

Instream

T-14309

MB-311

Name Wanek ranch LLC
Address PO Box 1287
Lapine Oregon 97739
curtlae@yahoo.com
Change in PO use
Date Filed 8/17/2023
Initial notice date 8/22/2023
DPD issued date _____
PD issued date 4/8/2025
PD notice date 4/15/2025
Date of FO 6/11/2025 Vol 134 Page 941-950
C-Date _____
COBU due date _____
COBU Received date _____
Certificate issued _____

DESCRIPTION OF WATER RIGHT(s)

Name of Stream Little Deschutes
Trib. of Deschutes
Use Irrigation County Deschutes, Klamath
Quantity of water (CFS) _____ No. of Acres _____
Name of ditch _____
App# Decree Per # _____ Cert # 957460 PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____
App# _____ Per # _____ Cert # _____ PR Date _____

FEES PAID

Date	Amount	Receipt #
<u>8.17.2023</u>	<u>\$ 1,840.00</u>	<u>141423</u>

FEES REFUNDED

Date	Amount	Receipt #
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Assignments: _____

Irrigation District _____

Agent GSI Water Solutions- Owen Mcmurtrey

CWRE _____
CC's list City of Lapine; Deschutes County; Jefferson County; City of Bend Planning
Klamath County community development; Confederated tribes of Warm Springs

☐ - Oversized map - Location _____



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

DATE: JUN 11 2025

Wanek Ranch, LLC
PO Box 1287
La Pine, Oregon 97739

Re: Instream Transfer T-14309 & Mitigation Credit Project MP-311

Thank you for participating in the Instream Transfer and Deschutes Mitigation Credit programs. I want to express appreciation for your participation in these programs and cooperation in helping to improve streamflows for fish and aquatic life and to provide mitigation water to groundwater users in the Deschutes Groundwater Study Area.

As identified in the attached Final Order, this Instream Transfer has been approved and awarded mitigation credits. Mitigation credits awarded to this project have been assigned to **Wanek Ranch, LLC**.

These mitigation credits may be used to satisfy the mitigation obligation of a groundwater permit or application or may be assigned to any person or mitigation bank. The **270.0** mitigation credits awarded to this project are valid upon issuance of the instream certificate and until used to fulfill the mitigation obligation of a groundwater permit application(s) and/or an existing groundwater right(s). The **270.0** mitigation credits may be used in the **Little Deschutes Zone of Impact**. Of the 270.0 mitigation credits awarded to this project, up to **251.1** credits may also be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**. A groundwater user wanting to demonstrate that mitigation credits are being used to satisfy a mitigation obligation needs to submit documentary evidence to the Department showing that mitigation credits have been obtained and assigned to them.

Mitigation credit transactions should be reported to the Water Resources Department. The Department has a Documentary Evidence form, copy enclosed (along with an example), available for your use or any subsequent mitigation credit holder, to assign the credits to a groundwater user. The Department's Documentary Evidence form contains pertinent information needed by the Department to evaluate the use and validity of the mitigation credits.

If you decide to assign the mitigation credits to someone other than a groundwater user, the Department would like to suggest that the enclosed Assignment of Mitigation Credits form (chain-of-custody) be used to assign credits to another party. An additional Assignment of Mitigation Credit form is also enclosed. Assignment forms will help establish a chain-of-custody

for the ownership of the mitigation credits. Please provide a copy of the complete assignment record (from original credit holder to current credit holder) and a blank assignment form to any new credit holders so that they may continue the mitigation credit assignment record as well. A general example is enclosed for your reference.

Once the mitigation credits are assigned to a groundwater user, the groundwater user will need to submit documentary evidence that valid mitigation credits have been obtained to satisfy their mitigation obligation. If credits have changed hands beyond the original credit holder, the Department will ask the groundwater user to demonstrate that the credits they are intending to use are indeed valid. A complete assignment record will help demonstrate the validity of the credits being used.

