

# Application for Water Right Instream Transfer

## Part 1 of 6 – Minimum Requirements Checklist



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.oregon.gov/OWRD

**This transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.**  
For questions, please call (503) 986-0900, and ask for Transfer Section.

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**FOR ALL INSTREAM TRANSFER APPLICATIONS**

Check all items included with this application. (N/A = Not Applicable)

- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed Map Checklist.
- Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: [http://apps.wrd.state.or.us/apps/misc/wrd\\_fee\\_calculator](http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator). If you have questions, call Customer Service at (503) 986-0801.  
  
Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.
- Part 4 – Completed Applicant Information and Signature.
- Part 5 – Completed Instream Use Information.
- Part 6 – Information about the Transferred Water Rights: **How many water rights are to be transferred? 1 List them here: 95746**  
Please include a separate Part 6 for each water right. (See instructions on page 8)

**Attachments:**

- Completed Instream Transfer Application Map.
- Completed Evidence of Use Affidavit and supporting documentation.
- N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
- N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district.
- Land Use Notice - Notice of the intent to file an instream transfer application must be provided to each affected local government along the proposed reach. Copies of the notices must be enclosed with the instream transfer application.

**(For Staff Use Only)**

**WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):**

<input type="checkbox"/> Application fee not enclosed/insufficient	<input type="checkbox"/> Map not included or incomplete
<input type="checkbox"/> Land Use Form not enclosed or incomplete	
<input type="checkbox"/> Additional signature(s) required	<input type="checkbox"/> Part _____ is incomplete
Other/Explanation _____	
Staff: _____	Date: ____/____/____

## Part 2 of 6 – Map Checklist

Your transfer application will be returned if any of the map requirements listed below are not met.

Please be sure that the transfer application map you submit includes all the required items and matches the existing water right map. Check all boxes that apply.

- N/A Certified Water Right Examiner (CWRE) Stamp and Original Signature. For list of CWREs see [http://apps.wrd.state.or.us/apps/wr/cwre\\_license\\_view/](http://apps.wrd.state.or.us/apps/wr/cwre_license_view/).
- OR**
- N/A Waiver of requirement that map be prepared by a CWRE. Completed map waiver form is signed by the Department's Regional Manager and included in the application. The map **must** still meet Department mapping requirements described below.
- N/A If **more than three** water rights are involved, separate maps are needed for each water right.
- Permanent quality printed with dark ink on good quality paper.
- The size of the map can be 8½ x 11 inches, 8½ x 14 inches, 11 x 17 inches, or up to 30 x 30 inches. For 30 x 30 inch maps, one extra copy is required.
- A north arrow, a legend, and scale.
- The scale of the map must be: 1 inch = 400 feet, 1 inch = 1,320 feet, the scale of the Final Proof/Claim of Beneficial Use Map (the map used when the permit was certificated), the scale of the county assessor map if the scale is not smaller than 1 inch = 1,320 feet, or a scale that has been pre-approved by the Department.
- Township, Range, Section, quarter-quarter, DLC, Government Lot, and other recognized public land survey lines.
- Tax lot boundaries (property lines) are required. Tax lot numbers are recommended.
- Major physical features including rivers and creeks showing direction of flow, lakes and reservoirs, roads, and railroads.
- Major water delivery system features from the point(s) of diversion/appropriation such as main pipelines, canals, and ditches.
- Existing place of use that includes separate hachuring for each water right, priority date and use including number of acres in each quarter-quarter section, government lot, or in each quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If less than the entirety of the water right is being changed, a separate hachuring is needed for lands left unchanged.
- Existing diversion point(s) with distance and bearing or coordinates from a recognized survey corner. This information can generally be found in your water right certificate or permit.

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Part 3 of 6 – Fee Worksheet

FEE WORKSHEET for INSTREAM TRANSFER			
1	Base Fee (includes Place of Use and Character of Use to Instream changes to one water right for up to 1 cfs)	1	\$2,450
2	Number of water rights included in transfer <u>1 (2a)</u> Subtract 1 from the number in 2a above: <u>0 (2b)</u> <i>If only one water right, this will be 0</i> Multiply line 2b by \$610 and enter » » » » » » » » » » » » » » »	2	\$0
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>3.75 (3a)</u> Subtract 1.0 from the number in 3a above: <u>2.75 (3b)</u> If 3b is 0, enter 0 on line 3 » » » » » » » » » » » » » » » If 3b is greater than 0, round up to the nearest whole number: <u>3.0 (3c)</u> and multiply 3c by \$410, then enter on line 3 » » » » » » » » » »	3	\$1,230
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$3,680
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » »	5	\$1,840
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » » <b>Transfer Fee:</b>	6	<b>\$1,840</b>

\*Example for Line 3a calculation to transfer 45.0 acres of Primary Certificate 12345 (total 1.25 cfs for 100 acres) and 45.0 acres of Supplemental Certificate 87654 (1/80 cfs per acre) on the same land:

1. For irrigation calculate cfs for each water right involved as follows:
  - a. Divide total authorized cfs by total acres in the water right (for C12345, 1.25 cfs ÷ 100 ac); then multiply by the number of acres to be transferred to get the transfer cfs (x 45 ac = 0.56 cfs).
  - b. If the water right certificate does not list total cfs, but identifies the allowable use as 1/40 or 1/80 of a cfs per acre; multiply number of acres proposed for change by either 0.025 (1/40) or 0.0125 (1/80). (For C87654, 45.0 ac x 0.0125 cfs/ac = 0.56 cfs)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land.** The fee should be assessed only once for each “on the ground” acre included in the transfer. (In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0).

