

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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-14347, AND MITIGATION)	PROPOSING APPROVAL OF A CHANGE IN
PROJECT MP-312, Deschutes County)	PLACE OF USE AND CHARACTER OF USE
)	AND PARTIAL CANCELLATION OF A
)	WATER RIGHT AND PRELIMINARY AWARD
)	OF MITIGATION CREDITS

Authority

Oregon Revised Statutes (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 Rules (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.

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

Applicant

Arnold Irrigation District (AID)
19604 Buck Canyon Road
Bend, Oregon 97702

Agent

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703

Applicant

Roats Water System, Inc. (RWS)
61147 Hamilton Lane
Bend, Oregon 97702

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.

Findings of Fact

1. On November 6, 2023, AID, RWS, and DRC filed an application to change the place of use and character of use under Certificate 74197 to instream use. The Department assigned the application number T-14347.
2. Notice of the application for transfer was published on November 14, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to City of Bend, City of Redmond, Confederated Tribes of the Warm Springs, Deschutes County Planning Department, and Jefferson County Planning Department. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-13920.
4. On March 22, 2024, the Department received amendments to Page 4 and Page 12 of the application.
5. On May 2, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14347 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 1, 2024, for the applicants to respond. On May 10, 2024, DRC, the applicant's agent, responded and identified several scrivener errors in the order, a revised draft Preliminary Determination is being issued to correct those scrivener's errors.
6. On May 15, 2024, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Instream Transfer Application T-14347 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of June 14, 2024, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination.

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

Certificate: 74197 in the name of Arnold Irrigation District (confirmed by the Deschutes River Decree, on record at Salem, in the Order of Record of the Water Resources Director, in Volume 12, at Page 282 and in Volume 16, at Pages 10 and 390)

Use: 347.59 acre equivalent for Quasi-Municipal use

Priority Date: February 1, 1905, April 25, 1905

Season of Use: April 1 to November 1, further limited as follows:
Season 1: April 1 to May 1 & October 1 to November 1
Season 2: May 1 to May 15 & September 15 to October 1
Season 3: May 15 to September 15

Limit/Duty: **Rate:**
Season 1: limited to 1/51 cubic foot per second (CFS) per acre
Season 2: limited to 1/39 CFS per acre

Season 3: limited to 1/20.8 CFS per acre

Volume: Limited to 15.42 acre-feet (AF) per acre during the irrigation season as measured at the diversion from the source.

Limit: The listed rates and duty reflect allowance of 65% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933.

Source: Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	27	NE SW	POD 1 (ARNOLD CANAL): 2800 FEET SOUTH AND 3740 FEET WEST FROM THE NE CORNER OF SECTION 27

Authorized Place of Use:

QUASI-MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	12 E	WM	8	NE SE	10.25
18 S	12 E	WM	8	SE SE	5.00
18 S	12 E	WM	9	NE NE	5.00
18 S	12 E	WM	9	SE NE	5.00
18 S	12 E	WM	9	NE SW	5.00
18 S	12 E	WM	9	NW SW	10.01
18 S	12 E	WM	9	SW SW	9.30
18 S	12 E	WM	9	SE SW	5.00
18 S	12 E	WM	9	NE SE	5.00
18 S	12 E	WM	9	SE SE	5.00
18 S	12 E	WM	15	NW NW	5.00
18 S	12 E	WM	15	SW NW	5.00
18 S	12 E	WM	15	NE SW	5.00
18 S	12 E	WM	15	NW SW	5.00
18 S	12 E	WM	15	SW SW	5.00
18 S	12 E	WM	16	NE NE	5.00
18 S	12 E	WM	16	SW NE	5.00
18 S	12 E	WM	16	SE NE	5.00
18 S	12 E	WM	16	NE NW	5.00
18 S	12 E	WM	16	NW NW	5.00
18 S	12 E	WM	16	SW NW	5.00
18 S	12 E	WM	16	SE NW	5.00
18 S	12 E	WM	16	NE SW	5.00
18 S	12 E	WM	16	NW SW	5.00
18 S	12 E	WM	16	SW SW	5.00
18 S	12 E	WM	16	SE SW	5.00
18 S	12 E	WM	16	NE SE	5.00
18 S	12 E	WM	16	NW SE	5.00
18 S	12 E	WM	16	SW SE	5.00
18 S	12 E	WM	16	SE SE	5.00
18 S	12 E	WM	17	NE SE	10.00
18 S	12 E	WM	17	SW SE	10.00
18 S	12 E	WM	17	SE SE	10.00

