

Instream

Name Tumalo Irrigation District
 Attn: Ken Rieck
 Address 64697 Cook Ave.
Bend, OR 97703

DESCRIPTION OF WATER RIGHT(S)

Name of Stream Drainage Area

Trib. of Crescent Lake

Use Multi Purpose

County Klamath um 11

Quantity of water (CFS)

No. of Acres

Name of ditch

App# R-1301

Per # R-102

Cert # 76683

PR Date 1911

App#

Per #

Cert #

PR Date

App#

Per #

Cert #

PR Date

App#

Per #

Cert #

PR Date

App#

Per #

Cert #

PR Date

Change in POU, USE

Date Filed 6-16-17

Initial notice date

DPD issued date

PD issued date

PD notice date

Date of FO Vol Page

C-Date

COBU due date

COBU Received date

Certificate issued

Date
6-16-17

FEES PAID

Amount
1350⁰⁰

Receipt #
123721

FEES REFUNDED

Date

Amount

Receipt #

Assignments:

Irrigation District

Agent GSI Water Solutions, Inc. Attn: Adam Sussman
1600 SW Western Blvd. Ste. 240 Corvallis, OR 97333

CWRE

CC's list City of La Pine - PO Box 2460 La Pine, OR 97739

City of Bend Planning - 710 NW Wall St. Bend, OR 97701

Confederated Tribes of Warm Springs - 1233 Veterans St. Warm Springs, OR 97761

☐ - Oversized map - Location

HENDERSON Sarah A * WRD

From: Brett Hodgson <Brett.L.Hodgson@state.or.us>
Sent: Tuesday, April 03, 2018 2:02 PM
To: HENDERSON Sarah A * WRD
Cc: FAUCERA Danette L
Subject: MP-230
Attachments: MP-230-agency review ODFW_blh_draft.doc

Sarah,

Please see the attached ODFW review of MP-230.

Brett

Brett Hodgson
Deschutes District Fish Biologist
Oregon Department of Fish and Wildlife
61374 Parrel Road, Bend, OR 97702
541-388-6009

DESCHUTES GROUND WATER MITIGATION CREDIT PROJECT REVIEW SHEET

The Oregon Water Resources Department is requesting an evaluation of the mitigation credit project described below pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2)

Project Summary (the following is to be filled out by WRD):

Date: 3/8/18 21 Day Deadline Date: 4/3/18 Mitigation Credit Project ID #: MP-230

Project Applicant's Name: Tumalo Irrigation District

Type of Mitigation Project: In Stream Water Right Transfer
Project Duration: permanent

Project ID #(ie transfer applic): T-12698

Potential Mitigation Credits that may be awarded to the project: 1000 (1 mitigation credit = 1 AF)

If the project were awarded mitigation credits, the credits could be used to mitigate a ground water use(s) in the following zone(s) of impact:

- | | |
|---|--|
| <input checked="" type="checkbox"/> General Zone of Impact | <input type="checkbox"/> Metolius River Zone of Impact |
| <input checked="" type="checkbox"/> Middle Deschutes River Zone of Impact | <input type="checkbox"/> Upper Deschutes River Zone of Impact |
| <input type="checkbox"/> Crooked River Zone of Impact | <input type="checkbox"/> Little Deschutes River Zone of Impact |

Water Right to be protected instream:

Water Source: The drainage area draining into Crescent Lake, a tributary of Crescent Creek and Little Deschutes River, in Crescent Lake Reservoir

Water Right: Certificate 76683

Use: Multiple Purpose Uses

Duty: 1000 acre-feet

Released from Storage: Between November 1 and March 31

Priority Date: March 20, 1911

Instream use to be created by the project:

Reach: From the authorized POD, Crescent Dam, to Lake Billy Chinook, certificate 76683 does not describe the location of Crescent Dam. The center of the dam is located 450 feet North and 2,380 feet East from the Southwest Corner of Section 11, Township 24S, Range 6 East, WM.

The applicant has requested to account for channel losses, an 18% loss factor shall be applied between the mouth of Crescent Creek on the Little Deschutes River to Benham Falls on the Deschutes River. And a 7% loss factor shall be applied on the Deschutes River between Benham Falls and the City of Bend. Therefore, of the 1000 acre-feet (average 3.317cfs) protected under this right at Crescent Creek Gage No. 14060000, 820 acre-feet (average 2.719cfs) would be protectable at Benham Falls and 762.6 acre-feet (2.529cfs) would be protectable at Bend.

The applicant has requested to protect water during the period: November 1 through March 31.

Identify any issues that would limit when water could be protected instream during the irrigation season: not determined

Frequency that new use will likely be met within described reach: 100%

Other Instream Water Rights within the same Reach:

Identify any instream Water Rights within the same reach as requested by the applicant: Certificates 84352, 87440, 88992, 91923 are for the same reach identified above (Crescent dam to Lake Billy Chinook.) There are numerous other instream water rights within a portion of the proposed reach.

WRD Project Contact: Sarah Henderson, Transfer and Conservation Section

Phone: (503)-986-0890 / Fax: (503)-986-0901 / e-mail sarah.a.henderson@oregon.gov

Mitigation Project (MP-230 (T-12698)) Review Section:

The following is to be completed by the WRD Watermaster, DEQ, ODFW, Parks, Agriculture and DSL:

1. Will the proposed mitigation project provide a resource benefit within the above identified zone(s) of impact? YES / NO (circle one)

Please explain and if the project will provide a resource benefit, please identify the specific resource that will benefit:

____ The proposed project as currently developed will provide seasonal benefits to native fish populations and ecological resources in Crescent Creek, the Little Deschutes River and the Deschutes River from the confluence with the Little Deschutes downstream to Lake Billy Chinook. However, the impacts to these resources from groundwater withdrawal are year round and throughout the zones of impact. The release of stored water from Crescent Lake during the non irrigation season (Nov 1 – March 31) will mitigate for groundwater withdrawal within the Little Deschutes River and General Zones of Impact during those months, however, it will not provide resource benefits during the critical spring and summer months when native redband trout are spawning and rearing. As such, this serves as incomplete mitigation and should be accompanied by alternative sources of mitigation.

How can the proposed mitigation project be conditioned to enhance resource benefits and to make the most effective use of the mitigation project and mitigation water pursuant to OAR 690-521-0300 (7)? (i.e. time period water should be protected instream)

Please describe: To fully mitigate for the impacts of groundwater withdrawal the release and instream protection of 1000 acre feet of stored water from Crescent Lake should be prorated through the entire year, rather than Nov. 1 – March 31. If this is not possible, then alternative mitigation projects providing water instream from April 1 – October 31 should be secured and coupled with MP-230 to provide complete mitigation. ODFW recommends MP-230 not be approved until complementary mitigation is secured.

2. Other comments on the above referenced mitigation project:

____ ODFW recognizes the release of stored water during the non irrigation season as a valuable tool for supplementing the existing mitigation credits that are currently limited to the irrigation season. These forms of mitigation are complementary rather than additive.

Agency Representative: Brett Hodgson Date: April 3, 2018

Agency: Oregon Department of Fish and Wildlife

HENDERSON Sarah A * WRD

From: Kimberley Priestley <kjp@waterwatch.org>
Sent: Wednesday, April 04, 2018 3:17 PM
To: HENDERSON Sarah A * WRD
Subject: Comment, MP-230
Attachments: Handout for Transfers of Storage_2.7.2018 (2).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sarah,

MP-230 seeks mitigation credits in connection with T-12698. We will provide comments on TID's Transfer (T-12698) as well, but I just to provide brief comments on MP-230 before today's deadline.

First, it is premature to authorize a mitigation project before the relied upon transfer is finalized. We would ask that you re-notice this once either TID's transfer application and/or secondary water right application (s-88478) is approved.

Second, according to the WRD's new interpretation of the transfer statutes (date 2/7/18, attached), the WRD cannot transfer the character of use. Thus, given that T-12698 calls for a two part transfer, one being change in character of use, two being a change in place of use, it is questionable whether the transfer application would/could be approved. So again, until the source of the mitigation has been approved, it is premature to authorize MP-230.

Third, if the applicant is trying to move its transfer application forward under the auspices of the WRD's new interpretation allowing the direct transfer of stored water to an instream water right under ORS 537.348 (see WRD memo, 2/7/18), we would argue that: (1) that would require a wholly different application as that is not what the application for T-12698 contemplates, and (2) the WRD's interpretation does not allow for an instream purpose of "mitigation" but rather an instream transfer/lease under the instream water rights statute, ORS 537.348, for purposes authorized by that statute. Mitigation is not a public use under ORS 537.348.

We are happy to discuss these comments in detail if you have questions.