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Part 4 of 6 – Applicant Information and Signature

Is this a  **Permanent Instream Transfer** or  **Time-Limited Instream Transfer?**

**Applicant Information**

APPLICANT/BUSINESS NAME <b>Wanek Ranch, LLC</b>		PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS <b>P.O. Box 1287</b>			FAX NO.
CITY <b>La Pine</b>	STATE <b>OR</b>	ZIP <b>97739</b>	E-MAIL <b>artla@yahoo.com</b>
<b>BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.</b>			

**Agent Information** – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME <b>GSI Water Solutions, Inc. c/o Owen McMurtrey</b>		PHONE NO. <b>(541) 257-9005</b>	ADDITIONAL CONTACT NO.
ADDRESS <b>1600 SW Western Boulevard</b>			FAX NO.
CITY <b>Corvallis</b>	STATE <b>OR</b>	ZIP <b>97333</b>	E-MAIL <b>omcmurtrey@gsiws.com</b>
<b>BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.</b>			

Explain in your own words what you propose to accomplish with this transfer application, and why:

The applicant proposes to transfer 150 acres of irrigation surface water rights instream for mitigation credits. The applicant plans to assign these credits to groundwater permit application G-18349 to provide water for irrigation for the same place of use as will be transferred instream under Certificate 95746.

Some of the lands proposed for instream transfer are currently leased instream. The applicant plans to terminate that lease prior to the beginning of the irrigation season (April 1) in which the instream transfer will be approved and sign a new lease to include only the lands to remain on Certificate 95746.

If you need additional space, continue on a separate piece of paper and attach to the application as "Attachment 1".

Check this box if this project is fully or partially funded by the American Recovery and Reinvestment Act. (Federal stimulus dollars)

Check one box

- By signing this application, I understand that, upon receipt of the draft preliminary determination and prior to Department approval of the transfer, I will be required to provide landownership information and evidence that I am authorized to pursue the transfer as identified in OAR 690-380-4010(5); **OR**
- I affirm the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; **OR**
- I affirm that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the water right proposed for transfer is appurtenant and have supporting documentation.

I understand that prior to Department approval of the transfer, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following newspaper: La Pine Weekly.

I (we) affirm that the information contained in this application is true and accurate.



Wendy W. Potok  
Applicant Signature

Wendy Potok  
Print Name (and Title if applicable)

August 9, 2003  
Date

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Print Name (and Title if applicable)

\_\_\_\_\_  
Date

Is the applicant the sole owner of the land on which the water right, or portion thereof, proposed for transfer is located?  Yes  No *If NO, include signatures of all deeded landowners (and mailing and/or e-mail addresses if different than the applicant's) or attach affidavits of consent (and mailing and/or e-mail addresses) from all landowners or individuals/entities to which the water right(s) were conveyed.*

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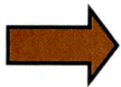
Check the following boxes that apply:

- Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.) N/A – The La Pine Cooperative Water Association is not an irrigation district.

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

- Check here if water for any of the rights is supplied under a water service agreement or other contract for stored water with a federal agency or other entity.

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the proposed instream reach will be located.

ENTITY NAME <b>City of La Pine</b>	ADDRESS <b>P.O. Box 2450 16345 Sixth Street</b>	
CITY <b>La Pine</b>	STATE <b>OR</b>	ZIP <b>97739</b>

ENTITY NAME <b>Deschutes County</b>	ADDRESS <b>P.O. Box 6005</b>	
CITY <b>Bend</b>	STATE <b>OR</b>	ZIP <b>97708-6005</b>

ENTITY NAME <b>Jefferson County Community Development</b>	ADDRESS <b>85 SE D Street</b>	
CITY <b>Madras</b>	STATE <b>OR</b>	ZIP <b>97741</b>

ENTITY NAME <b>City of Bend Planning Department</b>	ADDRESS <b>710 NW Wall Street</b>	
CITY <b>Bend</b>	STATE <b>OR</b>	ZIP <b>97701</b>

ENTITY NAME <b>Klamath County Community Development</b>	ADDRESS <b>305 Main Street #1</b>	
CITY <b>Klamath Falls</b>	STATE <b>OR</b>	ZIP <b>97601</b>

ENTITY NAME <b>Confederated Tribes of Warm Springs</b>	ADDRESS <b>1233 Veterans Street P.O. Box C</b>	
CITY <b>Warm Springs</b>	STATE <b>OR</b>	ZIP <b>97761</b>

## Part 5 of 6 – Proposed Instream Use Information

Identify the Public Use for which the instream right is requested (check at least one box):

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
- Recreation
- Navigation
- Pollution Abatement

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**Instream use proposed to be created by the instream transfer:**

Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
95746	1897	Little Deschutes River	April 1 to May 23	0.92 cfs @ 1/80	97.06
95746	1879	Little Deschutes River	May 24 to August 19	1.85 cfs @ 1/40	322.33
95746	1879	Little Deschutes River	August 20 to October 31	0.92 cfs @ 1/80	133.69
95746	1902	Little Deschutes River	April 1 to May 23	0.08 cfs @ 1/80	8.06
95746	1902	Little Deschutes River	May 24 to August 19	0.15 cfs @ 1/40	26.76
95746	1902	Little Deschutes River	August 20 to October 31	0.08 cfs @ 1/80	11.10
<b>TOTAL VOLUME</b>					<b>599.0</b>

**\*Tip:** To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

**\*\*Tip:** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the max rate allowed by the existing right(s) and the total volume may not exceed to max volume or duty allowed by the existing right(s).