QUASI-MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	12 E	WM	19	NE NE	5.00
18 S	12 E	WM	19	SE NE	5.00
18 S	12 E	WM	19	NE SE	5.00
18 S	12 E	WM	19	NW SE	5.00
18 S	12 E	WM	19	SW SE	8.03
18 S	12 E	WM	19	SE SE	10.00
18 S	12 E	WM	20	NE NE	10.00
18 S	12 E	WM	20	NW NE	10.00
18 S	12 E	WM	20	SW NE	10.00
18 S	12 E	WM	20	SE NE	10.00
18 S	12 E	WM	20	NE NW	5.00
18 S	12 E	WM	20	NW NW	5.00
18 S	12 E	WM	20	SW NW	5.00
18 S	12 E	WM	20	SE NW	5.00
18 S	12 E	WM	20	NE SW	5.00
18 S	12 E	WM	20	NW SW	5.00
18 S	12 E	WM	20	SW SW	5.00
18 S	12 E	WM	20	SE SW	5.00
18 S	12 E	WM	20	NW SE	5.00
18 S	12 E	WM	21	NW NW	10.00
18 S	12 E	WM	21	SW NW	10.00
18 S	12 E	WM	30	NE NE	5.00
18 S	12 E	WM	30	NW NE	5.00
Total					347.59

8. Certificate 74197 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed, the total rate and seasonal volume (based on the duty limit) for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and seasonal volume allowed at the POD described in Finding of Fact No. 6, the portion of the right involved in this instream transfer would be limited as described in the table below. These rates and total duty are also the quantities by which the diversion at POD No. 1 shall be reduced if this instream transfer is approved.

POD No. 1 (based on 347.59 acre equivalent for Quasi-Municipal use)

Priority Date	Season 1	Season 2	Season 3	Total Duty
February 1, 1905	1.982 CFS	1.982 CFS	1.982 CFS	5359.84 AF
April 25, 1905	4.833 CFS	6.930 CFS	9.911 CFS	
Totals	6.815 CFS	8.912 CFS	11.893 CFS	

9. A total of 1875.94 acre-feet of water, excluding transmission losses, may be beneficially used annually for quasi-municipal use under the portion of Certificate 74197 proposed for transfer.

10. There is a supplemental water right, Certificate 76714, appurtenant to the same lands on which the primary water right Certificate 74197 is proposed to be transferred to instream use. The applicants have requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-14347 and is further described below in this order. The partial cancellation removes the place of use but does not diminish the volume of water to be stored under this certificate.
11. Instream Transfer Application T-14347 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation and pollution abatement and to establish mitigation credits in the Deschutes Ground Water Study Area.
12. Instream Transfer Application T-14347 proposes to change the place of use of the right to create an instream reach from Arnold Canal (POD No. 1) to the Madras Gage on the Deschutes River.
13. The applicant proposes the quantities water to be transferred instream be as protected follows:

Priority Date	Season 1	Season 2	Season 3	Total Duty
February 1, 1905	0.730 CFS	0.730 CFS	0.730 CFS	1875.94 AF
April 25, 1905	1.703 CFS	2.433 CFS	5.005 CFS	

14. There are several existing instream water rights, located within the same reach proposed by the applicants.
15. The applicants have 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)

16. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Instream Transfer Application T-14347.