Thank you, Kimberley

~~~~~  
Kimberley Priestley  
WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
Phone: (503) 295-4039, ext. 3  
FAX: (503) 295-2791  
<http://www.waterwatch.org>  
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Changes to Reservoir Rights

The Water Resources Department has long debated about its authority to make changes to storage rights. In light of a lack of clarity in its existing laws, the Department has occasionally allowed changes in the location of reservoirs and, more commonly, has processed changes in the purpose of use identified in the right to store water (e.g. from irrigation to multi-purpose). Although the Department has tried to conform current law to water right holder needs, after considerable internal review, the Department has determined that it does not believe that it has statutory authority to allow changes to the purpose of use identified in a right to store water or to change the location of reservoirs.

As a result, the Water Resources Department has developed this handout in response to questions about the Department's understanding of its authorities related to the transfer of storage rights. *This handout provides general information on the Department's authorities but is not intended to provide an exhaustive list of every exception.*

A storage right is a different type of right from a surface water right and a groundwater right. This is evidenced throughout the Oregon Water Code.

ORS 537.400 outlines the characteristics of a storage right, which provides for a right to store water to serve as a source for a subsequent beneficial use. Storage itself is not the beneficial use of the water. In general, in order to make beneficial use of the stored water, a second water right is needed. These secondary rights can be issued through ORS 537.147, which allow a person to apply "for a water right permit to use stored water," wherein the reservoir right is listed as the supply source of the water. Similarly, ORS 537.336 requires "an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water." As a result, the right to store water is also inherently tied to the second water right to use the stored water and apply it to a beneficial use. This is different from a surface or groundwater right, where a second water right is not needed to apply it to a beneficial use.

The Water Code is clear that storing water is different than using the water and that groundwater, surface water, and stored water are different types of rights. ORS 537.130(2) states that "a person may not use, store or divert any waters..." ORS 537.143 allows "a person to obtain a limited license to use or store ground water..., to use or store surface water, to use stored water..." As a result, it is clear that there are water rights "to use" water and water rights to "store water for a use." With some exceptions, storage is generally a source or supply for secondary water rights.

Some statutes identify when a change in the type of a water right is authorized. ORS 540.531 provides when a change between a groundwater and surface water right can occur. Similarly, ORS 540.524 allows for substituting a supplemental right from a groundwater source for a primary water right from a surface water source. The exchange statutes provide that "water rights" may be exchanged and provide for changes between groundwater, surface water and stored water. See ORS 540.533 stating a person "may apply ...to use stored, surface or ground water from another source ... A person may apply for an exchange... among any combination of surface, storage or ground water rights." Furthermore, the transfer statutes are silent on the authority to change the reservoir right and refer only to water *uses* subject to transfer, not reservoir permits, storage rights, or rights to *store* water.

As is always the case in water law, there are exceptions to the above; for example, ORS 540.570, which authorizes a transfer of the type of use identified in a right to store water under specific circumstances (note, however, it does not authorize a change in the location of storage rights).

In addition, ORS 537.348 allows for "existing water rights" to be leased instream or transferred instream. In looking at the statute, it appears to the Department that a right to store water is an "existing water right," and therefore, there is statutory authority for instream leasing and permanent changes of a right to store water to instream purposes. While the Department's rules provide for leasing storage water rights instream, the process for permanently transferring storage rights instream needs to be further clarified in rule.

In conclusion, in most cases, the transfers statutes do not allow changes to rights to store water, such as changes in the character of the stored water or the location of the stored water. However, the statutes that allow changes of rights to instream purposes appear to allow for temporary (lease) and permanent transfers of the right to store water to an instream right; however, the Department's rules will need to be updated to provide greater clarity – particularly for permanent instream transfers.



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www.wrd.state.or.us

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Watermaster Review Form: Water Right Transfer

Transfer Application: T-12698

Review Due Date: 7/20/17

Applicant Name: TID

Proposed Changes: ☒ POU ☐ POD ☐ POA ☐ USE ☐ OTHER

Reviewer(s): Giffin

Date of Review: Jul. 5, 2017

1. Do you have evidence that the right has not been used in the last 5 years and that the presumption of forfeiture would not likely be rebuttable? ☐ Yes ☒ No If "yes", attach evidence (e.g. dated aerial photo showing pavement or building on the land for >5 yrs.)
2. Is there a history of regulation on the source that serves this (or these) right(s) that has involved the transferred right(s) and downstream water rights? ☒ Yes ☐ No
Generally characterize the frequency of any regulation or explain why regulation has not occurred: We regulate this flow every day for instream and out of stream rights.
3. Have headgate notices been issued for the source that serves the transferred right(s)?
☐ Yes ☒ No ☐ Records not available.
4. In your estimation, after the proposed change would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized?
☐ Yes ☒ No If "Yes", explain: _____
5. In your estimation, if the proposed change is approved, are there upstream water rights that would be affected? ☐ Yes ☒ No If "Yes", describe how the rights would be affected and list the rights most affected: _____
6. Check here ☐ if it appears that downstream water rights benefit from return flows resulting from the current use of the transferred right(s)? If you check the box, generally characterize the locations where the return flows likely occur and list the water rights that benefit most: _____ ☐ N/A
7. For POD changes and instream transfers, check here ☒ if there are channel losses between the old and new PODs or within the proposed instream reach? If you check the box, describe and, if possible, estimate the losses: The losses are spelled out in the application perfectly. ☐ N/A
8. For instream transfers that propose protection of a reach beyond the mouth of the source stream: ☐ N/A Would the quantity be measureable into the receiving stream consistent with OAR 690-077-0015(8)? ☒ Yes ☐ No
9. For POU changes: ☐ N/A Is it likely the original place of use would continue to receive water from the same source? ☐ Yes ☒ No If "Yes", explain: _____



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

Watermaster Review Form: Water Right Transfer

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Review Due Date: 7/20/17

Applicant Name: TID

Proposed Changes: ☒ POU ☐ POD ☐ POA ☐ USE ☐ OTHER

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Generally characterize the frequency of any regulation or explain why regulation has not occurred: We regulate this flow every day for instream and out of stream rights.
3. Have headgate notices been issued for the source that serves the transferred right(s)?
☐ Yes ☒ No ☐ Records not available.
4. In your estimation, after the proposed change would distribution of water for the right(s) result in regulation of other water rights that would not have occurred if use under the original right(s) was/were maximized?
☐ Yes ☒ No If "Yes", explain: _____
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9. For POU changes: ☐ N/A Is it likely the original place of use would continue to receive water from the same source? ☐ Yes ☒ No If "Yes", explain: _____

10. For POU or USE changes: ☐ N/A In your best judgment, would use of the existing right at "full face value," result in the diversion of more water than can be used beneficially and without waste? ☐ Yes ☒ No If "Yes", explain: _____
11. Are there other issues not identified through the above questions that should be considered in determining whether the change "can be effected without injury to other rights"? ☐ Yes ☒ No If "Yes", explain: _____
12. What alternatives may be available for addressing any issues identified above: We monitor and track the ISWR flows daily at our gages on Crescent Creek, Little Deschutes River and the Deschutes River.
13. Do conditions need to be included in the transfer order to avoid enlargement of the right or injury to other rights? ☒ No ☐ Yes, as checked below:
- ☐ A Headgate should be required prior to diverting water.
 - ☐ Measurement Devices for POD or POA: (if this condition is selected, also fill in the top sections of page 3)
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter*, or, with prior approval of the Director, another suitable measuring device, ☐ at each point of diversion/appropriation (new and existing) or ☐ at each new point of diversion/appropriation.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
 - ☐ Reservoir water use measurement: (if this condition is selected, also fill in the top sections of page 3)
 - a. *Before water use may begin under this order, the water user shall install staff gages*, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in each reservoir. Staff gages shall be United States Geological Survey style.*
 - b. *Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.*

* The following alternative device(s) should be substituted for the bold, underlined device in the above selected condition:

- | | |
|---|--|
| <input type="checkbox"/> Weir | <input type="checkbox"/> Submerged Orifice |
| <input type="checkbox"/> Parshall Flume | <input type="checkbox"/> Flow Restrictor |
| <input type="checkbox"/> Other: _____ | |

Oregon Water Resources Department

Measurement Condition Information for the Applicant
(to be sent with the Draft Preliminary Determination or Final Order)

Transfer #: T-_____

☐ In order to avoid enlargement of the right or injury to other rights, a _____ will be required to be installed **prior to diversion of water**, as a condition of this transfer:

☐ at each point of diversion/appropriation (new and existing) **or**

☐ at each new point of diversion/appropriation.

For additional information, or to obtain approval of a different type of measurement device, the applicant should contact the area Watermaster:

Watermaster name: _____

District: _____

Address: _____

City/State/Zip: _____

Phone: _____

Email: _____

***Note:** If a device other than the one specified in the Preliminary Determination or Final Order is approved by the Watermaster, fill out and mail the form below to the Salem office.*

Approval of an Alternate Measurement Device T-_____

(to be filled out after consultation with the applicant, or after a site visit)

On behalf of the Director, I authorize use of the following suitable **alternate measurement device**:

 Watermaster signature

 District

 Date

If this form is used for approval of an alternative measurement device, it must be mailed to:

Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-1266

DESCHUTES GROUND WATER MITIGATION CREDIT PROJECT REVIEW SHEET

The Oregon Water Resources Department is requesting an evaluation of the mitigation credit project described below pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2)

Project Summary (the following is to be filled out by WRD):

Date: 3/8/18 21 Day Deadline Date: 4/3/18 Mitigation Credit Project ID #: MP-230

Project Applicant's Name: Tumalo Irrigation District

Type of Mitigation Project: In Stream Water Right Transfer

Project ID #(ie transfer applic): T-12698

Project Duration: permanent

Potential Mitigation Credits that may be awarded to the project: 1000 (1 mitigation credit = 1 AF)

If the project were awarded mitigation credits, the credits could be used to mitigate a ground water use(s) in the following zone(s) of impact:

- | | |
|---|--|
| <input checked="" type="checkbox"/> General Zone of Impact | <input type="checkbox"/> Metolius River Zone of Impact |
| <input checked="" type="checkbox"/> Middle Deschutes River Zone of Impact | <input type="checkbox"/> Upper Deschutes River Zone of Impact |
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Water Right to be protected instream:

Water Source: The drainage area draining into Crescent Lake, a tributary of Crescent Creek and Little Deschutes River, in Crescent Lake Reservoir

Water Right: Certificate 76683

Use: Multiple Purpose Uses

Duty: 1000 acre-feet

Released from Storage: Between November 1 and March 31

Priority Date: March 20, 1911

Instream use to be created by the project:

Reach: From the authorized POD, Crescent Dam, to Lake Billy Chinook, certificate 76683 does not describe the location of Crescent Dam. The center of the dam is located 450 feet North and 2,380 feet East from the Southwest Corner of Section 11, Township 24S, Range 6 East, WM.

The applicant has requested to account for channel losses, an 18% loss factor shall be applied between the mouth of Crescent Creek on the Little Deschutes River to Benham Falls on the Deschutes River. And a 7% loss factor shall be applied on the Deschutes River between Benham Falls and the City of Bend. Therefore, of the 1000 acre-feet (average 3.317cfs) protected under this right at Crescent Creek Gage No. 14060000, 820 acre-feet (average 2.719cfs) would be protectable at Benham Falls and 762.6 acre-feet (2.529cfs) would be protectable at Bend.

The applicant has requested to protect water during the period: November 1 through March 31.

Identify any issues that would limit when water could be protected instream during the irrigation season: not determined

Frequency that new use will likely be met within described reach: 100%

Other Instream Water Rights within the same Reach:

Identify any instream Water Rights within the same reach as requested by the applicant: Certificates 84352, 87440, 88992, 91923 are for the same reach identified above (Crescent dam to Lake Billy Chinook.) There are numerous other instream water rights within a portion of the proposed reach.

WRD Project Contact: Sarah Henderson, Transfer and Conservation Section

Phone: (503)-986-0890 / Fax: (503)-986-0901 / e-mail sarah.a.henderson@oregon.gov

Mitigation Project (MP-230 (T-12698)) Review Section:

The following is to be completed by the WRD Watermaster, DEQ, ODFW, Parks, Agriculture and DSL:

1. Will the proposed mitigation project provide a resource benefit within the above identified zone(s) of impact? (YES)/ NO (circle one)

Please explain and if the project will provide a resource benefit, please identify the specific resource that will benefit: _

The Little Deschutes River, below the confluence with Crescent Creek, is water quality limited for dissolved oxygen during the proposed ISWR season. The additional flow from the ISWR may ameliorate dissolved oxygen conditions in the Little Deschutes River.

2. How can the proposed mitigation project be conditioned to enhance resource benefits and to make the most effective use of the mitigation project and mitigation water pursuant to OAR 690-521-0300 (7)? (i.e. time period water should be protected instream)

Please describe: _

DEQ recommends that the mitigation project be conditioned to maximize instream flow from January 1st to May 15th to ameliorate dissolved oxygen concentrations in the Little Deschutes River for the beneficial use of resident trout spawning.

3. Other comments on the above referenced mitigation project:

The degree of resource benefit of this project is uncertain due to the complexity of factors influencing dissolved oxygen in the Little Deschutes. Additional dissolved oxygen, temperature, and flow data and modelling would be helpful to further clarify the relationship between dissolved oxygen and flow in this reach.

Agency Representative: Smita Mehta Date: 4/3/2018

Agency: DEQ

HENDERSON Sarah A * WRD

From: Brett Hodgson <Brett.L.Hodgson@state.or.us>
Sent: Friday, April 06, 2018 8:48 AM
To: HENDERSON Sarah A * WRD
Subject: RE: MP 230
Attachments: MP-230-agency review ODFW.DOC

Hi again,

Danette reminded me the last file I sent still included draft language. Please use the attached. Sorry for the confusion.

Brett

From: HENDERSON Sarah A * WRD [<mailto:Sarah.A.Henderson@oregon.gov>]
Sent: Friday, April 6, 2018 7:30 AM
To: HODGSON Brett L <Brett.L.Hodgson@state.or.us>
Subject: RE: MP 230

Thank you Brett, I will replace the document.

From: Brett Hodgson [<mailto:Brett.L.Hodgson@state.or.us>]
Sent: Thursday, April 05, 2018 5:24 PM
To: HENDERSON Sarah A * WRD
Cc: FAUCERA Danette L
Subject: MP 230

Hello Sarah,

Please replace the ODFW review of MP 230 submitted previously with the attached document. The content of the review has not changed but the file name of the previous document identified it as a draft. The correction is made on the attached. I apologize for the oversight.

Brett

Brett Hodgson
Deschutes District Fish Biologist
Oregon Department of Fish and Wildlife
61374 Parrel Road, Bend, OR 97702
541-388-6009

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Identify any issues that would limit when water could be protected instream during the irrigation season: not determined

Frequency that new use will likely be met within described reach: 100%

Other Instream Water Rights within the same Reach:

Identify any instream Water Rights within the same reach as requested by the applicant: Certificates 84352, 87440, 88992, 91923 are for the same reach identified above (Crescent dam to Lake Billy Chinook.) There are numerous other instream water rights within a portion of the proposed reach.

WRD Project Contact: Sarah Henderson, Transfer and Conservation Section

Phone: (503)-986-0890 / Fax: (503)-986-0901 / e-mail sarah.a.henderson@oregon.gov

Mitigation Project (MP-230 (T-12698)) Review Section:

The following is to be completed by the WRD Watermaster, DEQ, ODFW, Parks, Agriculture and DSL:

1. Will the proposed mitigation project provide a resource benefit within the above identified zone(s) of impact? YES / NO (circle one)

Please explain and if the project will provide a resource benefit, please identify the specific resource that will benefit:

____ The project, as currently proposed, will provide seasonal benefits to native fish populations and ecological resources in Crescent Creek, the Little Deschutes River, and the Deschutes River from the confluence with the Little Deschutes downstream to Lake Billy Chinook. However, the flow-related impacts to these resources from groundwater withdrawals in the basin are year round and occur throughout all zones. The release of stored water from Crescent Lake during the non-irrigation season (November 1 – March 31) will mitigate for groundwater withdrawal within the Little Deschutes River and General Zones of Impact only during those months; it will not provide resource benefits during the critical spring and summer months when native redband trout are spawning and rearing. As such, this serves as incomplete mitigation for year-round impacts, and ODFW recommends that impacts be accompanied by alternative sources of mitigation.

How can the proposed mitigation project be conditioned to enhance resource benefits and to make the most effective use of the mitigation project and mitigation water pursuant to OAR 690-521-0300 (7)? (i.e. time period water should be protected instream)

Please describe: To fully mitigate for the flow-related impacts of year-round groundwater withdrawal, ODFW recommends the release and instream protection of 1,000 acre feet of stored water from Crescent Lake during November 1 – March 31 be coupled with complementary mitigation projects providing water instream from April 1 – October 31. As such, ODFW recommends future year-round groundwater applications not be approved until year-round mitigation is secured.

2. Other comments on the above referenced mitigation project:

____ As currently designed, the Deschutes Groundwater Mitigation Program mitigates year-round groundwater withdrawals with irrigation season water. This type of mitigation does provide for more instream water during the irrigation season, but also will eventually reduce flows in the lower river during the non-irrigation season. Critical fish life history components occur outside of the irrigation season, particularly during "shoulder months" at the beginning and end of the irrigation season (March/April and October/November). ODFW recognizes the release of stored water during the non-irrigation season as a valuable tool for supplementing the existing mitigation credits that are currently limited to the irrigation season. ODFW recommends winter reservoir releases used as mitigation be complementary to the current implementation of the Mitigation Program rather than additive.

Agency Representative: _____ Date: _____

Agency: _____

HENDERSON Sarah A * WRD

From: Brett Hodgson <Brett.L.Hodgson@state.or.us>
Sent: Thursday, April 05, 2018 5:24 PM
To: HENDERSON Sarah A * WRD
Cc: FAUCERA Danette L
Subject: MP 230
Attachments: MP-230-agency review ODFW_.doc

Hello Sarah,

Please replace the ODFW review of MP 230 submitted previously with the attached document. The content of the review has not changed but the file name of the previous document identified it as a draft. The correction is made on the attached. I apologize for the oversight.

Brett

Brett Hodgson
Deschutes District Fish Biologist
Oregon Department of Fish and Wildlife
61374 Parrel Road, Bend, OR 97702
541-388-6009

DESCHUTES GROUND WATER MITIGATION CREDIT PROJECT REVIEW SHEET

The Oregon Water Resources Department is requesting an evaluation of the mitigation credit project described below pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2)

Project Summary (the following is to be filled out by WRD):

Date: 3/8/18 21 Day Deadline Date: 4/3/18 Mitigation Credit Project ID #: MP-230

Project Applicant's Name: Tumalo Irrigation District

Type of Mitigation Project: In Stream Water Right Transfer
Project Duration: permanent

Project ID #(ie transfer applic): T-12698

Potential Mitigation Credits that may be awarded to the project: 1000 (1 mitigation credit = 1 AF)

If the project were awarded mitigation credits, the credits could be used to mitigate a ground water use(s) in the following zone(s) of impact:

- | | |
|---|--|
| <input checked="" type="checkbox"/> General Zone of Impact | <input type="checkbox"/> Metolius River Zone of Impact |
| <input checked="" type="checkbox"/> Middle Deschutes River Zone of Impact | <input type="checkbox"/> Upper Deschutes River Zone of Impact |
| <input type="checkbox"/> Crooked River Zone of Impact | <input type="checkbox"/> Little Deschutes River Zone of Impact |

Water Right to be protected instream:

Water Source: The drainage area draining into Crescent Lake, a tributary of Crescent Creek and Little Deschutes River, in Crescent Lake Reservoir

Water Right: Certificate 76683

Use: Multiple Purpose Uses

Duty: 1000 acre-feet

Released from Storage: Between November 1 and March 31

Priority Date: March 20, 1911

Instream use to be created by the project:

Reach: From the authorized POD, Crescent Dam, to Lake Billy Chinook, certificate 76683 does not describe the location of Crescent Dam. The center of the dam is located 450 feet North and 2,380 feet East from the Southwest Corner of Section 11, Township 24S, Range 6 East, WM.

The applicant has requested to account for channel losses, an 18% loss factor shall be applied between the mouth of Crescent Creek on the Little Deschutes River to Benham Falls on the Deschutes River. And a 7% loss factor shall be applied on the Deschutes River between Benham Falls and the City of Bend. Therefore, of the 1000 acre-feet (average 3.317cfs) protected under this right at Crescent Creek Gage No. 14060000, 820 acre-feet (average 2.719cfs) would be protectable at Benham Falls and 762.6 acre-feet (2.529cfs) would be protectable at Bend.

The applicant has requested to protect water during the period: November 1 through March 31.

Identify any issues that would limit when water could be protected instream during the irrigation season: not determined

Frequency that new use will likely be met within described reach: 100%

Other Instream Water Rights within the same Reach:

Identify any instream Water Rights within the same reach as requested by the applicant: Certificates 84352, 87440, 88992, 91923 are for the same reach identified above (Crescent dam to Lake Billy Chinook.) There are numerous other instream water rights within a portion of the proposed reach.

WRD Project Contact: Sarah Henderson, Transfer and Conservation Section

Phone: (503)-986-0890 / Fax: (503)-986-0901 / e-mail sarah.a.henderson@oregon.gov

Mitigation Project (MP-230 (T-12698)) Review Section:

The following is to be completed by the WRD Watermaster, DEQ, ODFW, Parks, Agriculture and DSL:

1. Will the proposed mitigation project provide a resource benefit within the above identified zone(s) of impact? YES / NO (circle one)

Please explain and if the project will provide a resource benefit, please identify the specific resource that will benefit:

____ The proposed project as currently developed will provide seasonal benefits to native fish populations and ecological resources in Crescent Creek, the Little Deschutes River and the Deschutes River from the confluence with the Little Deschutes downstream to Lake Billy Chinook. However, the impacts to these resources from groundwater withdrawal are year round and throughout the zones of impact. The release of stored water from Crescent Lake during the non irrigation season (Nov 1 – March 31) will mitigate for groundwater withdrawal within the Little Deschutes River and General Zones of Impact during those months, however, it will not provide resource benefits during the critical spring and summer months when native redband trout are spawning and rearing. As such, this serves as incomplete mitigation and should be accompanied by alternative sources of mitigation.

How can the proposed mitigation project be conditioned to enhance resource benefits and to make the most effective use of the mitigation project and mitigation water pursuant to OAR 690-521-0300 (7)? (i.e. time period water should be protected instream)

Please describe: To fully mitigate for the impacts of groundwater withdrawal the release and instream protection of 1000 acre feet of stored water from Crescent Lake should be prorated through the entire year, rather than Nov. 1 – March 31. If this is not possible, then alternative mitigation projects providing water instream from April 1 – October 31 should be secured and coupled with MP-230 to provide complete mitigation. ODFW recommends MP-230 not be approved until complementary mitigation is secured.

2. Other comments on the above referenced mitigation project:

____ ODFW recognizes the release of stored water during the non irrigation season as a valuable tool for supplementing the existing mitigation credits that are currently limited to the irrigation season. These forms of mitigation are complementary rather than additive.

Agency Representative: _____ Brett Hodgson _____ Date: April 3, 2018 _____

Agency: Oregon Department of Fish and Wildlife _____

From: HENDERSON Sarah A * WRD
Sent: Thursday, April 05, 2018 7:49 AM
To: Kimberley Priestley
Subject: RE: Comment, MP-230

Hi Kimberley,

Thank you for submitting comments. The water right transfer application T-12698 and Mitigation Project MP-230 are still pending files that have not been assigned a caseworker and have not been reviewed. Your comments will be put in the file for the assigned caseworker to look at when reviewing the applications.

The Department will be in touch if we have any questions.

Have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Ph: 503.986.0890 | Fax: 503.986.0901
Email: sarah.a.henderson@oregon.gov | Web: <http://www.oregon.gov/owrd>

-----Original Message-----

From: Kimberley Priestley [<mailto:kjp@waterwatch.org>]
Sent: Wednesday, April 04, 2018 3:17 PM
To: HENDERSON Sarah A * WRD
Subject: Comment, MP-230

Hi Sarah,

MP-230 seeks mitigation credits in connection with T-12698. We will provide comments on TID's Transfer (T-12698) as well, but I just to provide brief comments on MP-230 before today's deadline.

First, it is premature to authorize a mitigation project before the relied upon transfer is finalized. We would ask that you re-notice this once either TID's transfer application and/or secondary water right application (s-88478) is approved.

Second, according to the WRD's new interpretation of the transfer statutes (date 2/7/18, attached), the WRD cannot transfer the character of use. Thus, given that T-12698 calls for a two part transfer, one being change in character of use, two being a change in place of use, it is questionable whether the transfer application would/could be approved. So again, until the source of the mitigation has been approved, it is premature to authorize MP-230.

Third, if the applicant is trying to move its transfer application forward under the auspices of the WRD's new interpretation allowing the direct transfer of stored water to an instream water right under ORS 537.348 (see WRD memo, 2/7/18), we would argue that: (1) that would require a wholly different application as that is not what the

application for T-12698 contemplates, and (2) the WRD's interpretation does not allow for an instream purpose of "mitigation" but rather an instream transfer/lease under the instream water rights statute, ORS 537.348, for purposes authorized by that statute. Mitigation is not a public use under ORS 537.348.

We are happy to discuss these comments in detail if you have questions.

Thank you, Kimberley