Additional Information: Certificate 95746 is limited to a diversion of 1/40 cfs per acre from May 23 to August 20 and a rate of 1/80 cfs per acre from April 1 to May 23 and August 20 to November 1. The right is further limited to a diversion not to exceed 4.0 acre-feet per acre each year. The Oregon Department of Fish and Wildlife provided guidance that the right should be protected throughout the season.

**Identify the location of the proposed instream water right.**

- Water is requested to be protected at a point.  
Location (i.e. the point of diversion (POD) – use the POD Name or Number from Table 1): \_\_\_\_\_.

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- Water is requested to be protected within a reach:  
Location of proposed reach (If an instream water right reach is requested, identify the upstream and downstream extent of the reach): **From the authorized POD, located in the SW SW ¼ ¼ of Section 34, township 23 S, range 9 E, to Lake Billy Chinook.**

**Recommendations for conditions on the instream use to avoid taking away or impairing existing water rights.**

- None
- Other (such conditions may include, but are not limited to, reductions in the instream flow levels in cfs per month or total ac-ft, the effective reach(es) or lake levels of the instream flow, measuring locations and the strategy for monitoring the instream flow or lake levels):  
\_\_\_\_\_.

**Are there any existing instream water rights on the same point or within the same requested reach(es) or lake, or on a portion thereof?**

- No       Yes (identify other instream water rights): **There are many instream water rights in the proposed instream reaches. The following instream water rights have resulted from transfers or leases from this water right: Certificates 90238, 87047, 83652, and IL-1450.**

Note: New instream water rights are generally (but not always) additive to instream water rights established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of instream water rights established under ORS 537.341 (state agency application process) or ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date.

Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 and ORS 537.470 and replace a portion of any instream water right established under ORS 537.341 and ORS 537.346 with an earlier priority date?

- Yes       No. If no, please explain your intent: \_\_\_\_\_.

If the proposed conversion would add to the amounts of an existing instream water right(s) established under ORS 537.341 or 537.346, provide documentation demonstrating why additional instream flows are necessary. Supporting documentation should include information from the Oregon Dept. of Fish and Wildlife (ODFW) (fish life), Dept. of Environmental Quality (DEQ) (pollution abatement), and/or Parks and Recreation Dept. (recreation).

**Is the requested instream flow intended to exceed the estimated average natural flow or level occurring from the drainage system?**

- No; **OR**
- Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); **OR**
- Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:
- The requested flow does not exceed the maximum amount of any instream water right application applied for under ORS 537.341 (state agency instream water right application process) for the same reach or portion thereof, and the requested public use is for the same public use as the afore mentioned instream water right application, **and**



- For the specified time period that flows are requested to exceed the estimated average natural flow or lake level, the stream is in an ODFW flow restoration priority watershed. A copy of the priority watershed map indicating the specific watershed involved should be included with the application. Priority watershed maps may be found on the OWRD web page; **or**
- The stream is listed as water quality limited and DEQ has provided scientific information that demonstrates that increased flows would improve water quality. The scientific information provided by DEQ should be included with the transfer application.

**For a Time Limited Instream Transfer, please answer the following:**

- The time-limited instream transfer is for a specific number of years:  
\_\_\_\_\_ Begin Year to \_\_\_\_\_ End Year
- Time-limited instream transfer is to terminate based upon other conditions:  
Conditions: \_\_\_\_\_.

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## Part 6 of 6 – Water Right Information

Please use a separate Part 6 for each water right being changed. See instructions on page 8, to copy and paste additional Part 6s, or to add additional rows to tables within the form.

**CERTIFICATE # 95746**

**Name on Certificate: La Pine Cooperative Water Association**

**Date(s) of Priority: 12/31/1897, 12/31/1900, 4/30/1902**

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**Source(s) of Water to be Affected by the Transfer: Little Deschutes River**

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**Description of Water Delivery System**

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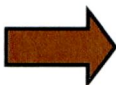
System capacity: **26.874** cubic feet per second (cfs) OR  
 \_\_\_\_\_ gallons per minute (gpm)

Describe the current water delivery system or the system that was in place at some time within the last five years. Include information on the pumps, canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use. **The authorized POD is located in the SW SW ¼ ¼ of Section 34, township 23 S, range 9 E. The diversion has the capacity to divert the entire water right under Certificate 95746, which is 26.874 cfs during peak irrigation season. The rate of diversion is measured at OWRD gage 14062500. During 2022, the maximum authorized rate under Certificate 95746, after accounting for instream leases and the watermaster’s regulation by priority date, was measured at the gage and confirmed by field measurements.**

**Other Water Rights**

Are there other water right certificates, water use permits or ground water registrations associated with the “from” lands?  Yes  No

If YES, list the certificate, water use permit, or ground water registration numbers:\_\_\_\_\_.



Pursuant to ORS 540.510, any “layered” water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

**Table 1. Location of Authorized Point(s) of Diversion (POD)**

(Note: If the POD name is not specified on the certificate, assign it a name or number here. Also, if the POD is not described in the Certificate, provide a description below)

POD Name or Number	Priority Date (if different between PODs)	Twp		Rng		Sec	¼ ¼		Tax Lot, DLC or Gov’t Lot	Measured Distances (from a recognized survey corner)
POD	1897, 1900, 4/30/1902	23	S	9	E	34	SW	SW		550 feet North and 1,150 feet East from the SW corner of Section 34.

