the applicant and agent that included provisions under which the transfer could be approved. The draft Preliminary Determination cover letter set forth a deadline of October 4, 2019, for the applicant to respond. Deficiencies identified in the cover letter included:
  - a) Additional revisions to the transfer application map;
  - b) Updated documentation to support the evidence of use affidavit provided on May 29, 2019.
  - c) Concurrence with provisions detailed in this Revised Draft Preliminary Determination that would allow for approval of the instream transfer application. This is separate from the identified deficiencies, which also must be resolved in order to move the application forward favorably.
11. On October 1, 2019, the agent for the applicant provided updated supporting documentation for the evidence of use affidavit. While the supporting documentation was not sufficient to overcome the Watermaster's findings during the site visit on July 19, 2019, the documentation does satisfy the requirement for documentation provided in support of the evidence of use affidavit.
12. On October 1, 2019, the agent also requested an additional 2 weeks to provide the requested materials described in the cover letter attached to the September 5, 2019, Draft Preliminary Determination.
13. On October 15, 2019, the agent for the applicant provided a revised copy of the transfer application map meeting the requirements of the transfer rules. A final original version of the transfer application map was received by the Department on November 8, 2019.

14. On October 16, 2019, the agent, on behalf of the applicant, requested that the Department proceed with issuance of a Preliminary Determination and had previously provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer. A request was also submitted to amend the transfer application to remove the 0.25 acre identified by the Watermaster as not subject to transfer. The applicant has also elected to not cancel the 0.25 acre as recommended by the Department. The remaining deficiencies have been resolved and other requested information has been provided.

15. The portion of the right proposed for transfer has been modified and is as follows:

**Certificate:** 91836 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 0.6 ACRE

**Priority Date:** SEPTEMBER 1, 1898

**Rate:** up to 0.015 CUBIC FOOT PER SECOND (CFS), being 0.015 CFS from May 23 through August 20 and 0.008 CFS from April 1 to May 23 and August 20 to November 1

**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, 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-Eightieth of one cubic foot per second per acre from April 1 to May 23 and August 20 to November 1.

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

**Source:** BIG MARSH CREEK, tributary to CRESCENT CREEK

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acre
24 S	7 E	WM	20	SW NE	0.85

16. A total of 2.4 Acre-Feet (AF) of water may be used annually under the existing right.

17. 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

18. Transfer Application T-11508 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; pollution abatement; and to establish mitigation credits in the Deschutes Ground Water Study Area.

19. Transfer Application T-11508 proposes to change the place of use of the right to create an instream reach from the Point of Diversion (as described in Finding of Fact No. 17) to the mouth of Big Marsh Creek, into Crescent Creek to its mouth, then into the Little Deschutes River to its mouth, and then into the mainstem Deschutes River to Lake Billy Chinook.
20. The applicant proposes the quantities water to be transferred instream be as protected follows (based on the original request to transfer 0.85 acre of irrigation use to instream use):

Instream Period	Instream Rate (CFS)	Instream Volume (AF)
April 1 through July 15	None identified	3.4 AF

21. 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)***

22. Based upon updated documentation provided in support of the evidence of use affidavit on October 1, 2019, a site visit conducted by the Watermaster on July 19, 2019, and Instream Lease IL-1237 (as evidenced by Special Order Volume 88, Page 98, beginning in the 2012 irrigation season and terminating on October 31, 2014), involving a small portion of the footprint of the right proposed for transfer, it does appear that water has been used within the last five years according to the terms and conditions of Certificate 91826 for the 0.6 acre proposed for transfer, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
23. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to May 29, 2019, when the applicant modified the portion of Certificate 91836 proposed for transfer, specifically the place of use, under Transfer Application T-11508.
24. The proposed instream use requires modification to take into account return flows from irrigation use and downstream channel losses. Return flows, approximately 10% of the diversion, from the existing irrigation 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.