~~~~~  
Kimberley Priestley  
WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
Phone: (503) 295-4039, ext. 3  
FAX: (503) 295-2791  
<http://www.waterwatch.org>  
~~~~~


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Sent: Thursday, April 05, 2018 7:49 AM
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Subject: RE: Comment, MP-230

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The Department will be in touch if we have any questions.

Have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301
Ph: 503.986.0890 | Fax: 503.986.0901
Email: sarah.a.henderson@oregon.gov | Web: <http://www.oregon.gov/owrd>

-----Original Message-----

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We are happy to discuss these comments in detail if you have questions.

Thank you, Kimberley

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Kimberley Priestley  
WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
Phone: (503) 295-4039, ext. 3  
FAX: (503) 295-2791  
<http://www.waterwatch.org>  
~~~~~




UTILITY DEPARTMENT

RECEIVED BY OWRD

July 27, 2017

JUL 31 2017

SALEM, OR

62975 BOYD ACRES RD
BEND, OR 97701
541-317-3000 opt.2
541-317-3046 fax
bendoregon.gov

MAYOR
Casey Roats

MAYOR PRO TEM
Sally Russell

CITY COUNCILORS
Justin Livingston
Bill Moseley
Bruce Abernethy
Nathan Boddie
Barb Campbell

CITY MANAGER
Eric King
UTILITY DIRECTOR
Paul Rheault

Lisa Jaramillo
Transfer and Conservation Section Manager, Water Rights Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Transfer Application T-12698 in the name of Tumalo Irrigation District (TID)

The City of Bend supports TID's Transfer Application T-12698 for the reasons outlined below.

The City of Bend has a legal duty to provide its customers with a reliable supply of water. In fact, the City is required to have a 20 year supply of land and water to meet future needs according to existing state law. Similarly, the Department's Water Management and Conservation Planning rules require municipal water providers to plan for future water demands in 20-year increments. Water supply planning (particularly for the next 20 years) is, accordingly, of extreme importance to the City.

The City has a dual source of supply, and it uses groundwater to meet approximately half of its customers' annual water demands. Two of the City's water use permits require mitigation under the requirements of the Deschutes Ground Water Mitigation Program, and the City could need up to 3,200 mitigation credits to fully develop its permits. In addition, as part of the Bureau of Reclamation's (BOR) on-going Upper Deschutes Basin Study, an analysis was conducted that determined the need for over 13,000 mitigation credits were needed to meet the basin's 20-year projected demand for mitigation to satisfy groundwater use.

Historically, mitigation for groundwater use has been developed in partnership with the irrigation districts. However, with recent events in the Deschutes Basin, such as lawsuits over the spotted frog and reduced access to stored water, the ability for districts to work with water providers to create needed mitigation has been limited. Hence, the supply of water for permanent mitigation credits has all but ceased.