**Will the proposed instream transfer affect the entire water right?**

Yes Then Table 2 on Page 10 does not need to be completed.

No Then complete all of Table 2 to describe the portion of the water right to be changed.

Please use additional pages of Table 2 as needed. See page 8 for instructions. If you have further questions about how to fill out the tables, contact the Department at 503-986-0900 and ask for Transfer Staff.

**Table 2. Description of Change to Water Right Certificate # 95746**

List only the part of the right that will be changed. If more than one POD serves the lands, specify the acreage associated with each POD.

Twp	Rng	Sec	¼ ¼	Tax Lot	Gov't Lot or DLC	Acres if Applicable	Type of USE listed on Certificate	Priority Date (if not the same for all acres or type of use)	POD(s) (name or number from Table 1)			
22	S	10	E	22	SE	NE	101		16.5	Irrigation	1897	POD
22	S	10	E	22	NE	SE	101		20.9	Irrigation	1897	POD
22	S	10	E	22	SW	SE	109		1.0	Irrigation	1897	POD
22	S	10	E	22	SW	SE	101		1.4	Irrigation	1897	POD
22	S	10	E	22	SE	SE	109		0.6	Irrigation	1897	POD
22	S	10	E	22	SE	SE	101		5.0	Irrigation	1897	POD
22	S	10	E	23	NW	SW	2401		8.1	Irrigation	1897	POD
22	S	10	E	23	SW	SW	2401		4.8	Irrigation	1897	POD
22	S	10	E	27	NE	NE	102		3.8	Irrigation	1897	POD
22	S	10	E	27	NE	NE	103		3.6	Irrigation	1897	POD
22	S	10	E	27	NW	NE	102		15.6	Irrigation	1897	POD
22	S	10	E	27	NW	NE	103		9.2	Irrigation	1897	POD
22	S	10	E	27	SW	NE	103		4.2	Irrigation	1897	POD
22	S	10	E	27	SW	NE	104		4.4	Irrigation	1897	POD
22	S	10	E	27	SW	NE	108		1.8	Irrigation	1897	POD
22	S	10	E	27	SE	NE	103		3.0	Irrigation	1897	POD
22	S	10	E	27	SE	NE	104		7.4	Irrigation	1897	POD
22	S	10	E	27	SE	NE	108		3.9	Irrigation	1897	POD
22	S	10	E	27	NE	SE	108		5.4	Irrigation	1897	POD
22	S	10	E	27	NE	SE	105		0.3	Irrigation	1897	POD
22	S	10	E	27	NW	SE	108		6.4	Irrigation	1897	POD
22	S	10	E	27	NW	SE	105		11.2	Irrigation	1897	POD
22	S	10	E	22	SW	NE	101		0.1	Irrigation	1902	POD
22	S	10	E	22	NW	SE	101		3.8	Irrigation	1902	POD
22	S	10	E	22	SW	SE	101		7.6	Irrigation	1902	POD
TOTAL ACRES									150.0			

Additional remarks: Some taxlot boundaries have changed and are no longer consistent with tax lots listed on Certificate 95746. A portion of the place of use is currently leased instream, but the lease will be terminated prior to the start of the irrigation season in which the instream transfer is expected to be approved. See Attachment D for table identifying from lands and acres to remain on within each quarter-quarter and tax lot.

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**Attachment A:**  
**Instream Transfer Application Map**

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**Attachment B:**  
**Evidence of Use Affidavit**

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# Application for Water Right Transfer

## Evidence of Use Affidavit



Oregon Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301-1266  
 (503) 986-0900  
 www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing. Supporting documentation must be attached.

State of Oregon )  
 ) ss  
 County of DESCHUTES)

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I, WENDY POTOK, in my capacity as \_\_\_\_\_,  
 mailing address P.O. BOX 1287, LA PINE, OREGON 97739  
 telephone number (\_\_\_\_)\_\_\_\_, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one):

- Personal observation                       Professional expertise

2. I attest that:

- Water was used during the previous five years on the **entire** place of use for Certificate # \_\_\_\_\_; **OR**
- My knowledge is specific to the use of water at the following locations within the last five years (**place of use leased instream under IL-1742, IL-1743, and IL-1450**):

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)
See attached maps from leases IL-1742, IL-1743, and IL-1450 (Attachment C).							

OR

- Confirming Certificate # \_\_\_\_\_ has been issued within the past five years; **OR**
- Part or all of the water right was leased instream at some time within the last five years. The instream lease number is: IL-1742, IL-1743, AND IL-1450 (TERMINATED 3/11/2019) (Note: If the entire right proposed for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**
- The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached.
- Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # \_\_\_\_\_ (For Historic POD/POA Transfers)

(continues on reverse side)

3. The water right was used for: (e.g., crops, pasture, etc.): INSTREAM LEASE
4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

\_\_\_\_\_  
 Signature of Affiant

\_\_\_\_\_  
 Date **14309**

Signed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires: \_\_\_\_\_

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)	Copy of <b>confirming</b> water right certificate that shows issue date
<input type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water	<ul style="list-style-type: none"> <li>● Power usage records for pumps associated with irrigation use</li> <li>● Fertilizer or seed bills related to irrigated crops</li> <li>● Farmers Co-op sales receipt</li> </ul>
<input type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none"> <li>● District assessment records for water delivered</li> <li>● Crop reports submitted under a federal loan agreement</li> <li>● Beneficial use reports from district</li> <li>● IRS Farm Usage Deduction Report</li> <li>● Agricultural Stabilization Plan</li> <li>● CREP Report</li> </ul>
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a “date stamp” or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – <a href="http://www.oregonexplorer.info/imagery">www.oregonexplorer.info/imagery</a> OWRD – <a href="http://www.wrd.state.or.us">www.wrd.state.or.us</a> Google Earth – <a href="http://earth.google.com">earth.google.com</a> TerraServer – <a href="http://www.terra-server.com">www.terra-server.com</a></p>
<input checked="" type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number – <b><u>IL-1743, IL-1742, IL-1450. See attached final orders of approval and cancellation.</u></b>