In addition, 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. As identified in Finding of Fact No. 9, the Watermaster identified that 0.25 acre of the 0.85 acre of irrigation proposed for transfer as of May 29, 2019, under Certificate 91836, does not appear to have been beneficially used for irrigation purposes for an extended period of time. There is insufficient documentation to support that the full 0.85 acre has been beneficially used within the five year period prior modification of the transfer application, as shown on the modified transfer application map received on May 29, 2019. On October 16, 2019, the agent for the applicant amended the transfer application to remove this 0.25 acre and reduce the number of acres for transfer to 0.6 acre.
26. The transfer applicant has not proposed an instream rate (see Finding of Fact No. 20). Rather there is only an instream period and instream volume identified in the transfer application. The instream period requested is consistent with a letter received from the Oregon Department of Fish and Wildlife dated March 21, 2013 that recommended an instream use period of April 1 through July 15.
27. As is, the instream use requested, requires modification to prevent injury and enlargement. The instream quantity requested (3.4 AF) is based on the transfer of a full 0.85 acre of irrigation use under certificate 91836. In addition, if the full quantity were transferred instream, without accounting for return flows, stream channel losses, shaping for the instream use, reduced acreage for transfer, it would result in injury to other water rights and enlargement of the existing right.
28. The Department recommends, with concurrence provided on October 16, 2019, by the applicant's agent, that instream flows be protected as follows:

**Big Marsh Creek, tributary to Crescent Creek**

**Instream Reach 1:** From the POD (as described in Finding of Fact No. 17), to 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	0.008 CFS	2.40 AF
	May 23 through July 15	0.015 CFS	

**Instream Reach 2:** From 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 at the confluence with Crescent Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.16 AF
	May 23 through July 15	0.014 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 at the confluence with the Little Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.12 AF
	May 23 through July 15	0.013 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 at the confluence with the Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.12 AF
	May 23 through July 15	0.013 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	0.006 CFS	1.97 AF
	May 23 through July 15	0.012 CFS	

29. 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 mainstem 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 that may be protected instream, as recommended by the Department in Finding of Fact No 28 and accounting for return flows and stream channel losses, 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, into the Little Deschutes River, and into the Deschutes River to Lake Billy Chinook.

30. The proposed change, as modified, would not result in enlargement of the right.
31. The proposed change, as modified, would not result in injury to other water rights.

32. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
33. 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 within the proposed reach on Crescent Creek and in the mainstem Deschutes River that have been accounted for in Reach No. 3 and No. 5); 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 below the place of use.
34. The transfer applicant has requested that water be protected instream for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; and pollution abatement.
35. Within the proposed reach on Big Marsh Creek there are three 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. Certificates 86854 and 91696, both with a with priority date of September 1, 1898, were 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, 88992, and 91923 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 Certificates 86854 and 91696, which begin 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 eleven additional existing instream water rights, Certificates 83652, 86020, 86021, 86854, 87047, 87440, 84352, 90238, 88992, 91923, and 91696, 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.

36. 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.
37. 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.
38. During the period April 1 through July 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.
39. 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.
40. 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.

41. 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***

42. Diamond Meadows #1384 Homeowners Association, Inc. (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 Diamond Meadows #1384 Homeowners Association.
43. The Department assigned this mitigation credit project number MP-176.
44. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on January 22, 2019. No comments were received in response to this notice.
45. 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 January 14, 2019. Comments were received from DEQ.
46. This mitigation credit project was initially proposed to potentially provide mitigation for groundwater permit applications G-17415 (now Certificate 93334 and receiving mitigation from another project), G-17445 (now Certificate 93335 and receiving mitigation from another project), and G-17465 (still pending). 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. There are two instream transfers on Big Marsh Creek, and proposed for mitigation, associated with this letter from ODFW. Instream Transfer T-11868 (MP-191) has been approved and was awarded 10.8 mitigation credits. Transfer Application T-11508 (MP-176) is the second of the two instream transfer applications associated with Big Marsh Creek.
47. DEQ concurred with the shaping recommendations from ODFW. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
48. When the Department originally provided notice of this mitigation project and consulted with ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, Oregon Department of Agriculture, and the Department's Watermaster, the amount of mitigation made available by this project was estimated to be 1.5 Acre-Feet of mitigation

credits. This was based on the proposed transfer of 0.85 acre of irrigation use under Certificate 91836 to instream use. In review of the transfer application, the Department has identified that there appears to only be 0.6 ac of irrigation use available for transfer to instream use. The amount of mitigation made available by this project must be reduced.