The transfer application submitted by TID is a unique opportunity to continue the efforts to improve the ecological health of the Deschutes River AND to create much needed permanent mitigation credits. TID's proposal to establish an instream water right for up to 1,000 acre-feet during the non-storage season will

ensure this water is permanently protected instream. At the same time, the protection of this water instream and creation of permanent mitigation credits will assist the Department in meeting its key goals of the Groundwater Mitigation Program – maintaining flows for scenic waterways and instream rights, facilitating restoration of flows in the middle reach of the Deschutes River and related tributaries, and sustaining existing water uses and accommodating growth through new groundwater development.

The issues in the Deschutes Basin are complex and interrelated. As we collectively move forward we need to embrace transactions that can achieve multiple benefits.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Rheault". The signature is fluid and cursive, with the first name "Paul" and last name "Rheault" clearly distinguishable.

Paul Rheault
Public Works/Utility Director
City of Bend

RECEIVED BY OWRD

JUL 31 2017

SALEM, OR

JARAMILLO Lisa J * WRD

From: Patrick Griffiths <pgriffiths@bendoregon.gov>
Sent: Monday, July 31, 2017 1:16 PM
To: JARAMILLO Lisa J * WRD
Cc: Paul Rheault; Gillian Ockner; Adam Sussman
Subject: RE: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District

Hi Lisa

I was made aware of one technical typo in our comment letter.

It should say "storage" season, instead of "non-storage" season.

Thank you for noting that in the files as appropriate

Sincerely

Patrick Griffiths
City of Bend



UTILITY DEPARTMENT

Patrick Griffiths
City of Bend Water Resources Manager
62975 Boyd Acres Road
Bend, OR 97701
O: 541-317-3008 | M:541-419-6188
pgriffiths@bendoregon.gov
www.bendoregon.gov

WaterWise: Water Isn't All You Save
[www. WaterWiseTips.org](http://www.WaterWiseTips.org)



From: JARAMILLO Lisa J * WRD [mailto:Lisa.J.Jaramillo@oregon.gov]
Sent: Monday, July 31, 2017 9:31 AM
To: Patrick Griffiths <pgriffiths@bendoregon.gov>
Cc: Paul Rheault <prheault@bendoregon.gov>; Gillian Ockner <gockner@bendoregon.gov>; Adam Sussman

<ASussman@gsiws.com>

Subject: RE: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District

Thank you Patrick,

I will place a copy of this correspondence in the application file for T-12698.

Have a great day!

-Lisa

Lisa J. Jaramillo

Transfer and Conservation Section Manager

Water Right Services Division

Oregon Water Resources Department

Phone: 503-986-0880

Lisa.J.Jaramillo@oregon.gov

From: Patrick Griffiths [<mailto:pgriffiths@bendoregon.gov>]

Sent: Thursday, July 27, 2017 2:55 PM

To: JARAMILLO Lisa J

Cc: Paul Rheault; Gillian Ockner; Adam Sussman

Subject: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District

Hi Lisa

Please accept comments on above mentioned transfer application submitted by Tumalo ID.

We have also put a hard copy in the mail

Please let me know you have received our letter

Thank You

Patrick Griffiths



UTILITY DEPARTMENT

Patrick Griffiths

City of Bend Water Resources Manager

62975 Boyd Acres Road

Bend, OR 97701

O: 541-317-3008 | M:541-419-6188

pgriffiths@bendoregon.gov

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JARAMILLO Lisa J * WRD

From: JARAMILLO Lisa J * WRD
Sent: Monday, July 31, 2017 10:30 AM
To: Adam Sussman
Subject: RE: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District

Hi Adam,

No other comments are in the application file at this time.

I'll place a copy of your email in the file to make a note of the typo; however, it would be better coming from Patrick Griffiths himself.

Thanks,
Lisa

Lisa J. Jaramillo

Transfer and Conservation Section Manager
Water Right Services Division
Oregon Water Resources Department
Phone: 503-986-0880
Lisa.J.Jaramillo@oregon.gov

From: Adam Sussman [<mailto:asussman@gsiws.com>]
Sent: Monday, July 31, 2017 10:00 AM
To: JARAMILLO Lisa J * WRD
Subject: Re: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District

Lisa,

Thank you. Were there any other comments submitted? Are they available on line?

BTW, I think the letter from Patrick had a typo - it should say storage season instead of non-storage season.

Thanks!

Adam Sussman
GSI Water Solutions

On Jul 31, 2017, at 9:31 AM, JARAMILLO Lisa J * WRD <Lisa.J.Jaramillo@oregon.gov> wrote:

Thank you Patrick,

I will place a copy of this correspondence in the application file for T-12698.

Have a great day!
-Lisa

Lisa J. Jaramillo

Transfer and Conservation Section Manager
Water Right Services Division
Oregon Water Resources Department
Phone: 503-986-0880
Lisa.J.Jaramillo@oregon.gov

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Sent: Thursday, July 27, 2017 2:55 PM
To: JARAMILLO Lisa J
Cc: Paul Rheault; Gillian Ockner; Adam Sussman
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Hi Lisa

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We have also put a hard copy in the mail
Please let me know you have received our letter

Thank You

Patrick Griffiths

<image001.png>

Patrick Griffiths
City of Bend Water Resources Manager
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<image002.png> <image003.png> <image004.png> <image005.png>

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Sent: Thursday, July 27, 2017 2:55 PM
To: JARAMILLO Lisa J
Cc: Paul Rheault; Gillian Ockner; Adam Sussman
Subject: Comment Letter - Transfer Application T-12698 - Tumalo Irrigation District
Attachments: BendSupportLetter7-27-17-Transfer Application T-12698.pdf

Hi Lisa

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We have also put a hard copy in the mail
Please let me know you have received our letter

Thank You

Patrick Griffiths



UTILITY DEPARTMENT

Patrick Griffiths
City of Bend Water Resources Manager
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O: 541-317-3008 | M:541-419-6188
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UTILITY DEPARTMENT

July 27, 2017

Lisa Jaramillo
Transfer and Conservation Section Manager, Water Rights Division
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

62975 BOYD ACRES RD
BEND, OR 97701
541-317-3000 opt.2
541-317-3046 fax
bendoregon.gov

MAYOR
Casey Roats

MAYOR PRO TEM
Sally Russell

CITY COUNCILORS
Justin Livingston
Bill Moseley
Bruce Abernethy
Nathan Boddie
Barb Campbell

CITY MANAGER
Eric King
UTILITY DIRECTOR
Paul Rheault

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Historically, mitigation for groundwater use has been developed in partnership with the irrigation districts. However, with recent events in the Deschutes Basin, such as lawsuits over the spotted frog and reduced access to stored water, the ability for districts to work with water providers to create needed mitigation has been limited. Hence, the supply of water for permanent mitigation credits has all but ceased.

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ensure this water is permanently protected instream. At the same time, the protection of this water instream and creation of permanent mitigation credits will assist the Department in meeting its key goals of the Groundwater Mitigation Program – maintaining flows for scenic waterways and instream rights, facilitating restoration of flows in the middle reach of the Deschutes River and related tributaries, and sustaining existing water uses and accommodating growth through new groundwater development.

The issues in the Deschutes Basin are complex and interrelated. As we collectively move forward we need to embrace transactions that can achieve multiple benefits.

Sincerely,

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Paul Rheault
Public Works/Utility Director
City of Bend



Oregon

Kate Brown, 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.wrd.state.or.us

June 22, 2017

TUMALO IRRIGATION DISTRICT
ATTN: KEN RIECK
64697 COOK AVE
BEND, OR 97703

Reference: Instream Transfer T- 12698

On June 16, 2017, we received your water right Transfer application. The application was accompanied by \$1350.00. Our receipt number 123721 is enclosed.

By copy of this letter, we are asking the Watermaster for a report regarding the potential for injury to existing water rights which may be caused by the requested change.

Your application will be examined to determine whether additional information is needed. We will notify you if further information or corrections to the application or map are required.

This application may require publication of a notice for two consecutive weeks in a newspaper with general circulation in the area where the water right is located. If it is determined that newspaper notice will be required, the Department will prepare the notice and notify you of the cost. You will be responsible for submitting payment to the Department prior to publication of the notice.

Except as provided under ORS 540.510(3) for municipalities, you may not use water for the new use, in the new place of use until a final order approving the transfer application has been issued by the Department.

In order to avoid any possible forfeiture of the water right, you should continue to use the water as described by your existing water right.

If the land is sold before the application is approved, the buyer's consent to the application will be required unless a recorded deed or other legal document clearly established that the water right was not conveyed in the sale.

Refer to the following page for a chart showing the steps and expected timelines for the processing of your application.

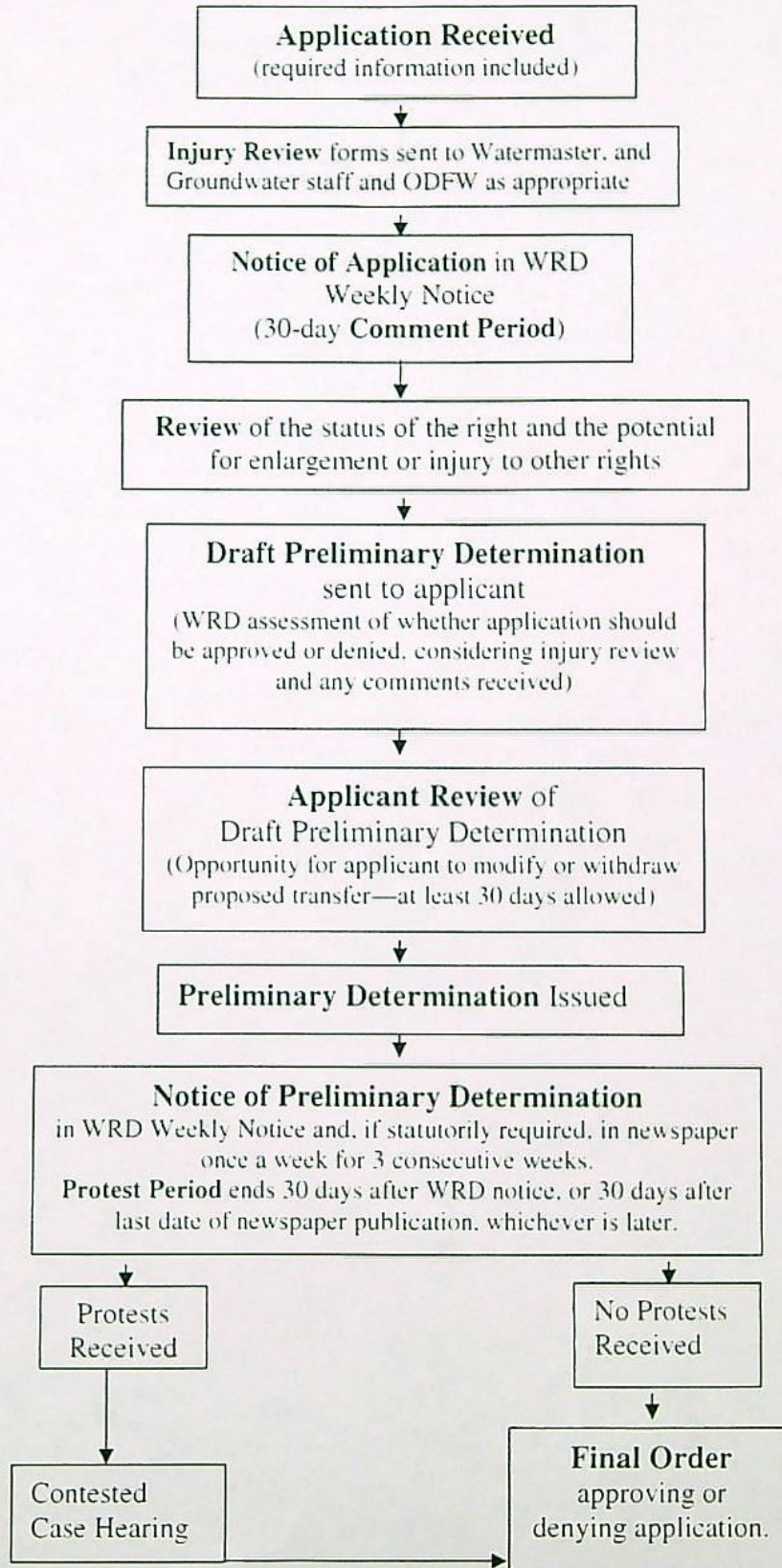
If you have any questions, please contact the Transfer Section at (503) 986-0807.