18. A water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Instream Transfer Application T-14347.
19. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
20. The quantities to be protected instream are as follows:

Instream Reach: From Arnold Canal POD No. 1 to (as described in Finding of Fact No. 7) to the Madras Gage

Certificate	Priority Date	Instream Rate (CFS)			Total Instream Volume	Instream Period
		Season 1	Season 2	Season 3		
74197	February 1, 1905	0.730	0.730	0.730	1875.94	April 1 – Oct 31
	April 25, 1905	1.703	2.433	5.005		
Totals		2.433	3.163	5.735		

21. The proposed change would not result in enlargement of the right.
22. The proposed change would not result in injury to other water rights.
23. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
24. The protection of flows within the proposed reach is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
25. Within the proposed reach on the Deschutes River, there are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), which includes the use of water for fish habitat, aquatic life, recreation, aesthetics, and pollution abatement. There is presently one instream water right (Certificate 59778) within the proposed reach created as a result of ORS 537.346 (conversion of minimum perennial streamflow). There is one pending instream water right application, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 (state agency instream process), to establish an instream water right from the COID North Canal to Lake Billy Chinook for anadromous and resident fish rearing, which if approved, will have a priority date of September 19, 1990.

26. In addition, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat and recreation is a matter of statutory policy. At times, flows within the proposed reach for the designated Scenic Waterway are not met during the requested periods for instream protection.
27. Within the proposed reach on the Deschutes River, the pending instream water right application to be established under ORS 537.341 (state agency application process) is sufficient to protect the monthly quantities of water necessary for various fish life stages, supporting aquatic life, and minimizing pollution, but may not always be met. The pending instream water right application, if approved, will have a priority date junior in comparison to other water rights on the Deschutes River. The instream use proposed by this transfer application will have priority dates of February 1, 1905 and April 25, 1905. By replacing a portion of instream water rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
28. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
29. During the period April 1 to October 31, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
30. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
31. All other application requirements are met.

Partial Cancellation of a Water Right (ORS 540.621)

32. On April 5, 2024, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of a water right was received from Central Oregon Irrigation District and Arnold Irrigation District. This partial cancellation removes the place of use but does not diminish the volume of water to be stored under this certificate. The

applicant has requested that the affected portions of the water right under Certificate 76714 be cancelled contingent upon issuance of the final order approving T-14347.

33. The portion of the right to be cancelled is:

Certificate: 76714 in the name of Central Oregon Irrigation District (perfected under Permit S-23256)
Use: 347.59 acres/equivalent for Quasi-Municipal use
Priority Date: FEBRUARY 28, 1913
Source: CRANE PRAIRIE RESERVOIR, constructed under permit R-1687, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	27	NE SW	ARNOLD IRRIGATION DISTRICT MAIN CANAL: 2800 FEET SOUTH AND 3740 FEET WEST FROM THE NE CORNER OF SECTION 27

Authorized Place of Use:

QUASI-MUNICIPAL EQUIVALENT ACRES					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	12 E	WM	8	NE SE	10.25
18 S	12 E	WM	8	SE SE	5.00
18 S	12 E	WM	9	NE NE	5.00
18 S	12 E	WM	9	SE NE	5.00
18 S	12 E	WM	9	NE SW	5.00
18 S	12 E	WM	9	NW SW	10.01
18 S	12 E	WM	9	SW SW	9.30
18 S	12 E	WM	9	SE SW	5.00
18 S	12 E	WM	9	NE SE	5.00
18 S	12 E	WM	9	SE SE	5.00
18 S	12 E	WM	15	NW NW	5.00
18 S	12 E	WM	15	SW NW	5.00
18 S	12 E	WM	15	NE SW	5.00
18 S	12 E	WM	15	NW SW	5.00
18 S	12 E	WM	15	SW SW	5.00
18 S	12 E	WM	16	NE NE	5.00
18 S	12 E	WM	16	SW NE	5.00
18 S	12 E	WM	16	SE NE	5.00
18 S	12 E	WM	16	NE NW	5.00
18 S	12 E	WM	16	NW NW	5.00
18 S	12 E	WM	16	SW NW	5.00
18 S	12 E	WM	16	SE NW	5.00
18 S	12 E	WM	16	NE SW	5.00
18 S	12 E	WM	16	NW SW	5.00
18 S	12 E	WM	16	SW SW	5.00
18 S	12 E	WM	16	SE SW	5.00
18 S	12 E	WM	16	NE SE	5.00
18 S	12 E	WM	16	NW SE	5.00
18 S	12 E	WM	16	SW SE	5.00
18 S	12 E	WM	16	SE SE	5.00