Also enclosed is a copy of the final order and new instream water right certificate. If you have any questions regarding the instream transfer and new certificate or the award of mitigation credits, please call me at (503) 979-9872 or email at Sarah.A.Henderson@water.oregon.gov.

Sincerely,



Sarah Henderson
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-14309 (MP-311)
Owen McMurtrey, GSI Water Solutions, Agent (omcmurtrey@gsiws.com)
Kyle Gorman, GSI Water Solutions, Agent for the applicant (kgorman@gsiws.com)
Jeremy Giffin, District 11 Watermaster (via e-mail)
Oregon Department of Fish and Wildlife (via e-mail)
(danette.l.faucera@odfw.oregon.gov; Gerald.j.jeorge@odfw.oregon.gov)
Oregon Department of Environmental Quality (via e-mail)
(cole.hendrickson@deq.oregon.gov)
Oregon Department of Parks and Recreation (via e-mail)
(matt.rippee@opr.oregon.gov; Tabitha.hendricksen@opr.oregon.gov)
Confederated Tribes of Warm Springs (via e-mail) (Robert.brunoe@ctwsbnnr.org;
alison.toivola@bbklaw.com)

encs

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING A CHANGE IN
Application T-14309, and Mitigation	)	PLACE OF USE AND CHARACTER OF USE
Project MP-311, Deschutes and Klamath	)	AND FINAL AWARD OF MITIGATION
County	)	CREDITS

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

Applicant

WANEK RANCH, LLC
PO BOX 1287
LA PINE, OR 97739

Findings of Fact

1. On August 17, 2023, Wanek Ranch filed an application to change the place of use and character of use under Certificate 95746 to instream use. The Department assigned the application number T-14309.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

2. On August 19, 2024, the Department received correspondence from Josh Newton, Attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe). The Tribe does not object to the Department processing the Transfer Application T-14309, in accordance with applicable law, and the Department's customary practice.
3. Notice of the application for transfer was published on August 22, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. Consistent with land use requirements, prior to submitting the instream transfer application, the applicant provided notification of the intent to file the instream transfer application to City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notice of the proposed action to City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend and the Confederated Tribes of the Warm Springs upon receipt of Transfer Application T-14309.
4. Certificate 95746 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots, from which the portion of the right is proposed for transfer, have changed since the original water right was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be transferred is described in Finding of Fact No. 6 and is consistent with the water right of record in so far as possible.
5. On November 8, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14309 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 8, 2024, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. On April 8, 2025, the Department issued a Preliminary Determination proposing to approve Instream Transfer T-14309 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 15, 2025, and in the Bend Bulletin newspaper on April 11 and April 18, 2025, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
7. The portion of the right to be transferred is as follows:

Certificate:	95746 in the name of LA PINE COOPERATIVE WATER ASSOCIATION (confirmed by Deschutes River Decree, of record in Salem, in the Order Record of the Water Resources Director in Volume 16, at Page 185)
Use:	IRRIGATION of 150.0 ACRES

Priority Date: 1897 for 138.5 acres of Irrigation and APRIL 30, 1902 for 11.5 acres of Irrigation

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from May 23 to August 20, and ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from April 1 to May 23 and from August 20 to November 1, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Priority Date	April 1 to May 23 (cfs)	May 23 to Aug 20 (cfs)	Aug 20 to Nov 1 (cfs)	Duty (af)
1897	1.73	3.46	1.73	554.0
1902	0.14	0.29	0.14	46.0