Cc: Watermaster Dist. #11 (via email)
Adam Sussman, Agent
CONFEDERATED TRIBES OF WARM SPRINGS
CITY OF LA PINE; CITY OF BEND; SEVERAL COUNTIES

Enclosure

Instream Transfer Process

OAR 690 Divisions 380 and 077



**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

RECEIPT # **123721**

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM: GSI Water Solutions, Inc.
BY: _____

APPLICATION	
PERMIT	
TRANSFER	<u>T-12698</u>

CASH: ☐ CHECK: # 19470 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 1350⁰⁰

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES \$ _____
OTHER: (IDENTIFY) \$ _____

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407 COPY & TAPE FEES \$ _____
0410 RESEARCH FEES \$ _____
0408 MISC REVENUE: (IDENTIFY) \$ _____
TC162 DEPOSIT LIAB. (IDENTIFY) \$ _____
0240 EXTENSION OF TIME \$ _____

WATER RIGHTS:

0201 SURFACE WATER	\$ _____	0202	RECORD FEE	\$ _____
0203 GROUND WATER	\$ _____	0204		\$ _____

0205 TRANSFER \$ 1350.00

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	\$ _____	0219	LICENSE FEE	\$ _____
LANDOWNER'S PERMIT		0220		\$ _____

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE \$ _____ CARD # _____
0210 MONITORING WELLS \$ _____ CARD # _____

OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FWWRD) \$ _____
0231 HYDRO LICENSE FEE (FWWRD) \$ _____

HYDRO APPLICATION \$ _____

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION \$ _____

RECEIPT:

123721

DATED: 6-16-17 BY: [Signature]

GSI WATER SOLUTIONS, INC.

019470

Check Date: 6/7/2017

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
Tumalo Irr Dist-T Ap	6/6/2017	0012071	1,350.00			1,350.00
Oregon Water Resources Department		TOTAL	1,350.00			1,350.00
Key Bank 8460 - GSI Water 1		245				

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Checked by B Date 6.16.17

(If OK, check box to left; if not, fill in the blank)

- ☐ 1. Page 1 of application: Are all attachments that have been checked actually included?

If not, what is missing? _____

- ☒ 2. Are fees included and correct? 1350

If not, the correct fee would be: _____, so the amount missing is: _____

Base fee for one water right, POU change and first cfs =		\$1,000.00
Type of use change to instream =		\$800.00
# of additional water rights (see Part 4 of application) =	_____	x \$450.00 =
If more than 1 cfs (based on primary acres x rate), # cfs or fraction above the first cfs =	_____	x \$300.00 =
Sub-total =		
50% "fish-friendly reduction in fee = Sub-total above x 0.50 =		
Total = original sub-total minus the 50% reduction =		

- ☐ 3. Page 3 of application: Have all the applicants listed at the top of the page signed at the bottom?

If not, whose signature is missing? _____

- ☐ 4. Are all signatures on the application and any affidavits "original"?

If not, whose "original" signature is missing? _____

- ☐ 5. Are all listed certificates or permits shown by WRIS as non-cancelled?

If not, which are cancelled? _____

For each cancelled certificate, if there has been a remaining right certificate issued that covers the lands in the left side of Table 2, list its number _____ and check the #4 box at left on this checklist.

- ☐ 6. If any certificate is in the name of a "district", is a Supplemental Form D from that district enclosed?

☒ N/A ☐ Form D needed from _____ (district)

7. If all #1-#6 boxes on this checklist are checked (with no remaining deficiencies identified), accept the application and assign it a numbered transfer folder. Put this check sheet in the transfer folder. If #1, #2, #3, #4, #5 or #6 is deficient, the application cannot be accepted. It should be returned and the deficiencies listed in the "staff" section at the bottom of Application Page 1, unless the applicant or agent can resolve the deficiencies within 2-3 days.

Transfer Applications: Regular

The holder of a water right may apply to permanently change an existing water use subject to transfer as defined in ORS 540.505(4). An application may involve any of the following changes: Point of diversion or appropriation; Additional point of diversion or appropriation; Historic POD; Place of use; Character of use; Instream; Substitution; or Exchange.

The Department seeks public comment on the recently-filed transfer applications listed below. Any person may comment on a transfer application. Comments must be received by the Department on or before July 27, 2017. Any person who provides comments within the comment period will receive a copy of the Department's preliminary determination of whether the application should be approved or rejected after the Department has completed a review of the application and will be provided an opportunity to protest the application and preliminary determination at that time.

Transfer	12697
Water Right	Cert:87553
County/Basin	Clackamas / Willamette(2)
Applicant Name	ORIENT HOLDINGS LLC PO BOX 233 EAGLE CREEK, OR 97022
Proposed Change	POINT OF APPROPRIATION
Sources/TRSQ40Q160	A WELL > JOHNSON CREEK / 1.00S 4.00E 29 NESW
Use/Quantity	AGRICULTURE USES / 0.110 CFS
Priority Date	08/18/1993
Transfer	12698
Water Right	Cert:76683
County/Basin	Klamath / Deschutes(5)
Applicant Name	RIECK, KEN TUMALO IRRIGATION DISTRICT 64697 COOK AVE BEND, OR 97703
Proposed Change	PLACE OF USE.USE
Sources/TRSQ40Q160	DRAINAGE AREA > CRESCENT LAKE / 24.00S 6.00E 11 SWSW
Use/Quantity	MULTIPLE PURPOSE / 35000.000 AF
Priority Date	03/20/1911

Water Right Transfer Cover Sheet

Transfer T-12698

Transfer Specialist: _____

Transfer Type: Instream Transfer

Applicant Name/Address: TUMALO IRRIGATION DISTRICT KEN RIECK 64697 COOK AVE BEND, OR 97703	Agent Name/Address: ADAM SUSSMAN 1600 SW WESTERN BLVD SUITE 240 CORVALLIS, OR 97333	CONFEDERATED TRIBES OF WARM SPRINGS
CWRE Name/Number:	Irr. District Name/Address:	Affected Gov'ts Name/Address: Klamath County Deschutes County Jefferson County City Of La Pine City of Bend
Commentors: Name/Address:		Current Landowner Name/Address:

Water Rights Affected

Records Marked	Records Copied	App File No. or Decree Name	Permit No.	Certificate No.	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	<input type="checkbox"/>	R-1301	R-102	76653	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>	<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions

Rec'd: June 16, 2017	Proposed Action(s): PLACE OF USE; USE	
Fees Pd: 1350.00	WM District: 11	ODFW District:
Initial Notice: June 27, 2017	WM Review sent: 6/20/17	ODFW Review sent:
Acknowledgement Letter Sent <input checked="" type="checkbox"/>	GW Review sent:	

Processing Dates & Actions

Deficiency Contacts: _____

Newspaper quote requested: _____

☐ not required

DPD Mailed: _____

Request for news \$ sent: _____

☐ ODFW contact sheet sent with DPD, or ☐ N/A

News \$ received: _____

☐ WM measurement contact sheet sent, or ☐ N/A

PD Signed: _____

Request to publish sent to newspaper: _____

PD Weekly Notice: _____

Affidavit of publication received: _____

DPD Review (Optional)	PD Review (Salem)	Final Order Review (Salem)
Reviewer: _____	Reviewer: _____	Reviewer: _____
Date: _____	Date: _____	Date: _____
Coordinator: _____	Coordinator: _____	Coordinator: _____
Date: _____	Date: _____	Date: _____
Comments/Special Issues:		

Special Order Volume: Vol _____ Pages _____ Final Order Signature Date: _____

Notice of FO email'd to processors _____



Water Solutions, Inc.

June 13, 2017

Lisa Jaramillo
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Application for water right instream transfer in the name of Tumalo Irrigation District

Dear Ms. Jaramillo:

Please find enclosed an application for instream water right transfer, which is submitted on behalf of Tumalo Irrigation District. The Applicant is requesting to permanently transfer instream a portion of water right certificate 76683 as a mitigation project for mitigation credits.

Also enclosed is the required fee of \$1,350.

If you have any questions about the enclosed materials, please contact me at 541-257-9001.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Sussman", is written over a horizontal line.

Adam Sussman
GSI Water Solutions, Inc.

Enclosures

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SALEM, OR



State of Oregon
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900

Application for Water Right Instream Transfer

Part 1 of 6 – Minimum Requirements Checklist

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.

FOR ALL INSTREAM TRANSFER APPLICATIONS RECEIVED BY OWRD

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

JUN 16 2017

- ☒ Part 1 – Completed Minimum Requirements Checklist.
- ☒ Part 2 – Completed Map Checklist. SALEM, OR
- ☒ 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. 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: 76683 See Attachment A**
Please include a separate Part 6 for each water right. (See instructions on page 8)

Attachments:

- ☒ Completed Instream Transfer Application Map. See Attachment B
- ☒ Completed Evidence of Use Affidavit and supporting documentation. See Attachment C
- ☐ ☒ 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. N/A – the applicant is 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. See Attachment D

(For Staff Use Only)

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

- ☐ Application fee not enclosed/insufficient ☐ Map not included or incomplete
- ☐ Land Use Form not enclosed or incomplete
- ☐ Additional signature(s) required ☐ Part ____ is incomplete

Other/Explanation _____

Staff: _____ 503-986-0 _____

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/.
- 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.

* Map scale Weber/Kelly

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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	\$1,800
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 \$450 and enter » » » » » » » » » » » » » »	2	\$0
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>3.3 cfs, on average (3a)</u> Subtract 1.0 from the number in 3a above: <u>2.3 (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 \$300, then enter on line 3 » » » » » » » » » »	3	\$900
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$2,700
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » »	5	\$1,350
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » Transfer Fee:	6	\$1,350

*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, $1.25 \text{ cfs} \div 100 \text{ ac}$*); then multiply by the number of acres to be transferred to get the transfer cfs (*$x 45 \text{ ac} = 0.56 \text{ cfs}$*).
 - 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, $45.0 \text{ ac} \times 0.0125 \text{ cfs/ac} = 0.56 \text{ cfs}$*)
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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Is this a ☐ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

Applicant Information

APPLICANT/BUSINESS NAME Tumalo Irrigation District ATTN: Ken Rieck			PHONE NO. 541-382-3053	ADDITIONAL CONTACT NO.
ADDRESS 64697 Cook Avenue			FAX NO.	
CITY Bend	STATE OR	ZIP 97703	E-MAIL ken@tumalo.org	
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.				

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

AGENT/BUSINESS NAME GSI Water Solutions, Inc. ATTN: Adam Sussman			PHONE NO. 541-257-9001	ADDITIONAL CONTACT NO.
ADDRESS 1600 SW Western Boulevard, Suite 240			FAX NO.	
CITY Corvallis	STATE OR	ZIP 97333	E-MAIL asussman@gsiwatersolutions.com	
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.				

Explain in your own words what you propose to accomplish with this transfer application, and why: **Tumalo Irrigation District (TID) proposes to change the character and place of use of a 1,000 acre-foot portion of certificate 76683 from multiple purpose storage to instream use from Crescent Lake Dam to Lake Billy Chinook. TID would like this instream transfer application processed as a mitigation project under OAR 690-521-0300 in order to establish mitigation credits.**

Under this water right transfer, TID proposes to forego storage of 1,000 acre-feet of water in Crescent Lake Reservoir under Certificate 76683, and protect that water for instream use. In addition to this foregone storage, TID releases stored water for instream use as a result of Conserved Water Project 37 (CW-37), including a total of 920.08 acre-feet under Certificates 84352, 87440, 88992, 91923.

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)

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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) ** (see note below); **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.


Applicant Signature

Ken Rieck, Manager
Print Name (and Title if applicable)

6-12-2017
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 ** (see note below) *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.*

**** See Attachment E (Landownership and Right of Way/Easement Information). United States of America/US Forest Service is the landowner and TID holds a right of way/easement. TID is the sole operator of Crescent Lake Dam.**

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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.)