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BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Instream Lease IL-1450 and ) FINAL ORDER  
Mitigation Credit Project MP-196, Deschutes ) TERMINATING INSTREAM  
County ) LEASE & MITIGATION CREDIT  
) PROJECT

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

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.

**Lessor**

Wanek Ranch LLC  
P.O. Box 1098  
La Pine, Oregon 97739

**Lessee**

Deschutes River Conservancy Mitigation Bank (DRCMB)  
700 N.W. Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On April 17, 2015, Wanek Ranch LLC and the DRCMB filed an application involving a portion of Certificate 87048 for instream use. The Department assigned the application number IL-1450 and mitigation credit project MP-196.
2. The lease application requested to protect water instream for five years, terminating on November 2, 2019. A Final Order approving this lease and mitigation credit project was issued by the Department on June 19, 2015, as evidenced by Special Order Volume 96, Page 333. The mitigation credit project was awarded 360.0 mitigation credits for use in the Little Deschutes Zone of Impact, of that amount up to 334.8 could of also been used in the Upper Deschutes, Middle Deschutes and General Zones of Impact. These mitigation credits were assigned to the DRC Mitigation Bank and were to expire on December 31, 2019.
3. The final order contained a condition allowing the Lessor and the Lessee to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department from all parties to the lease.

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This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



4. On February 21, 2019, the Department received a request from Wanek Ranch and the DRCMB to terminate the lease and mitigation credit project prior to the 2019 instream use period.
3. The lease was exercised during the 2015, 2016, 2017, and 2018 water use period ending on November 2, 2018. Mitigation credits established by this project were used to provide mitigation for groundwater permits in 2015, 2016, 2017, and 2018.

### Conclusions of Law

The Department concludes that terminating the lease in advance of the 2019 instream use period is consistent with OAR 690-077.

### Now, therefore it is ORDERED:

The Instream Lease described herein is TERMINATED and no longer in effect. The mitigation credits awarded to the Mitigation Project described herein are no longer valid.

Dated at Salem, Oregon this day, MAR 11 2019.



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 12 2019

*This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0884.*

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BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1742 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
of Mitigation Credits for Mitigation Project ) INSTREAM LEASE and MITIGATION  
MP-248, Deschutes County ) CREDIT PROJECT

**Authority**

Oregon Revised Statute (ORS) 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

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.

**Lessor**

Wanek Ranch LLC  
P.O. BOX 1098  
La Pine, OR. 97739  
[artla@yahoo.com](mailto:artla@yahoo.com)

**Lessee**

Deschutes River Conservancy Mitigation  
Bank (DRCMB)  
700 NW Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On April 22, 2019, Wanek Ranch LLC and the DRC filed an application to involving a portion of Certificate 90239 for instream use. The Department assigned the application number IL-1742.
2. The portion of the right to be leased is as follows:

**Certificate:** 90239 in the name of La Pine Cooperative Water Association (confirmed by the Deschutes River Decree, of record at Salem, in the Order Record of the Water Resources Director in Volume 16, Page 185)

**Use:** Irrigation of 133.6 acres

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

**Priority Dates:** April 30, 1902

**Quantity:** **Rate/Volume:** 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 1/40<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigation, from May 23 to August 20, and 1/80<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigated, from

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This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

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.

<b>April 1 to May 23 &amp; Aug. 20 to Nov. 1</b>	<b>May 23 to Aug 20</b>	<b>Duty</b>
1.67 CFS	3.34 CFS	534.4 AF

**Source:** LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER  
**Authorized Point of Diversion (POD):**

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 original (new)	Acres
22 S	10 E	WM	22	SW SE	101	2.7
22 S	10 E	WM	22	SW SE	103 (109)	1.6
22 S	10 E	WM	22	SE SE	101	4.2
22 S	10 E	WM	22	SE SE	103 (109)	0.5
22 S	10 E	WM	27	NW NE	103 (102)	20.6
22 S	10 E	WM	27	NW NE	103	14.6
22 S	10 E	WM	27	NE NE	103 (102)	4.4
22 S	10 E	WM	27	NE NE	103	4.6
22 S	10 E	WM	27	SW NE	103	7.5
22 S	10 E	WM	27	SW NE	108 (104)	20.1
22 S	10 E	WM	27	SW NE	108	6.5
22 S	10 E	WM	27	SE NE	103	3.5
22 S	10 E	WM	27	SE NE	108 (104)	8.3
22 S	10 E	WM	27	SE NE	108	4.0
22 S	10 E	WM	27	NW SE	108	11.3
22 S	10 E	WM	27	NW SE	108 (105)	13.5
22 S	10 E	WM	27	NE SE	108	5.3
22 S	10 E	WM	27	NE SE	108 (105)	0.4
<b>Total</b>						<b>133.6</b>

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- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
- 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.

Return flows from the existing use return to the Little Deschutes River in the vicinity of the Little Deschutes gage near the city of LaPine, located approximately at river mile 27.