QUASI-MUNICIPAL EQUIVALENT ACRES					
Twp	Rng	Mer	Sec	Q-Q	Acres
18 S	12 E	WM	17	NE SE	10.00
18 S	12 E	WM	17	SW SE	10.00
18 S	12 E	WM	17	SE SE	10.00
18 S	12 E	WM	19	NE NE	5.00
18 S	12 E	WM	19	SE NE	5.00
18 S	12 E	WM	19	NE SE	5.00
18 S	12 E	WM	19	NW SE	5.00
18 S	12 E	WM	19	SW SE	8.03
18 S	12 E	WM	19	SE SE	10.00
18 S	12 E	WM	20	NE NE	10.00
18 S	12 E	WM	20	NW NE	10.00
18 S	12 E	WM	20	SW NE	10.00
18 S	12 E	WM	20	SE NE	10.00
18 S	12 E	WM	20	NE NW	5.00
18 S	12 E	WM	20	NW NW	5.00
18 S	12 E	WM	20	SW NW	5.00
18 S	12 E	WM	20	SE NW	5.00
18 S	12 E	WM	20	NE SW	5.00
18 S	12 E	WM	20	NW SW	5.00
18 S	12 E	WM	20	SW SW	5.00
18 S	12 E	WM	20	SE SW	5.00
18 S	12 E	WM	20	NW SE	5.00
18 S	12 E	WM	21	NW NW	10.00
18 S	12 E	WM	21	SW NW	10.00
18 S	12 E	WM	30	NE NE	5.00
18 S	12 E	WM	30	NW NE	5.00
Total					347.59

Preliminary Award of Deschutes Basin Mitigation Credits

34. Arnold Irrigation District and Roats Water System, Inc. 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 Arnold Irrigation District and Roats Water System, Inc.
35. The Department assigned this mitigation credit project number MP-312.
36. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on November 21, 2023. No comments were received in response to this notice.
37. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality (DEQ), Oregon Parks and Recreation Department, Oregon Department of State Lands, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on November 16, 2023. Comments were received from DEQ in favor of the application, addressing the additional

flow in the summer will reduce diel variation instream temperature and better support designated beneficial uses for resident trout rearing and migration.

38. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
39. The number of mitigation credits may be determined by multiplying the number of equivalent acres of municipal use to be transferred instream by the max volume per acre and then multiplying by the consumptive use factor for the municipal use (347.59 acres equivalent * 5.4 acre feet per acre * 51.25 % consumptive use = 961.96 acre feet of mitigation water). Therefore, **961.96** mitigation credits may be awarded to this mitigation credit project and assigned to Arnold Irrigation District and Roats Water System, Inc. 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 **General and Middle Deschutes Zones of Impact**.
40. A total of 1875.94 AF is proposed to be transferred to instream use and 961.96 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.
41. 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.
42. 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-14347 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved, and the abandoned right will be cancelled.