IRRIGATION DISTRICT NAME Tumalo Irrigation District	ADDRESS 64697 Cook Avenue	
CITY Bend	STATE OR	ZIP 97703

- ☐ 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 City of La Pine	ADDRESS P.O. Box 2460 16345 Sixth Street	
CITY La Pine	STATE OR	ZIP 97739

ENTITY NAME Deschutes County	ADDRESS PO Box 6005	
CITY Bend	STATE OR	ZIP 97708-6005

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

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

ENTITY NAME Klamath County Community Development	ADDRESS 305 Main Street, #1	
CITY Klamath Falls	STATE OR	ZIP 97601

ENTITY NAME Confederated Tribes of Warm Springs	ADDRESS 1233 Veterans Street PO Box C	
CITY Warm Springs	STATE OR	ZIP 97761

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TACS

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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

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)**
76683	3/20/1911	The drainage area draining into Crescent Lake	November 1 through March 31	***	1,000
TOTAL VOLUME					1,000

***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.

***** The volume of 1,000 acre-feet, protected over the proposed instream period of 152 days, would be, on average, 3.317 cfs. This rate is calculated by dividing 1,000 acre feet by 152 days between November 1 and March 31.**

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 76683 authorizes the storage of up to 35,000 acre-feet in Crescent Lake, a tributary of Crescent Creek and the Little Deschutes River for Multiple Purpose Uses.

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):

- ☒ 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, Crescent Dam, to Lake Billy Chinook. Certificate 76683 does not describe the location of Crescent Dam. The center of the dam is located 450 feet North and 2,380 feet East from the Southwest Corner of Section 11, Township 24S, Range 6 East, WM.

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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):

- To account for channel losses, an 18 percent loss factor shall be applied between the mouth of Crescent Creek on the Little Deschutes River to Benham Falls on the Deschutes River. A 7 percent loss factor shall be applied on the Deschutes River between Benham Falls and the City of Bend. Therefore, of the 1,000 AF (average 3.317 cfs) protected under this right at Crescent Creek Gage No. 14060000, 820 AF (average 2.719 cfs) would be protectable at Benham Falls and 762.6 AF (average 2.529 cfs) would be protectable at Bend.

- The volume of water protected instream, together with the volume of water stored under water right certificate 76683 shall not exceed 35,000 acre-feet.

- The volume of water protected instream, together with the volume of water stored under water right certificate 76683 and 76637 shall not exceed 86,050 acre-feet.

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): Certificates 84352, 87440, 88992, 91923 are for the same reach identified above (Crescent Dam to Lake Billy Chinook). There are numerous other instream water rights within a portion of the proposed reach.

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 below:

_____.

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).

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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 # 76683

Name on Certificate: Tumalo Irrigation District

Date(s) of Priority: March 20, 1911

Source(s) of Water to be Affected by the Transfer: The drainage area draining into Crescent Lake

Description of Water Delivery System

System capacity: 86,050 acre-feet (maximum fill of Crescent Lake Reservoir)

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 reservoir captures inflow from Summit Creek and other drainages behind Crescent Lake Dam. The primary outflow from the dam discharges to Crescent Creek.

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☐ Yes ☐ No N/A – Certificate 76683 does not identify an authorized place of use, only a reservoir location. In addition to Certificate 76683, Certificate 76637 authorizes storage of water in Crescent Lake for multiple purpose uses.

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)
Crescent Lake Dam	3/20/1911	24 S	6 E	11	SW SE	100	2560 feet West and 260 feet North from the Southeast Corner of Section 11

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.

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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 # 76683

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.

[illegible]

Additional remarks: Although only a portion of the authorized volume is being transferred, the change affects the entire authorized reservoir footprint.

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Attachment A
Water Right Certificate 76683
Tumalo Irrigation District - Certificate 76683

T 12698

STATE OF OREGON
COUNTY OF KLAMATH
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

TUMALO IRRIGATION DISTRICT
64697 COOK AVE
BEND, OREGON 97701

confirms the right to store the waters of THE DRAINAGE AREA DRAINING INTO CRESENT LAKE, a tributary of CRESENT CREEK AND LITTLE DESCHUTES RIVER, in CRESENT LAKE RESERVOIR, for MULTIPLE PURPOSE USES AS PROVIDED BY DECREE OF THE CIRCUIT COURT OF DESCHUTES COUNTY, OREGON, DATED FEBRUARY 10, 1928 AS MODIFIED, IN THE MATTER OF THE DETERMINATION OF THE RELATIVE RIGHTS TO THE USE OF THE WATERS OF THE DESCHUTES RIVER AND ITS TRIBUTARIES, A TRIBUTARY OF COLUMBIA RIVER.

The right to store these waters was perfected under Reservoir Permit R-102. The date of priority is MARCH 20, 1911. The amount of water entitled to be stored each year under this right is not more than 35,000 ACRE- FEET AND THE MAXIMUM QUANTITY OF WATER STORED AT ANY TIME SHALL NOT EXCEED 86,050 ACRE- FEET.

The reservoir is located as follows:

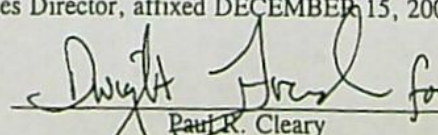
SE 1/4 SW 1/4	W 1/2 W 1/2
SW 1/4 SE 1/4	SECTION 24
SECTION 11	
W 1/2 SW 1/4	N 1/2 NE 1/4
SECTION 13	SW 1/4 NE 1/4
	NW 1/4
ALL (EXCEPT NW 1/4 NW 1/4)	NW 1/4 SW 1/4
SECTION 14	SECTION 26
S 1/2 NE 1/4	N 1/2
NE 1/4 SW 1/4	SW 1/4
S 1/2 SW 1/4	N 1/2 SE 1/4
SE 1/4	SECTION 27
SECTION 15	
S 1/2 SE 1/4	N 1/2
SECTION 20	N 1/2 S 1/2
	SECTION 28
ALL	NE 1/4
SECTIONS 22 AND 23	NE 1/4 SW 1/4
NE 1/4 NE 1/4	SE 1/4
S 1/2 NE 1/4	SECTION 29
S 1/2	TOWNSHIP 24 SOUTH, RANGE 6 EAST, WM
SECTION 21	
W 1/2 W 1/2	
SECTION 24	
TOWNSHIP 24 SOUTH, RANGE 6 EAST, WM	

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use described.

This certificate is issued to confirm a change in USE approved by an order of the Water Resources Director entered OCTOBER 11, 2000, and supersedes Certificate 12072, State Record of Water Right Certificates.

The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

WITNESS the signature of the Water Resources Director, affixed DECEMBER 15, 2000.


Paul R. Cleary

T-8556A

Recorded in State Record of Water Right Certificates numbered 76683.

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Attachment B
Instream Transfer Application Maps
Tumalo Irrigation District - Certificate 76683

T 12698

Application for a Water Right Instream Transfer in the name of Tumalo Irrigation District

Crescent Lake Reservoir Location – Certificate 76683

Klamath County, Oregon
Township 24 South, Range 6 East (W.M.)



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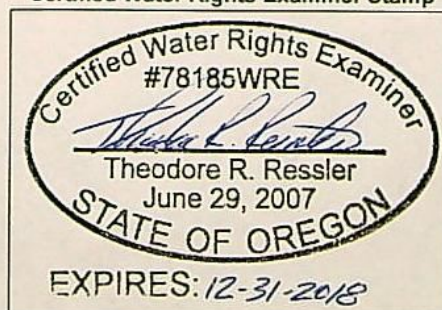
LEGEND

- Dam Outlet
- Government Lot (GL)
- Tax Lot
- Railroad
- Major Road
- Watercourse
- Waterbody

OUTLET LOCATION DESCRIPTION

Dam Outlet
Located 450 feet North and 2,380 feet East from the SW corner of Section 11, Township 24 South, Range 6 East (W.M.)

Certified Water Rights Examiner Stamp



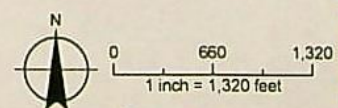
DISCLAIMER

This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

MAP NOTES

Date: June 9, 2017

Data Sources: BLM, ESRI, Klamath Co., USGS



T 12698

From: STARNES Patrick K * WRD
To: Owen McMurtrey
Subject: RE: Instream Transfer Application Map Waiver Request
Date: Friday, May 19, 2017 9:34:00 AM

Hi Owen –

The Department will grant a map scale waiver for the place of use map showing the location of the reservoir.

Please include a copy of this e-mail with the transfer application when you submit it to the Department.

Kelly

From: Owen McMurtrey [mailto:OMcMurtrey@gsiws.com]
Sent: Wednesday, May 17, 2017 2:01 PM
To: STARNES Kelly
Cc: Adam Sussman
Subject: Instream Transfer Application Map Waiver Request

Hi Kelly,

I've attached a place of use map for an instream transfer in the name of Tumalo Irrigation District. The map showing the location of the reservoir could not be made to the required scale on an 11x17 sheet of paper. Will the department grant a waiver?

Sincerely,

Owen McMurtrey
Staff Water Resources Consultant | GSI Water Solutions, Inc.
direct: 541-257-9005 | cell: 541-740-5619
1600 SW Western Blvd., Suite 240, Corvallis, OR 97333
www.gsiws.com | omcmurtrey@gsiws.com

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Attachment C
Evidence of Use Affidavit
Tumalo Irrigation District - Certificate 76683

T 12698

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 KLAMATH)

I, KEN RIECK, in my capacity as MANAGER, TUMALO IRRIGATION DISTRICT,
mailing address 65697 COOK AVENUE
telephone number (541)382-3053, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one): **RECEIVED BY OWRD**
☐ Personal observation ☒ Professional expertise

JUN 16 2017

2. I attest that:

- ☒ Water was used during the previous five years on the **entire** place of use for
Certificate # 76683; **OR**

SALEM, OR

- ☐ My knowledge is specific to the use of water at the following locations within the last five years:

Certificate #	Township	Range	Mer	Sec	1/4 1/4	Gov't Lot or DLC	Acres (if applicable)

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: ____ (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.): STORAGE FOR MULTIPLE PURPOSES

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

Signed and sworn to (or affirmed) before me this 2nd day of June, 2017.



April Lenea Harris
Notary Public for Oregon

My Commission Expires: June 11, 2018

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 confirming 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">• Power usage records for pumps associated with irrigation use• Fertilizer or seed bills related to irrigated crops• Farmers Co-op sales receipt
<input checked="" type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers *Maximum volume stored in Crescent Lake Reservoir according to OWRD Gage 14059500.	<ul style="list-style-type: none">• District assessment records for water delivered• Crop reports submitted under a federal loan agreement• Beneficial use reports from district• IRS Farm Usage Deduction Report• Agricultural Stabilization Plan• CREP Report
<input type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph	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. Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com
<input type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number

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T 12698

Annual Maximum Storage for Crescent Lake Reservoir
6/1/2012 - 5/7/2017

Water Year	Maximum Volume (acre-feet)	Date of Maximum Volume
2012	86,600	6/1
2013	84,500	12/17
2014	82,430	5/28
2015	81,140	4/13
2016	66,990	6/18
2017	71,020	5/7

*Source: OWRD Hydrographics Data, Station ID 14059500

http://apps.wrd.state.or.us/apps/sw/hydro_near_real_time/display_hydro_graph.aspx?station_nbr=14059500

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Attachment D
Land Use Notification

Tumalo Irrigation District - Certificate 76683

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T 12698



June 13, 2017

City of La Pine
PO Box 2460
16345 Sixth Street
La Pine, OR 97339

City of Bend Planning Department
710 NW Wall Street
Bend, OR 97701

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

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

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

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To Whom it May Concern:

SALEM, OR

Tumalo Irrigation District is providing notification of its intent to transfer a portion of a water right to instream use. The transfer application is requesting to change the character of use and place of use of a portion of water right certificate 76683. The portion of the water right to be transferred authorizes the storage of 1000 acre-feet in Crescent Lake Reservoir, located within Township 24 South, Range 6 East, WM.

The proposed transfer is for between 2.529 and 3.317 cubic feet per second (cfs) for instream use with a priority date of March 20, 1911. The water will be instream from November 1 to March 31 of each year. Tumalo Irrigation District requested that the water be protected from the authorized POD, located in the SE SW $\frac{1}{4}$ $\frac{1}{4}$ of Section 11, Township 24 S, Range 6 E to the mouth of Crescent Creek, in the Little Deschutes River from Crescent Creek to the confluence with the 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 541-257-9001 or asussman@gsiws.com.