Period of Use: April 1 to November 1

Source: LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Cert Tax Lot	New Tax Lot	Acres	Owner Name on Certificate
1897 PRIORITY DATE								
22 S	10 E	WM	22	SE NE	101	101	16.5	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NE SE	101	101	20.9	
22 S	10 E	WM	22	SW SE	103	109	1.0	
22 S	10 E	WM	22	SW SE	101	101	1.4	
22 S	10 E	WM	22	SE SE	103	109	0.6	
22 S	10 E	WM	22	SE SE	101	101	5.0	
22 S	10 E	WM	23	NW SW	2401	2401	8.1	
22 S	10 E	WM	23	SW SW	2401	2401	4.8	
22 S	10 E	WM	27	NE NE	103	102	3.8	
22 S	10 E	WM	27	NE NE	103	103	3.6	
22 S	10 E	WM	27	NW NE	103	102	15.6	
22 S	10 E	WM	27	NW NE	103	103	9.2	
22 S	10 E	WM	27	SW NE	103	103	4.2	
22 S	10 E	WM	27	SW NE	103	104	1.4	
22 S	10 E	WM	27	SW NE	108	104	3.0	
22 S	10 E	WM	27	SW NE	108	108	1.8	
22 S	10 E	WM	27	SE NE	103	103	3.0	
22 S	10 E	WM	27	SE NE	103	104	1.2	
22 S	10 E	WM	27	SE NE	108	104	6.2	
22 S	10 E	WM	27	SE NE	108	108	3.9	
22 S	10 E	WM	27	NE SE	108	108	5.4	
22 S	10 E	WM	27	NE SE	108	105	0.3	

Twp	Rng	Mer	Sec	Q-Q	Cert Tax Lot	New Tax Lot	Acres	Owner Name on Certificate
22 S	10 E	WM	27	NW SE	108	108	6.4	
22 S	10 E	WM	27	NW SE	108	105	11.2	
Total Acres							138.5	
APRIL 30, 1902 PRIORITY DATE								
22 S	10 E	WM	22	SW NE	101	101	0.1	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NW SE	101	101	3.8	
22 S	10 E	WM	22	SW SE	101	101	7.6	
Total Acres							11.5	

8. A total of 600.0 Acre-Feet (AF), being 554.0 AF under the 1897 priority date and 46.0 AF under the April 30, 1902 priority date, of water may be beneficially used annually under the existing right.
9. Transfer Application T-14309 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; and to establish mitigation credits in the Deschutes Ground Water Study Area.
10. Transfer Application T-14309 proposes to change the place of use of the right to create an instream reach from the point of diversion on the Little Deschutes River, into the mainstem Deschutes River, and down to Lake Billy Chinook.
11. The applicant proposes the quantities water to be transferred instream be protected as follows:

Priority Date	April 1 to May 23	May 23 to August 20	August 20 to November 1
1897	0.92 CFS	1.85 CFS	0.92 CFS
April 30, 1902	0.08 CFS	0.15 CFS	0.08 CFS

12. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

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

13. The portions of the right proposed to be transferred to instream use were leased instream within the last five years under Instream Lease IL-1450, IL-1742, and IL-1743, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-14309.
15. The transfer application requests to protect water instream from the Little Deschutes River into the mainstem Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be protected instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Deschutes River.
16. The segment of the reach on the mainstem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the mainstem Deschutes River (Instream Reach 2 below) requires additional modification to prevent injury and enlargement.
17. Based on Findings of Fact No. 16, the Department proposes to modify the quantities to be transferred and protected instream as follows:

Instream Reach 1: From POD (as described in Finding of Fact No. 7) to the mouth of the Little Deschutes River

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.92	1.85	0.92	554.0
April 30, 1902	0.08	0.15	0.08	46.0
Totals	1.00	2.00	1.00	600.0

Instream Reach 2: In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.86	1.72	0.86	515.2
April 30, 1902	0.07	0.14	0.07	42.7
Totals	0.93	1.86	0.93	557.9

18. The proposed change, as modified, would not result in enlargement of the right.
19. The proposed change, as modified, would not result in injury to other water rights.
20. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
21. The protection of flows, as modified, within the proposed reach is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;