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-14347 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-14347 are approved. The portion of the right that has been abandoned is cancelled.*

- Water right certificate 74197 is modified. The Department shall issue a new water right certificate to supersede certificate 74197 upon a determination that it is necessary for recordkeeping purposes. A new certificate confirming the instream water right will be issued. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 74197 by the following:

POD No. 1 (based on 347.59 acre equivalent for Quasi-Municipal use)

Priority Date	Season 1	Season 2	Season 3
February 1, 1905	1.982 CFS	1.982 CFS	1.982 CFS
April 25, 1905	4.833 CFS	6.930 CFS	9.911 CFS
Totals	6.815 CFS	8.912 CFS	11.893 CFS

- Certificate 76714 is modified. The Department shall issue a new water certificate on a determination that it is necessary for recordkeeping purposes to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact No. 33. Modification of this supplemental water right will be decreased by 347.59 acres equivalent of quasi-municipal use to which stored water may be applied for supplemental use under the right. However, the total quantity of stored water use under the right shall remain unchanged.
- The instream water right shall provide for the protection of streamflows in the Deschutes River and be monitored at OWRD gage 14070500 and shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
- The quantities to be protected instream are as follows:

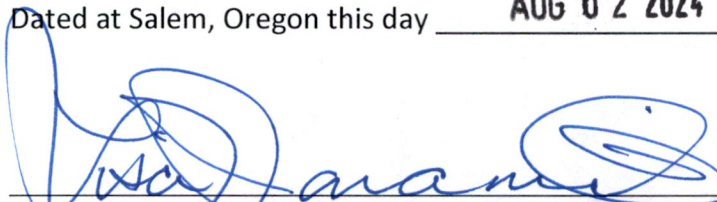
Instream Reach: From Arnold Canal POD No. 1 to (as described in Finding of Fact No. 7 above) to the Madras Gage

Certificate	Priority Date	Instream Rate (CFS)			Total Instream Volume	Instream Period
		Season 1	Season 2	Season 3		
74197	February 1, 1905	0.730	0.730	0.730	1875.94	April 1 – Oct 31
	April 25, 1905	1.703	2.433	5.005		
Totals		2.433	3.163	5.735		

- 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.
- 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.
- 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.

9. *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 74197 and any related decree.*
10. *The former place of use of the transferred water shall no longer receive water as part of this right.*
11. ***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 **961.96** credits, as described herein, may be awarded to this mitigation project and assigned to Arnold Irrigation District and Roats Water System, 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 **General and Middle Deschutes Zones of Impact**.*
12. *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.*
13. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this day **AUG 02 2024** .



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-979-9872 or Sarah.A.Henderson@water.oregon.gov

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-380-4030, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the transfer application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. If this Preliminary Determination determines that a change in point of diversion or appropriation would result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-380-0100(9)]. The protest must include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-380-4030(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-380-0100(11) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If after hearing the Department issues a proposed Final Order finding that a change in point of diversion or appropriation will result in injury, the applicant may file a notification of intent to pursue approval of the transfer under OAR 690-380-5030 to 690-380-5050 within 15 days of receipt of the proposed order. Notwithstanding 690-002-0175, if the applicant files a notification of intent to pursue approval of the transfer under 690-380-5030 to 690-380-5050, the deadline for filing exceptions to the proposed order shall be 30 days after the Department provides notice to the parties that the transfer does not meet the requirements of 690-380-5030 to 690-380-5050.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266.



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone 503 986-0900
Fax 503 986-0904
www.oregon.gov/owrd

DATE: AUG 02 2024

VIA CERTIFIED MAIL AND E-MAIL

Applicant

Arnold Irrigation District (AID)
19604 Buck Canyon Road
Bend, Oregon 97702

Agent

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703

Applicant

Roats Water System, Inc. (RWS)
61147 Hamilton Lane
Bend, Oregon 97702

SUBJECT: Water Right Instream Transfer Application T-14347

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14347 and mitigation project MP-312. 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 don't hesitate to contact me at 503-979-9872 or sarah.a.henderson@water.oregon.gov, if I may be of assistance.

Sincerely,

Elupe Richman for Sarah Henderson

Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-14347
Jeremy Giffin, District 11 Watermaster (via e-mail)

encs