Sincerely,

Adam Sussman
GSI Water Solutions, Inc.

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Attachment E
Land Ownership and Right-of-Way/Easement Information
Tumalo Irrigation District – Certificate 76683

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T. 12698

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OF RECLAMATION
L. OFFICE, REGION 1
BOISE, IDAHO

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
WASHINGTON 25, D. C.

IN REPLY REFER TO:
420

OCT 11 AM 9:31

OCT - 7 1954

400	155	10/11
150	UB	19/1
FILE		

To: Regional Director, Boise, Idaho

From: Chief, Irrigation Division

Subject: Present rights of the Deschutes County Municipal
Improvement District in Crescent Lake Dam and
Reservoir

Please refer to your letter of August 13, requesting a
copy of the permit for the subject reservoir.

A copy of the General Land Office's letter of March 24,
1913, approved by the Secretary on the same date, together
with a copy of the approved right-of-way map is enclosed for
your information.

Noyl B. Roming

T-8556

Enclosures 2

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WATER RESOURCES
SALEM, OREGON

T 12698



UNITED STATES
DEPARTMENT OF THE INTERIOR

BOREMAN FIELD OFFICE
GENERAL LAND OFFICE
WASHINGTON 25, D. C.

March 24, 1913.

T-8556

Crescent Lake Reservoir, : Submitting map for approval.
Deschutes Land Company. :

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The Secretary

JUN 16 2017

of the Interior.

Sir:

SALEM, OR

The Deschutes Land Company has made application under the provisions of the Act of Congress of March 3, 1891 (26 Stat., 1095) and Section 2 of the act of May 11, 1898 (30 Stat., 404) for reservoir easement embracing Crescent Lake, Oregon, in T. 24 S., R. 6 E., W. M., Lakeview, Oregon, land district. The articles of incorporation, proofs of organization, etc., have been filed and the company is duly authorized thereby to construct a reservoir at the site proposed.

Prima facie evidence of water right also accompanies the application. The map filed in connection with the application substantially conforms to the township plats except for a delineation and numbering of all of the

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JUN 27 2000

WATER RESOURCES DEPT.
SALEM, OREGON

T 12698

lots affected. This is a minor correction, however, which can readily be made in this office.

The reservoir proposed is included within the limits of a national forest, and also affects lands withdrawn under the first form by the Secretary of the Interior on April 26, 1909, under the act of June 17, 1902 (32 Stat., 388).

The Acting Secretary of Agriculture in a letter dated January 16, 1911, states that the company has executed the stipulations required by the Department of Agriculture for the protection of the national-forest interests, and that, therefore, that Department has no objection to the approval of the map filed by the company.

The Acting Director of the Geological Survey in reporting on this application, under date of June 10, 1910, states-

"It is the intention of this company to construct a reservoir by enlarging the present Crescent Lake, and there accompanies the application a stipulation in which the company agrees to turn over its right of way to the Government in case the right of way is needed for additional irrigation. In view of this stipulation it is believed that the interests of the Government are fully protected and I therefore recommend the approval of this application."

The Director of the U. S. Reclamation Service in reporting on this application, under date of April 1, 1910, states that the company-

"has executed the stipulation mentioned in office letter to you of February 17 and that there is therefore no longer any reason for withholding the approval of this application."

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SALEM, OREGON

In his report to the Department dated February 22, 1913, on the operations of the Deschutes Land Company, Mr. Edward W. Dixon, Special Inspector, states, with respect to the Crescent Lake Reservoir feature of the company's project-

T-8556

"There is, in my judgment, no reason why the company's application for easement for the Crescent Lake Reservoir should not be passed upon, and I therefore recommend that it be approved."

Crescent Lake forms one of the sources of supply of the Deschutes River, and in pursuance of the present practice instituted by Departmental instructions of February 27, 1913, with respect to applications which involve the use of the waters of the Deschutes River and its tributaries, the application was referred to the Director of the Reclamation Service for report as to its possible conflict with plans that may be developed as a result of the co-operative investigation to be conducted by representatives of the Federal Government and the State of Oregon for the purpose of developing plans for the most beneficial use of the waters of the Deschutes River and its tributaries. In a letter to the Secretary of the Interior, dated March 13, 1913, the director of the U. S. Reclamation Service, after quoting excerpts from Mr. Dixon's report, states-

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JUN 16 2017

SALEM, OR

"Relying upon the thorough manner in which Mr. Dixon has gone into the matter, I believe that prompt action should be taken without incurring further delay or referring these papers back to Oregon for consideration by the local men as to whether or not they may interfere with possible future plans. I concur, therefore, in Mr. Dixon's recommendation."

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-3-JUN 27 2000

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SALEM, OREGON

T 12698

Mr. Dixon's recommendation, with respect to this application, has heretofore been quoted. Both Mr. Dixon's report and the report of the Director of the U. S. Reclamation Service are hereto attached. As will be seen, Mr. Dixon's report was made at a date prior to Departmental instructions regarding the Deschutes River drainage.

T 8556

Attention is called to paragraph 3 of the contract between the State of Oregon and the United States, dated February 27, 1913, which reads as follows:

"The Secretary of the Interior shall take such action as is authorized by law to prevent the attachment of any rights to the public lands which could interfere with the proposed development of the Deschutes River Basin herein provided for, and the State Engineer of Oregon shall likewise secure such action as is authorized by law to withdraw and hold from appropriation any unappropriated water which may be required for carrying out any projects for development of the water resources within the Deschutes River Basin."

Aside from the Deschutes River drainage question, no good reason appears on the records of this office why this application should not be allowed at this time, and if, in the opinion of the Department, this application is one which falls outside of those contemplated by paragraph 3 of the contract, above quoted, it is recommended that the map, herewith, showing the location of the proposed reservoir site, be approved, subject to all valid existing rights, and subject to the stipulations entered into by the company with the Department of Agriculture with respect to the national-forest interests affected, and with the Department of the

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WATER RESOURCES DEPT
SALEM, OREGON

T 12698

Interior with respect to the operations of the Reclamation
Service; and reserving right of way for canals or ditches
constructed by authority of the United States.

T-8556

Very respectfully,

Fred Dennett
Commissioner.

March 24, 1913

Approved: Franklin K. Lane

Secretary.

One copy to Geological Survey.

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JUN 16 2017

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JUN 27 2000

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SALEM, OREGON

1-12698



IN REPLY REFER TO:

LCA-1000
LND-3.00

United States Department of the Interior

BUREAU OF RECLAMATION

Pacific Northwest Region
Lower Columbia Area Office
825 NE Multnomah Street, Suite 1110
Portland, Oregon 97232-2135

MAY 4 2000

MAY 2 2000

Carl William Hopp, Jr.
Hopp & Paulson, LLP
168 NW. Greenwood
Bend, OR 97701

Subject: Crescent Lake Special Inspection, Crescent Lake Project, Oregon

Dear Mr. Hopp:

I regret the delay in responding to your letter of April 11. We have discussed the items raised in that letter, and we have begun processes to deal with them. We are, for instance, searching files for the records that you mentioned, and we will provide copies of those records to you. We are also aware of outstanding concerns that relate primarily to the U.S. Forest Service concession near the dam. We are trying to develop strategies that would help resolve those matters.

The last sentence of your letter states the following:

"Once these items are resolved, the District is prepared to assume control of Crescent Lake."

While I appreciate the intent of this statement, I remind you that Reclamation's only property interest at Crescent Lake is with a withdrawal of Forest Service land. It has no property interest in either the dam or the water right. I also understand that the Tumalo Irrigation District has an easement from the Forest Service for the dam and reservoir. Although I have not consulted with our attorney, I am of the opinion that the District controls Crescent Lake and not Reclamation. The activities in which Reclamation is now involved are to clear its internal administrative procedures which were established under the assumption that Reclamation had title to Crescent Lake Dam. I intend, to the best that I can, to make this internal process beneficial to the Tumalo Irrigation District. I do this for two reasons. First, it is the right thing to do. Second, I, and others within Reclamation, appreciate the working relationship that we have had, and hope to continue, with the District—we do it as friends.

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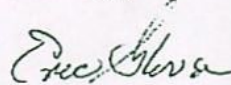
JUN 16 2017

SALEM, OR

T 12698

I have asked Leo Busch to coordinate this work for us. He may delegate the task to another employee within his group. I encourage you to work with Leo and his staff. You may always contact me if you have questions or concerns.

Sincerely,



J. Eric Glover
Area Manager

cc: BFO-3000

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JUN 16 2017

SALEM, OR

T 12698



United States Department of the Interior
BUREAU OF RECLAMATION

Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise ID 83706-1234



PN-3908
LND-3.00

NOV 03 1999

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JUN 16 2017

SALEM, OR

Mr. William Hopp, Jr.
Hopp & Paulson, LLP
Attorneys at Law
168 NW. Greenwood
Bend OR 97701

Subject: Ownership Issues, Crescent Lake Reservoir, Oregon

Dear Mr. Hopp:

Enclosed is a copy of an October 7, 1954, memorandum containing the location map you requested and other pertinent information in its enclosures. The map contains the approval of the Secretary of the Interior which established Tumalo Irrigation District's (District) right-of-way for Crescent Lake Reservoir. We apologize for the poor quality of the map and suggest that you might be able to obtain a better copy in the archived General Land Office records through the Bureau of Land Management.

To summarize the information presented to you at the recent meeting held in your office, we provide the following:

Article 22 of the September 20, 1954, Repayment Contract between Reclamation and the District (Contract No. 14-06-100-566) provided as follows:

"(a) Title to that part of the present Crescent Lake Dam and Reservoir and all other works, rights of way and appurtenances which will be utilized in reconstructing the project works, shall be conveyed to the United States. Title to any part of the present irrigation system of the District not so utilized may be retained by the District. Title to all works constructed, reconstructed, or repaired in accordance with this contract shall be vested in the United States.

(b) Title shall be conveyed to the United States as provided in (a) of this article by an instrument providing for, among other things, the reversioning of title in the District, including works to be constructed, reconstructed, or repaired in accordance with this contract, on the termination of this contract as provided in article 7."

Article 7 read: "This contract shall become effective upon its execution by the Secretary, and shall remain in effect until the District has paid to the United States, in full, its construction charge obligation and any and all other amounts owing to the United States under this contract."

There is no record of any conveyance instrument from the District to the United States conveying its right-of-way or easement interest, and the District's obligation under the repayment contract was paid out in June 1998. Reclamation's position is that the ownership of the property is no different than existed prior to the Repayment Contract:

(1) Fee title to the entire reservoir area, including the location of the damsite, remains in the name of the United States of America and is presently under a Reclamation withdrawal.

(2) The District holds a right of way as set forth by the following approval on the map submitted by their predecessor under the Act of March 3, 1891:

"Department of the Interior
March 24, 1913

Pursuant to the Act of Congress of March 3, 1891 (26 Stat. 1095) and Sec. 2 of the Act of May 11, 1898 (30 Stat. 404) this map of location is approved subject to all valid existing rights and subject to the terms of the stipulations entered into with the Dept. of Agriculture and with the Dept. of the Interior and the withdrawal of April 26, 1909 under the first form, Act of June 17, 1902 (32 Stat. 388) is modified accordingly; right of way is also reserved for canals or ditches constructed by authority of the United States.

(signed) Franklin K. Lane
Secretary"

(The language of the Act of March 3, 1891, codified as 43 U.S.C. 946, is enclosed for your reference and reflects the grant of the right-of-way upon such approval.)

The Reclamation withdrawn lands lie within the boundaries of the Deschutes National Forest and, since a 1969 Memorandum of Agreement (Agreement) between Reclamation and the Forest Service, those lands identified as being outside the "Reclamation Zone" have been administered by the Forest Service. The Agreement also provides that the lands within the "Reclamation Zone" are operated and maintained by the District as specified under its repayment contract with Reclamation.

We have started internal discussions to determine what actions Reclamation may need to take in regard to this matter and to determine what it believes should be the relationship between the District and Reclamation. We will keep you informed of those discussions and will consult with you as we move forward. We realize that we should have mutual agreement on the future relationship.

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F 12698

If you have any questions regarding the technical aspects of this matter, please contact Kraig Howe, Realty Specialist, at 208-378-5324. You should continue to work with Eric Glover on the policy issues related to this matter.