- b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and channel losses have been accounted for within Reach No. 2; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water.
22. Within the reach on the Little Deschutes River there is an existing instream water right, Certificate 73226, with a priority date of October 11, 1990, that was established under ORS 537.341 (state agency application process), for the purpose of fish migration, spawning, egg incubation, fry emergence and juvenile rearing. There are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; and recreation.
23. Within the proposed instream reach on the mainstem Deschutes River, there are numerous existing instream water rights. There is one instream water right, Certificate 59777, established under ORS 537.346 (minimum streamflow conversion) for the purpose of supporting aquatic life and minimizing pollution, from the confluence of the Little Deschutes River to the confluence with Spring River. There is another instream water right, Certificate 59778, also established under ORS 537.346 for the purpose of supporting aquatic life and minimizing pollution, from the confluence with Spring River to the Central Oregon Irrigation District (COID) North Canal Dam. There is also a pending instream water right application, IS-70695, filed by the ODFW pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right from the COID North Canal Dam to Lake Billy Chinook. These existing and pending instream water rights have priority dates ranging from 1983 to 1990. The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Most of these instream rights are located between the Central Oregon Canal and Lake Billy Chinook and have priority dates ranging from 1885 to 1961.
24. The existing instream water rights, established under and ORS 537.341 (state agency application process) and ORS 537.346 (minimum streamflow conversion), within the proposed reach on the Little Deschutes River and the Deschutes River are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under an earlier priority date.

25. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer and instream lease process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach on the Little Deschutes River and the Deschutes River, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values, pollution abatement and recreation.
26. During the period April 1 through October 31, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
27. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
28. Instream Lease IL-1742, involving portions of the right proposed for transfer to instream use, terminated on October 31, 2024, and is of no further force or effect. The subsequent credits created by the instream lease expired on December 31, 2024.

Preliminary Award of Deschutes Basin Mitigation Credits

29. Wanek Ranch (the Applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Applicant has requested that any mitigation credits generated from this project be assigned to Wanek Ranch, LLC.
30. The Department assigned this mitigation credit project number MP-311.
31. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on August 29, 2023. No comments were received in response to this notice.
32. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Environmental Quality (DEQ), and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on August 24, 2023. Comments from DEQ were received in response to this notice and in favor of the application.
33. As part of the public notice of the mitigation project, the Department identified that the project may result in 270.0 mitigation credits. This preliminary determination was based upon the proposal to transfer 150.0 acres of irrigation use to instream use with a priority date of 1897 (138.5 acres of irrigation use) and April 30, 1902 (11.5 acres of irrigation use).

Irrigation of 150.0 acres has an average consumptive use of 270.0 acre-feet (150.0 acres * 1.8 AF/acre = 270.0 AF). However, this volume may only be protected instream to the mouth of the Little Deschutes River (the Little Deschutes Zone of Impact).

34. The Department also identified that a portion of the mitigation credits may be available for use in the Upper Deschutes, Middle Deschutes and General Zones of Impact, because the reach of the instream use described in Finding of Fact No. 17 extends through the lower portion of the Upper Deschutes Zone of Impact and then into the Middle Deschutes Zone of Impact and ending at the General Zone of Impact. However, these credits must be reduced by 7% to account for the losing reach as identified in Finding of Fact No. 16.
35. Therefore, a maximum of 270.0 mitigation credits may be awarded to this mitigation credit project. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Little Deschutes Zone of Impact. Of the **270.0** mitigation credits within the **Little Deschutes** Zone of impact awarded to this mitigation project, up to **251.1** mitigation credits may be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**.
36. A maximum of 600.0 AF is proposed to be transferred to instream use and up to 270.0 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
37. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.
38. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application. As identified in Finding of Fact No. 28, instream lease IL-1742 terminated October 31, 2024 and the credits created by the instream lease expired on December 31, 2024.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-14309 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

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

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-14309 are approved.
2. Water right certificate 95746 is modified. The Department will issue a superseding certificate describing the right when it determines that it is necessary for record keeping.
3. The instream water right shall provide for the protection of streamflows as follows:

Instream Reach 1: From POD (as described in Finding of Fact No. 7) to the mouth of the Little Deschutes River

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.92	1.85	0.92	554.0
April 30, 1902	0.08	0.15	0.08	46.0
Totals	1.00	2.00	1.00	600.0