49. The proposed transfer of 0.60 acre of irrigation use, with a priority date of September 1, 1898, to instream use will provide 1.1 acre-feet of mitigation water. Therefore, 1.1 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to Diamond Meadows #1384 Homeowners Association, Inc.
50. The proposed instream reach (as described in Finding of Fact No. 28) extends through the Little Deschutes Zone of Impact, into the Upper Deschutes Zone of Impact, through the Middle Deschutes Zone of Impact and ends in the General Zone of Impact. The amount of water protected instream within each of these zones exceeds the 1.1 mitigation credits that may be awarded to this project.
51. 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, Upper Deschutes Zone of Impact, Middle Deschutes Zone of Impact, and General Zone of Impact.
52. A maximum of 2.4 AF is proposed to be transferred to instream use and 1.1 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
53. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete.
54. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application.

### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-11508 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-11508 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-11508 are approved.
2. Water right certificate 91836 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 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. 17), to 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	0.008 CFS	2.40 AF
	May 23 through July 15	0.015 CFS	

**Instream Reach 2:** From 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 at the confluence with Crescent Creek

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.16 AF
	May 23 through July 15	0.014 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 at the confluence with the Little Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.12 AF
	May 23 through July 15	0.013 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 at the confluence with the Deschutes River

Priority Date	Instream Period	Rate Instream	Volume Instream
9/1/1898	April 1 through May 22	0.007 CFS	2.12 AF
	May 23 through July 15	0.013 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**

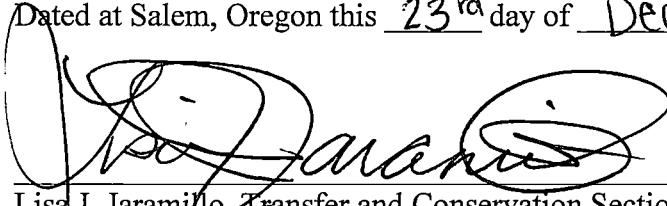
<i>Priority Date</i>	<i>Instream Period</i>	<i>Rate Instream</i>	<i>Volume Instream</i>
9/1/1898	April 1 through May 22	0.006 CFS	1.97 AF
	May 23 through July 15	0.012 CFS	

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 91836 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 1.1 credits, as described herein, may be awarded to this mitigation project and assigned to Diamond Meadows #1384 Homeowners Association, Inc. 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**. 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. They may be assigned and used as mitigation after water is legally protected instream.*
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 23<sup>rd</sup> day of December 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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 these proceedings under the federal Service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.

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).



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 23, 2019

VIA E-MAIL

**Applicant**

DIAMOND MEADOWS #1384 HOMEOWNERS ASSOCIATION INC

PO BOX 1083

CRESCENT LAKE, OR 97733

**SUBJECT:** Instream Water Right Transfer Application T-11508 / Mitigation Credit Project MP-176

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11508 and Mitigation Credit Project MP-176. 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.

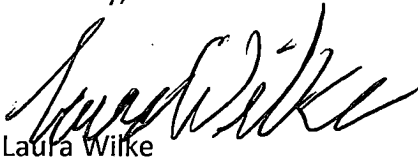
A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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,

A handwritten signature in black ink, appearing to read 'Laura Wilke', written in a cursive style.

Laura Wilke

Transfer Specialist

Transfer and Conservation Section

cc: T-11508

Mitigation Credit Project Folder MP-176

Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

Kim French, Water Right Specialist

John A. Short, Water Right Services, Agent for the applicant (*via e-mail*)

Linda Lee Miller, CWRE #47708

encs