Sincerely,

s/ Diana Cross
for J. William McDonald
Regional Director

Enclosure

cc: Mr. Phil Cruz
District Ranger
Crescent Ranger District
Deschutes National Forest
PO Box 208
Crescent OR 97733

Mr. Elmer G. McDaniels
Manager
Tumalo Irrigation District
64697 Cook Avenue
Bend OR 97701-9034 (both w/cy of encl.)

bc: LCA-1000 (Glover)
BFO-3000 (Busch)
PN-3300 (Patterson)
(all w/cy of encl.)

WBR:KHowe:rdw 10-28-99 crescent lake letter\khowe

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SALEM, OR

T. 12698



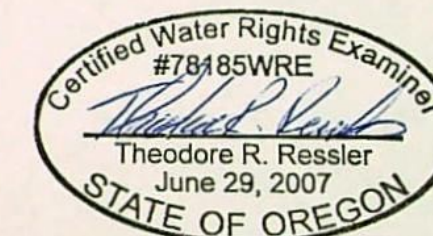
Application for a Water Right Instream Transfer in the name of Tumalo Irrigation District

Crescent Lake Reservoir Location
- Certificate 76683

Klamath County, Oregon
Township 24 South, Range 6 East (W.M.)

LEGEND

- Dam Outlet
- ▨ Crescent Lake Reservoir
- Government Lot (GL)
- Tax Lot
- Railroad
- Major Road
- Watercourse
- Waterbody



EXPIRES: 12-31-2018

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JUN 16 2017

SALEM, OR



0 1,100 2,200 3,300
Feet



Date: June 9, 2017
Data Sources: BLM, ESRI, Klamath Co., USGS

Mitigation Project
Instream Transfer

MP-230
T-12698

HENDERSON Sarah A * WRD

From: Kimberley Priestley <kjp@waterwatch.org>
Sent: Wednesday, April 04, 2018 3:17 PM
To: HENDERSON Sarah A * WRD
Subject: Comment, MP-230
Attachments: Handout for Transfers of Storage_2.7.2018 (2).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Sarah,

MP-230 seeks mitigation credits in connection with T-12698. We will provide comments on TID's Transfer (T-12698) as well, but I just to provide brief comments on MP-230 before today's deadline.

First, it is premature to authorize a mitigation project before the relied upon transfer is finalized. We would ask that you re-notice this once either TID's transfer application and/or secondary water right application (s-88478) is approved.

Second, according to the WRD's new interpretation of the transfer statutes (date 2/7/18, attached), the WRD cannot transfer the character of use. Thus, given that T-12698 calls for a two part transfer, one being change in character of use, two being a change in place of use, it is questionable whether the transfer application would/could be approved. So again, until the source of the mitigation has been approved, it is premature to authorize MP-230.

Third, if the applicant is trying to move its transfer application forward under the auspices of the WRD's new interpretation allowing the direct transfer of stored water to an instream water right under ORS 537.348 (see WRD memo, 2/7/18), we would argue that: (1) that would require a wholly different application as that is not what the application for T-12698 contemplates, and (2) the WRD's interpretation does not allow for an instream purpose of "mitigation" but rather an instream transfer/lease under the instream water rights statute, ORS 537.348, for purposes authorized by that statute. Mitigation is not a public use under ORS 537.348.

We are happy to discuss these comments in detail if you have questions.

Thank you, Kimberley

~~~~~  
Kimberley Priestley  
WaterWatch of Oregon  
213 SW Ash, Suite 208  
Portland, OR 97204  
Phone: (503) 295-4039, ext. 3  
FAX: (503) 295-2791  
<http://www.waterwatch.org>  
~~~~~


Changes to Reservoir Rights

The Water Resources Department has long debated about its authority to make changes to storage rights. In light of a lack of clarity in its existing laws, the Department has occasionally allowed changes in the location of reservoirs and, more commonly, has processed changes in the purpose of use identified in the right to store water (e.g. from irrigation to multi-purpose). Although the Department has tried to conform current law to water right holder needs, after considerable internal review, the Department has determined that it does not believe that it has statutory authority to allow changes to the purpose of use identified in a right to store water or to change the location of reservoirs.

As a result, the Water Resources Department has developed this handout in response to questions about the Department's understanding of its authorities related to the transfer of storage rights. *This handout provides general information on the Department's authorities but is not intended to provide an exhaustive list of every exception.*

A storage right is a different type of right from a surface water right and a groundwater right. This is evidenced throughout the Oregon Water Code.

ORS 537.400 outlines the characteristics of a storage right, which provides for a right to store water to serve as a source for a subsequent beneficial use. Storage itself is not the beneficial use of the water. In general, in order to make beneficial use of the stored water, a second water right is needed. These secondary rights can be issued through ORS 537.147, which allow a person to apply "for a water right permit to use stored water," wherein the reservoir right is listed as the supply source of the water. Similarly, ORS 537.336 requires "an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water." As a result, the right to store water is also inherently tied to the second water right to use the stored water and apply it to a beneficial use. This is different from a surface or groundwater right, where a second water right is not needed to apply it to a beneficial use.

The Water Code is clear that storing water is different than using the water and that groundwater, surface water, and stored water are different types of rights. ORS 537.130(2) states that "a person may not use, store or divert any waters..." ORS 537.143 allows "a person to obtain a limited license to use or store ground water..., to use or store surface water, to use stored water..." As a result, it is clear that there are water rights "to use" water and water rights to "store water for a use." With some exceptions, storage is generally a source or supply for secondary water rights.

Some statutes identify when a change in the type of a water right is authorized. ORS 540.531 provides when a change between a groundwater and surface water right can occur. Similarly, ORS 540.524 allows for substituting a supplemental right from a groundwater source for a primary water right from a surface water source. The exchange statutes provide that "water rights" may be exchanged and provide for changes between groundwater, surface water and stored water. See ORS 540.533 stating a person "may apply ...to use stored, surface or ground water from another source ... A person may apply for an exchange... among any combination of surface, storage or ground water rights." Furthermore, the transfer statutes are silent on the authority to change the reservoir right and refer only to water *uses* subject to transfer, not reservoir permits, storage rights, or rights to *store* water.

As is always the case in water law, there are exceptions to the above; for example, ORS 540.570, which authorizes a transfer of the type of use identified in a right to store water under specific circumstances (note, however, it does not authorize a change in the location of storage rights).

In addition, ORS 537.348 allows for "existing water rights" to be leased instream or transferred instream. In looking at the statute, it appears to the Department that a right to store water is an "existing water right," and therefore, there is statutory authority for instream leasing and permanent changes of a right to store water to instream purposes. While the Department's rules provide for leasing storage water rights instream, the process for permanently transferring storage rights instream needs to be further clarified in rule.

In conclusion, in most cases, the transfers statutes do not allow changes to rights to store water, such as changes in the character of the stored water or the location of the stored water. However, the statutes that allow changes of rights to instream purposes appear to allow for temporary (lease) and permanent transfers of the right to store water to an instream right; however, the Department's rules will need to be updated to provide greater clarity – particularly for permanent instream transfers.

HENDERSON Sarah A * WRD

From: HENDERSON Sarah A * WRD
Sent: Thursday, April 05, 2018 7:49 AM
To: 'Kimberley Priestley'
Subject: RE: Comment, MP-230

Hi Kimberley,

Thank you for submitting comments. The water right transfer application T-12698 and Mitigation Project MP-230 are still pending files that have not been assigned a caseworker and have not been reviewed. Your comments will be put in the file for the assigned caseworker to look at when reviewing the applications.

The Department will be in touch if we have any questions.

Have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah.a.henderson@oregon.gov | Web: <http://www.oregon.gov/owrd>

-----Original Message-----

From: Kimberley Priestley [<mailto:kjp@waterwatch.org>]

Sent: Wednesday, April 04, 2018 3:17 PM

To: HENDERSON Sarah A * WRD

Subject: Comment, MP-230

Hi Sarah,

MP-230 seeks mitigation credits in connection with T-12698. We will provide comments on TID's Transfer (T-12698) as well, but I just to provide brief comments on MP-230 before today's deadline.

First, it is premature to authorize a mitigation project before the relied upon transfer is finalized. We would ask that you re-notice this once either TID's transfer application and/or secondary water right application (s-88478) is approved.

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Applicant:

Tumalo Irrigation District

Project Process:

Instream Transfer T-12698 (public noticed on June 27, 2017)

Subbasin Source: Location of POD within Zone of Impact Map or intranet mapper

Middle Deschutes and Little Deschutes subbasin – The drainage area draining into Crescent Lake, a tributary of Crescent Creek and Little Deschutes River, in Crescent Lake Reservoir

Amount of water:

up to 3.317 Cubic Foot per Second and 1,000 Acre-Feet

Current Use:

Multiple purpose storage of 1,000 Acre Feet

Credits Assigned To:

GSI Water Solutions, Inc.

Preliminary Determination: Reach within the Zone of Impact

1,000 mitigation credits that may be available for use in the Middle Deschutes and/or Little Deschutes zones of Impact

Contact:

Sarah Henderson (503) 986-0890

SMITH Tamera L * WRD

From: SMITH Tamera L * WRD
Sent: Monday, March 12, 2018 1:20 PM
To: FAUCERA Danette L; HODGSON Brett L; TAYLOR Trevor * OPRD; BEALS Alice * OPRD; LAMB Bonnie; NIGG Eric; MEHTA Smita; MATTER Margaret A; ZUMWALT Shawn
Cc: WILKE Laura K * WRD; HENDERSON Sarah A * WRD; WATSON Danette M * WRD
Subject: Deschutes Mitigation Project Review Request for MP-230 (Instream Transfer T-12698)
Attachments: MP-230-agency review form (mit credits).doc

Good afternoon,

This is a request for evaluation of a mitigation credit project, MP-230. The Department is seeking your input on how best to protect water instream (shaping), including considering the instream needs of where water is proposed to be protected instream .

Attached to this email is a summary of the proposed project and agency evaluation form. A copy of the project application can be found by opening the application materials folder at:

http://apps.wrd.state.or.us/apps/wr/wrinfo/wr_transfer_centric.aspx?transfer_nbr=12698&transfer_char=T

The water right to be transferred can be found by typing in the certificate number on the Department's web page at:

<http://apps.wrd.state.or.us/apps/misc/vault/>

Please let me know if you have any questions or trouble accessing any of the documents. The deadline for comments is **April 3, 2018**.

Thank you for your time and input on this project,

Tamera Smith

Tamera Smith | Natural Resource Specialist, Restoration Program Technician

725 Summer St. NE, Suite A | Salem, Oregon 97301 | Phone: 503.986.0898



SMITH Tamera L * WRD

From: SMITH Tamera L * WRD
Sent: Monday, March 12, 2018 1:11 PM
To: LAMARCHE Jon L * WRD
Cc: HENDERSON Sarah A * WRD
Subject: Request for Zone of Impact Determination on MP-230

Hi Jonathan,

This is a request for a zone of impact determination for MP-230. This is for Instream Transfer T-12698 submitted by the TID and GSI. Below is a link to the lease application materials:

http://apps.wrd.state.or.us/apps/wr/wrinfo/wr_transfer_centric.aspx?transfer_nbr=12698&transfer_char=T

Please let me know if you need anything else.

Thanks,

Tamera

Tamera Smith | Natural Resource Specialist, Restoration Program Technician

725 Summer St. NE, Suite A | Salem, Oregon 97301 | Phone: 503.986.0898



SMITH Tamera L * WRD

From: SMITH Tamera L * WRD
Sent: Monday, March 12, 2018 1:10 PM
To: WATSON Danette M * WRD
Cc: HENDERSON Sarah A * WRD
Subject: MP-230 WM Evaluation (T-12698)
Attachments: MP-230-WM-review.doc

Hi Dani,

Attached to this email is a review request for Mitigation Project MP-230. This is for instream transfer T-12698, in the name of TID. A link to the application is below:

http://apps.wrd.state.or.us/apps/wr/wrinfo/wr_transfer_centric.aspx?transfer_nbr=12698&transfer_char=T

The comment period for this lease will be March 13, 2018 through April 3, 2018. This file will be assigned to Sarah Henderson.

Thanks,

Tamera

Tamera Smith | Natural Resource Specialist, Restoration Program Technician

725 Summer St. NE, Suite A | Salem, Oregon 97301 | Phone: 503.986.0898