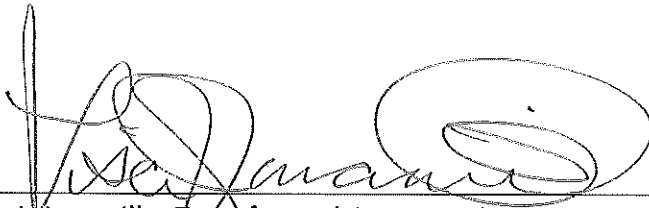
Instream Reach 2: In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.86	1.72	0.86	515.2
April 30, 1902	0.07	0.14	0.07	42.7
Totals	0.93	1.86	0.93	557.9

4. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.
6. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 95746 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

9. **Final Award of Mitigation Credits:** Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of **270.0 credits**, as described herein, may be awarded to this mitigation project and assigned to Wanek Ranch, LLC. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Little Deschutes Zone of Impact**. Of the 270.0 mitigation credits awarded to this project, up to **251.1 credits** may also be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under a new instream water right.
10. Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.
11. The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.

Dated at Salem, Oregon this day JUN 11 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

Mailing date: JUN 12 2025

STATE OF OREGON

COUNTIES OF DESCHUTES AND KLAMATH

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of the Little Deschutes River, tributary to the Deschutes River, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County. The decree is of record at Salem in the Order Record of the Water Resources Director, in Volume 16, at Page 185. The date of priority is 1897 and April 30, 1902.

The location of the diversion authorized previously under Certificate 95746 is located approximately at:

Twp	Rng	Mer	Sec	Q Q	Measured Distance
23 S	9 E	W.M.	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

The description of the stream reaches in which flows are to be maintained is as follows:

Instream Reach 1: From POD (as described above) to the mouth of the Little Deschutes River

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.92	1.85	0.92	554.0
April 30, 1902	0.08	0.15	0.08	46.0
Totals	1.00	2.00	1.00	600.0

Instream Reach 2: In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.86	1.72	0.86	515.2
April 30, 1902	0.07	0.14	0.07	42.7
Totals	0.93	1.86	0.93	557.9

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

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

Mitigation Credit Award

Mitigation Project: MP-311
Mitigation Credits Awarded: 270.0
Zone of Impact: These mitigation credits may be used to satisfy a mitigation obligation within the Little Deschutes Zone of Impact. Of the 270.0 credits awarded, 251.1 credits may be used within the Upper Deschutes, Middle Deschutes, and General Zones of Impact.

Each mitigation credit equals 1.0 AF of mitigation water, as determined by the Department.

The number of mitigation credits awarded is a portion of the total volume transferred instream, being up to 600.0 AF. The remaining balance of water dedicated to instream use and not used to satisfy the mitigation obligation of a ground water permit (and subsequent certificate(s)), will benefit instream flows.

The mitigation credits or mitigation water established by this instream water right may be used to satisfy a mitigation obligation of a ground water permit application(s) and/or a ground water permit(s)/certificate(s) within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules.

Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder.

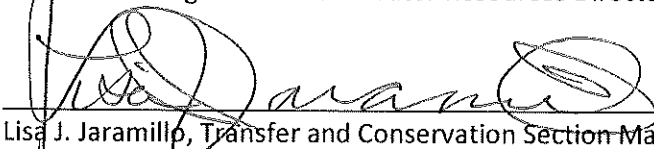
Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

The right is subject to all other terms and conditions of Certificate 95746, and any related decree.

This certificate is issued to confirm a change in use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 134, Page 941, approving Instream Transfer T-13764, and modifies a portion of Certificate 95746, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed JUN 11 2025.