The instream flows at River Mile 27 have been reduced to the consumptive portion of the right to account for return flows.

5. The lease application requests to protect water instream from Little Deschutes River into the 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 leased instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Little Deschutes River.
6. The segment of the reach on the main stem 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 main stem Deschutes River requires additional modification to prevent injury and enlargement.
7. At the instream rates and volumes requested, the Department cannot protect water instream during the full instream period. However, water may be protected instream over the full instream period by reducing the proposed instream rates.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Little Deschutes River, tributary to the Deschutes River

**Instream Reach 1:** From the POD (as described in Finding of Fact No. 2) to the gage near LaPine at approximate River Mile 27.0

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1897	0.855	534.33	April 1 through May 22
	2.084		May 23 through August 19
	0.548		August 20 through October 31

**Instream Reach 2:** From the gage near LaPine at approximately River Mile 27.0 to the mouth of the Little Deschutes River

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1897	0.569	240.48	April 1 through October 31

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

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1897	0.530	223.65	April 1 through October 31

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. The protection of flows within the proposed reach is appropriate, considering:
  - a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.

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- c. There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and have been accounted for in Reach 3; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right and have been accounted for in Reach 2.
11. 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.
  12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
  13. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
  14. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
  15. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
  16. The Lessor and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.
  17. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

**Preliminary Award of Deschutes Basin Mitigation Credits**

18. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
19. The Department assigned this mitigation credit project number MP-248.
20. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, 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). Comments were received by the Oregon Department of Environmental Quality, in favor of the instream lease.

21. As part of the public notice of the mitigation project, the Department identified that the project may result in 240.5 mitigation credits. Irrigation of 133.6 acres has an average consumptive use of 240.5 AF. However, this volume may only be protected instream in the Little Deschutes River. The quantity of water that may be protected instream downstream of the Little Deschutes River requires modification to account for streamflow losses on the Deschutes River, which reduces the amount of mitigation available from the project. In the Little Deschutes River up to 240.5 AF may be protected instream for mitigation purposes. This is the amount of mitigation available in the Little Deschutes Zone of Impact. Only up to 223.6 AF of this quantity may be protected instream into the Deschutes River. This is the amount of mitigation available in the Upper Deschutes, Middle Deschutes, and General Zones of Impact.
22. The Department finds that up to 240.5 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC Mitigation Bank. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact. However, the number of mitigation credits that may be used, out of 240.5 total mitigation credits, is limited to no more than 223.6 credits in the Upper Deschutes, Middle Deschutes and General Zones of Impact.
23. The mitigation credits expire on December 31, 2023.
24. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
25. 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 the Final Order approving the proposed instream lease shall result in completion of the project and verification that the project is complete.
26. No precedent is set by this Final Order as to the amount of mitigation credits that may be generated by a subsequent mitigation credit project.

**Conclusions of Law**

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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

**Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.

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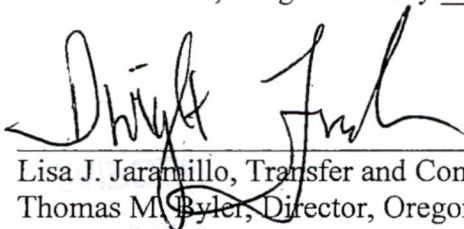
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2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2023. For multiyear leases, the Lessor and Lessee shall have the option of terminating the lease with written notice to the Department provided to both the Salem office and Watermaster office. Written notice of termination of a lease must be provided by all Lessors and the Lessee. The lease may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may be allowed until the following calendar year, unless the Director determines that enlargement would not occur.
4. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of this Final Order results in completion of the project and verification by the Department that the project is complete. The Department concludes that the mitigation credit project is awarded mitigation credits, as described above, pursuant to OAR 690-521-0400 and ORS 537.746. Mitigation Credits, in the amount of **240.5** credits, as described herein, are awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation Credits 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 **240.5** mitigation credits awarded to this project, up to **223.6** of those credits may also be used in the **Upper Deschutes, Middle Deschutes and General Zones of Impact**.
5. Mitigation credits are valid until used (or until they expire or are terminated) 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.
6. The mitigation credits shall expire on December 31, 2023.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this day     MAY 24 2019    .

  
 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
 Thomas M. Byler, Director, Oregon Water Resources Department

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Mailing date:     MAY 28 2019    

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.*

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

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In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1743 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
of Mitigation Credits for Mitigation Project ) INSTREAM LEASE and MITIGATION  
MP-249, Deschutes County ) CREDIT PROJECT

**Authority**

Oregon Revised Statute (ORS) 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

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.

**Lessor**

Wanek Ranch LLC  
P.O. BOX 1098  
La Pine, OR. 97739  
[artla@yahoo.com](mailto:artla@yahoo.com)

**Lessee**

Deschutes River Conservancy Mitigation  
Bank (DRCMB)  
700 NW Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On April 22, 2019, Wanek Ranch LLC and the DRC filed an application to involving a portion of Certificate 90239 for instream use. The Department assigned the application number IL-1743.
2. The portion of the right to be leased is as follows:

**Certificate:** 90239 in the name of La Pine Cooperative Water Association (confirmed by the Deschutes River Decree, of record at Salem, in the Order Record of the Water Resources Director in Volume 16, Page 185)

**Use:** Irrigation of 105.1 acres

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

**Priority Dates:** April 30, 1902

**Quantity:** **Rate/Volume:** 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 1/40<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigation, from May 23 to August 20, and 1/80<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigated, from

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.