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

WATER RIGHT TRANSFER COVER SHEET

Transfer: T-14309

Transfer Specialist:

Transfer Type: **Instream Lease Transfer**

Reimbursement Authority? ☐

Applicant: WANEK RANCH LLC PO BOX 1287 LA PINE, OR 97739	Agent: OWEN MCMURTREY 1600 SW WESTERN BLVD SUITE 240 CORVALLIS, OR 97333	Receiving Landowner:
Current Landowner if other than Applicant:	CWRE:	Irrigation District:
Affected Local Gov'ts: City Of La Pine, Deschutes County, , Jefferson County, City of Bend	Affected Tribal Gov't: Warm Springs Tribes	BOR Notified (date):

Water Rights Affected

File Marked	App. File # or Decree Name	Permit	Certificate	RR/CR Needed	RR/CR Nos.
<input type="checkbox"/>	Decree		Deschutes River	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/>				<input type="checkbox"/> Yes <input type="checkbox"/> No	

Key Dates & Initial Actions (Support Staff)

Rec'd: August 17, 2023	Proposed Action(s): PLACE OF USE; USE	
Fees Pd: 1840.00	Acknowledgement Letter Sent <input checked="" type="checkbox"/>	Basin: 5 Deschutes
Initial Public Notice: 8/22/2023	County sent cc: of Ack Letter <input checked="" type="checkbox"/>	County: DESCHUTES, KLAMATH
WM District: 11 Jeremy T. Giffin	WM Review request sent:	WM Review date received:
ODFW District:	ODFW Review sent:	ODFW Review date received:
Groundwater	GW Review sent:	GW Review date received:

Caseworker Actions: Newspaper & PD Notice:

Newspaper notice needed: <input type="checkbox"/>	Name of Newspaper:
Newspaper notice sent to coordinator:	Newspaper notice quote requested (NRS1):
Request for news \$ sent:	News \$ received:
Affidavit of publication received:	Last day of publication:

Peer Review:

Document	Drafted	Peer Review	Coordinator	Changes Made	Signature Bin	Signature Date
DPD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	CW Sent: _____ WM Sheet <input type="checkbox"/> ODFW Sheet: <input type="checkbox"/>	N/A
PD	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____ Data Review Date: _____	Date: _____	Date: _____
FO	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ Initials: _____	Date: _____ No. of docs for sig: _____	Date: 6/11/2025

Affidavit of Publication
STATE OF OREGON, COUNTY OF DESCHUTES

I, Julius Black, a citizen of the United State and a resident of the county aforesaid; I am over the age of eighteen years, and not part to or interested in the above-entitled matter. I am the principal clerk of the printer of

The Bulletin
P.O. BOX 6020, BEND, OR 97708

a daily newspaper of general circulation, published in the aforesaid county and state as defined by ORS 192.010 and ORS 192.020, that

Acct Name: OREGON WATER RESOURCES DEPT

PO Number:

Legal Description: NOTICE OF PRELIMINARY DETERMINATION FOR WATER RIGHT TRANSFER T-14309 T-14309 FILED BY WANER RANCH LLC PO BOX 1287 LA PINE OR 97739 PROPOSES A CHANGE IN THE PLACE OF USE AND CHARACTER OF USE TO INSTRE

a printed copy of which is hereto affixed was published in each regular and entire issue of the said newspaper and not in any supplement thereof on the following dates to wit:

4/11/25, 4/18/25

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

Dated at Bend, Oregon, this 18th day of April, 2025

AdName: 475504

State of Oregon, County of Deschutes

Subscribed and Sworn to before me this 28TH day of APRIL, 2025 by



Notary Public for Oregon

No. _____

in the _____ Court of the

STATE OF OREGON
for the
COUNTY OF DESCHUTES

AFFIDAVIT OF PUBLICATION

Filed. _____

By _____

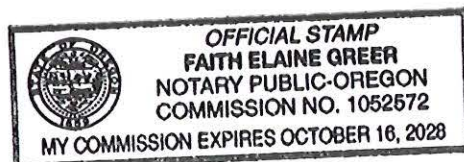
From the office of

Attorney for _____

Received

MAY 02 2025

OWRD



**Notice of Preliminary
Determination for**

Water Right Transfer T-14309

T-14309 filed by Wanek Ranch, LLC, PO Box 1287, La Pine, OR 97739, proposes a change in the place of use and character of use to instream use under Certificate 95746. The right allows the use of up to 3.46 cubic foot per second (cfs) under 1897 priority date from the Little Deschutes River in Sec. 34, T23S, R9E, WM for irrigation in Sects. 22, 23, and 27, T22S, R10E, WM and up to 0.29 cfs under 1902 priority date for irrigation in Sec. 22, T22S, R10E, WM. The applicant proposes to create an instream use in the Little Deschutes River from the point of diversion to Lake Billy Chinook on the Deschutes River at a maximum of 1.85 cfs under 1897 priority date and 0.15 cfs under 1902 priority date, and to establish mitigation credits in the Deschutes Groundwater Study Area. The Water Resources Department proposes to approve the transfer, based on the requirements of ORS Chapter 540 and OAR 690-380-5000 and OAR 690-077-0075. The Department has also concluded that the proposed transfer appears to result in mitigation credits pursuant to OAR 690-521-0300 and OAR 690-521-0400.

Any person may file, jointly or severally, a protest or standing statement within 30 days after the last date of newspaper publication of this notice, 04/18/2025. Call (503) 986-0935 to obtain additional information. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

Received

MAY 02 2025

OWRD



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

DATE: APR 08 2025

VIA CERTIFIED MAIL AND E-MAIL

WANEK RANCH, LLC
PO BOX 1287
LA PINE, OR 97739

SUBJECT: Water Right Instream Transfer Application T-14309 (MP-311)

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-14309 and mitigation project MP-311.

A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please don't hesitate to contact me at 503-979-9872 or sarah.a.henderson@water.oregon.gov, if I may be of assistance.

Sincerely,

Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-14347
Jeremy Giffin, District 11 Watermaster (via e-mail)
Owen McMurtrey, GSI Water Solutions, Agent for the applicant (via e-mail)
Kyle Gorman, GSI Water Solutions, Agent for the applicant (via e-mail)

encs

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-14309, and Mitigation	)	PROPOSING APPROVAL OF A CHANGE IN
Project MP-311, Deschutes and Klamath	)	PLACE OF USE AND CHARACTER OF USE
County	)	AND PRELIMINARY AWARD OF
	)	MITIGATION CREDITS

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

Applicant

WANEK RANCH, LLC
PO BOX 1287
LA PINE, OR 97739

Findings of Fact

1. On August 17, 2023, Wanek Ranch filed an application to change the place of use and character of use under Certificate 95746 to instream use. The Department assigned the application number T-14309.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

2. On August 19, 2024, the Department received correspondence from Josh Newton, Attorney for the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribe). The Tribe does not object to the Department processing the Transfer Application T-14309, in accordance with applicable law, and the Department's customary practice.
3. Notice of the application for transfer was published on August 22, 2023, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. Consistent with land use requirements, prior to submitting the instream transfer application, the applicant provided notification of the intent to file the instream transfer application to City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notice of the proposed action to City of LaPine, Deschutes County, Klamath County, Jefferson County, City of Bend and the Confederated Tribes of the Warm Springs upon receipt of Transfer Application T-14309.
4. Certificate 95746 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots, from which the portion of the right is proposed for transfer, have changed since the original water right was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be transferred is described in Finding of Fact No. 6 and is consistent with the water right of record in so far as possible.
5. On November 8, 2024, the Department mailed a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14309 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 8, 2024, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
6. The portion of the right to be transferred is as follows:

Certificate:	95746 in the name of LA PINE COOPERATIVE WATER ASSOCIATION (confirmed by Deschutes River Decree, of record in Salem, in the Order Record of the Water Resources Director in Volume 16, at Page 185)
Use:	IRRIGATION of 150.0 ACRES
Priority Date:	1897 for 138.5 acres of Irrigation and APRIL 30, 1902 for 11.5 acres of Irrigation
Limit/Duty:	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from May 23 to August 20, and ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, from April 1 to May 23 and from August 20 to November 1, and shall be further limited to

a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Priority Date	April 1 to May 23 (cfs)	May 23 to Aug 20 (cfs)	Aug 20 to Nov 1 (cfs)	Duty (af)
1897	1.73	3.46	1.73	554.0
1902	0.14	0.29	0.14	46.0