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.

April 1 to May 23 & Aug. 20 to Nov. 1	May 23 to Aug 20	Duty
1.314 CFS	2.628 CFS	420.4 AF

**Source:** LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER  
**Authorized Point of Diversion (POD):**

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
22 S	10 E	WM	22	SW NE	101	37.4
22 S	10 E	WM	22	SE NE	101	1.0
22 S	10 E	WM	22	NW SE	101	39.3
22 S	10 E	WM	22	SW SE	101	27.4
<b>Total</b>						<b>105.1</b>

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- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
- 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.

Return flows from the existing use return to the Little Deschutes River in the vicinity of the Little Deschutes gage near the city of LaPine, located approximately at river mile 27.

The instream flows at River Mile 27 have been reduced to the consumptive portion of the right to account for return flows.

- The lease application requests to protect water instream from Little Deschutes River into the 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 leased instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Little Deschutes River.

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- 6. The segment of the reach on the main stem 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 main stem Deschutes River requires additional modification to prevent injury and enlargement.
- 7. At the instream rates and volumes requested, the Department cannot protect water instream during the full instream period. However, water may be protected instream over the full instream period by reducing the proposed instream rates.
- 8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Little Deschutes River, tributary to the Deschutes River

**Instream Reach 1:** From the POD (as described in Finding of Fact No. 2) to the gage near LaPine at approximate River Mile 27.0

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.673	420.34	April 1 through May 22
	1.640		May 23 through August 19
	0.431		August 20 through October 31

**Instream Reach 2:** From the gage near LaPine at approximately River Mile 27.0 to the mouth of the Little Deschutes River

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.448	189.18	April 1 through October 31

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

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.420	175.94	April 1 through October 31

- 9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
- 10. The protection of flows within the proposed reach is appropriate, considering:
  - a. The instream water use 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 have been accounted for in Reach 3; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right and have been accounted for in Reach 2.
- 11. 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.
- 12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

13. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
14. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
15. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
16. The Lessor and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.
17. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

**Preliminary Award of Deschutes Basin Mitigation Credits**

18. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
19. The Department assigned this mitigation credit project number MP-249.
20. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, 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). Comments were received by the Oregon Department of Environmental Quality, in favor of the instream lease application.
21. As part of the public notice of the mitigation project, the Department identified that the project may result in 189.2 mitigation credits. Irrigation of 105.1 acres has an average consumptive use of 189.2 AF. However, this volume may only be protected instream in the Little Deschutes River. The quantity of water that may be protected instream downstream of the Little Deschutes River requires modification to account for streamflow losses on the Deschutes River, which reduces the amount of mitigation available from the project. In the Little Deschutes River up to 189.2 AF may be protected instream for mitigation purposes. This is the amount of mitigation available in the Little Deschutes Zone of Impact. Only up to 175.9 AF of this quantity may be protected instream into the Deschutes River. This is the amount of mitigation available in the Upper Deschutes, Middle Deschutes, and General Zones of Impact.

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22. The Department finds that up to 189.2 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC Mitigation Bank. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact. However, the number of mitigation credits that may be used, out of 189.2 total mitigation credits, is limited to no more than 175.9 credits in the Upper Deschutes, Middle Deschutes and General Zones of Impact.
23. The mitigation credits expire on December 31, 2023.
24. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
25. 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 the Final Order approving the proposed instream lease shall result in completion of the project and verification that the project is complete.
26. No precedent is set by this Final Order as to the amount of mitigation credits that may be generated by a subsequent mitigation credit project.

**Conclusions of Law**

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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

**Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2023. For multiyear leases, the Lessor and Lessee shall have the option of terminating the lease with written notice to the Department provided to both the Salem office and Watermaster office. Written notice of termination of a lease must be provided by all Lessors and the Lessee. The lease may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may

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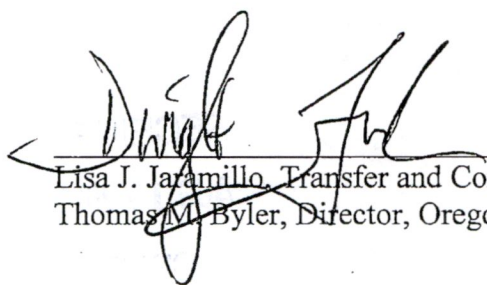
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allowed until the following calendar year, unless the Director determines that enlargement would not occur.

4. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of this Final Order results in completion of the project and verification by the Department that the project is complete. The Department concludes that the mitigation credit project is awarded mitigation credits, as described above, pursuant to OAR 690-521-0400 and ORS 537.746. Mitigation Credits, in the amount of **189.2** credits, as described herein, are awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation Credits 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 **189.2** mitigation credits awarded to this project, up to **175.9** of those credits may also be used in the **Upper Deschutes, Middle Deschutes and General Zones of Impact**.
5. Mitigation credits are valid until used (or until they expire or are terminated) 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.
6. The mitigation credits shall expire on December 31, 2023.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this day           **MAY 24 2019**          .



\_\_\_\_\_  
Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date:           **MAY 28 2019**          

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.*

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**Attachment C:  
Maps of Instream Leases**

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**Attachment D:**  
**Land Use Notice**

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August 8, 2023

City of La Pine  
P.O. Box 2460  
16345 Sixth Street  
La Pine, OR 97339

Deschutes County Community Development  
117 NW Lafayette Avenue  
Bend, OR 97701

Jefferson County Community Development  
85 SE D Street  
Madras, OR 97741

Confederated Tribes of the Warm Springs  
1233 Veterans Street  
PO Box C  
Warm Springs, OR 97761

City of Bend Planning Department  
710 NW Wall Street  
Bend, OR 9770

Klamath County Community Development  
305 Main Street, #1  
Klamath Falls, OR 97601

To Whom it May Concern:

Wanek Ranch LLC is providing notification of its intent to transfer a water right to instream use. The transfer application is requesting to change the character of use to and place of use of a portion of water right certificate 95746. The portion of the water right to be transferred includes 150 acres.

The proposed transfer will place between 1 and 4 cubic feet per second (cfs) instream with a priority date of 1897/1902 from April 1 to October 31. Wanek Ranch LLC requested that the water be protected from the authorized POD, located in the SW SW  $\frac{1}{4}$   $\frac{1}{4}$  of Section 34, township 23 S, range 9 E to the mouth of the Little Deschutes River, and in the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook. If you have any questions regarding the proposed transfer application or you are interested in receiving additional information, please contact me at 541-257-9005 or [omcmurtrey@gsiws.com](mailto:omcmurtrey@gsiws.com).

Sincerely,

A handwritten signature in black ink that reads "Owen McMurtrey". The signature is written in a cursive, slightly slanted style.

Owen McMurtrey  
Water Resources Consultant  
GSI Water Solutions, Inc.

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**Attachment E:**  
**Table of From Lands and Lands to Remain**

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Township	Range	Section	Taxlot	Old Taxlot	Priority	Q	Q	From Acres	Acres to Remain	Total	Total by QQ/Priority
22.00S	10.00E	22	101	101	1897	SE	NE	16.5	12.3	28.8	28.8
22.00S	10.00E	22	101	101	1897	NE	SE	20.9	17.8	38.7	38.7
22.00S	10.00E	22	109	103	1897	SW	SE	1.0	0.8	1.8	
22.00S	10.00E	22	101	101	1897	SW	SE	1.4	1.9	3.3	5.1
22.00S	10.00E	22	109	103	1897	SE	SE	0.6	0.3	0.9	
22.00S	10.00E	22	101	101	1897	SE	SE	5.0	15.3	20.3	21.2
22.00S	10.00E	23	2400	2400	1897	NW	SW	0.0	1.0	1.0	
22.00S	10.00E	23	2401	2401	1897	NW	SW	8.1	0.0	8.1	9.1
22.00S	10.00E	23	2401	2401	1897	SW	SW	4.8	0.0	4.8	4.8
22.00S	10.00E	27	102	103	1897	NE	NE	3.8	5.1	8.9	
22.00S	10.00E	27	103	103	1897	NE	NE	3.6	2.7	6.3	15.2
22.00S	10.00E	27	102	103	1897	NW	NE	15.6	6.2	21.8	
22.00S	10.00E	27	103	103	1897	NW	NE	9.2	5.8	15.0	36.8
22.00S	10.00E	27	103	103	1897	SW	NE	4.2	4.0	8.2	
22.00S	10.00E	27	104	103	1897	SW	NE	1.4	3.2	4.6	
22.00S	10.00E	27	104	108	1897	SW	NE	3.0	15.7	18.7	
22.00S	10.00E	27	108	108	1897	SW	NE	1.8	6.3	8.1	39.6
22.00S	10.00E	27	103	103	1897	SE	NE	3.0	1.2	4.2	
22.00S	10.00E	27	104	103	1897	SE	NE	1.2	0.5	1.7	
22.00S	10.00E	27	104	108	1897	SE	NE	6.2	1.0	7.2	
22.00S	10.00E	27	108	108	1897	SE	NE	3.9	0.0	3.9	17.0
22.00S	10.00E	27	108	108	1897	NE	SE	5.4	0.0	5.4	
22.00S	10.00E	27	105	108	1897	NE	SE	0.3	0.0	0.3	5.7
22.00S	10.00E	27	108	108	1897	NW	SE	6.4	9.5	15.9	
22.00S	10.00E	27	105	108	1897	NW	SE	11.2	7.1	18.3	34.2
22.00S	10.00E	22	101	101	1902	SW	NE	0.1	37.3	37.4	37.4
22.00S	10.00E	22	101	101	1902	SE	NE	0.0	1.0	1.0	1.0
22.00S	10.00E	22	101	101	1902	NW	SE	3.8	35.5	39.3	39.3
22.00S	10.00E	22	101	101	1902	SW	SE	7.6	26.6	34.2	34.2

**Total: 150.0 218.1 368.1 368.1**

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August 8, 2023

Sarah Henderson  
Flow Restoration Program Coordinator  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

Re: Application for water right instream transfer in the name of Wanek Ranch, LLC

Dear Sarah:

Please find enclosed an application for instream water right transfer, which is submitted on behalf of Wanek Ranch, LLC. The Applicant is requesting to permanently transfer instream a portion of water right certificate 95746 for mitigation credits. Also enclosed is the required fee of \$1,840.

The applicant plans to assign any mitigation credits awarded to a groundwater permit application G-18349 upon issuance of a final order approving that application.

A portion of the lands proposed for instream transfer are currently leased instream. The applicant plans to terminate their current instream lease prior to the beginning of the 2024 irrigation season, depending on the progress of the instream transfer and groundwater applications.

If you have any questions about the enclosed materials, please contact me at 541-257-9005.

Sincerely,

A handwritten signature in black ink that reads "Owen McMurtrey".

Owen McMurtrey  
Water Resources Consultant

Enclosures

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