Period of Use: April 1 to November 1

Source: LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Cert Tax Lot	New Tax Lot	Acres	Owner Name on Certificate
1897 PRIORITY DATE								
22 S	10 E	WM	22	SE NE	101	101	16.5	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NE SE	101	101	20.9	
22 S	10 E	WM	22	SW SE	103	109	1.0	
22 S	10 E	WM	22	SW SE	101	101	1.4	
22 S	10 E	WM	22	SE SE	103	109	0.6	
22 S	10 E	WM	22	SE SE	101	101	5.0	
22 S	10 E	WM	23	NW SW	2401	2401	8.1	
22 S	10 E	WM	23	SW SW	2401	2401	4.8	
22 S	10 E	WM	27	NE NE	103	102	3.8	
22 S	10 E	WM	27	NE NE	103	103	3.6	
22 S	10 E	WM	27	NW NE	103	102	15.6	
22 S	10 E	WM	27	NW NE	103	103	9.2	
22 S	10 E	WM	27	SW NE	103	103	4.2	
22 S	10 E	WM	27	SW NE	103	104	1.4	
22 S	10 E	WM	27	SW NE	108	104	3.0	
22 S	10 E	WM	27	SW NE	108	108	1.8	
22 S	10 E	WM	27	SE NE	103	103	3.0	
22 S	10 E	WM	27	SE NE	103	104	1.2	
22 S	10 E	WM	27	SE NE	108	104	6.2	
22 S	10 E	WM	27	SE NE	108	108	3.9	
22 S	10 E	WM	27	NE SE	108	108	5.4	
22 S	10 E	WM	27	NE SE	108	105	0.3	
22 S	10 E	WM	27	NW SE	108	108	6.4	
22 S	10 E	WM	27	NW SE	108	105	11.2	
Total Acres							138.5	
APRIL 30, 1902 PRIORITY DATE								
22 S	10 E	WM	22	SW NE	101	101	0.1	Wanek, Gordon and Henrietta
22 S	10 E	WM	22	NW SE	101	101	3.8	
22 S	10 E	WM	22	SW SE	101	101	7.6	
Total Acres							11.5	

7. A total of 600.0 Acre-Feet (AF), being 554.0 AF under the 1897 priority date and 46.0 AF under the April 30, 1902 priority date, of water may be beneficially used annually under the existing right.
8. Transfer Application T-14309 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; and to establish mitigation credits in the Deschutes Ground Water Study Area.
9. Transfer Application T-14309 proposes to change the place of use of the right to create an instream reach from the point of diversion on the Little Deschutes River, into the mainstem Deschutes River, and down to Lake Billy Chinook.

10. The applicant proposes the quantities water to be transferred instream be protected as follows:

Priority Date	April 1 to May 23	May 23 to August 20	August 20 to November 1
1897	0.92 CFS	1.85 CFS	0.92 CFS
April 30, 1902	0.08 CFS	0.15 CFS	0.08 CFS

11. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

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

12. The portions of the right proposed to be transferred to instream use were leased instream within the last five years under Instream Lease IL-1450, IL-1742, and IL-1743, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-14309.
14. The transfer application requests to protect water instream from the Little Deschutes River into the mainstem Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be protected instream from the Little Deschutes River is

measurable into the Deschutes River and may be protected instream in the Deschutes River.

15. The segment of the reach on the mainstem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the mainstem Deschutes River (Instream Reach 2 below) requires additional modification to prevent injury and enlargement.
16. Based on Findings of Fact No. 15, the Department proposes to modify the quantities to be transferred and protected instream as follows:

Instream Reach 1: From POD (as described in Finding of Fact No. 6) to the mouth of the Little Deschutes River

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.92	1.85	0.92	554.0
April 30, 1902	0.08	0.15	0.08	46.0
Totals	1.00	2.00	1.00	600.0

Instream Reach 2: In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.86	1.72	0.86	515.2
April 30, 1902	0.07	0.14	0.07	42.7
Totals	0.93	1.86	0.93	557.9

17. The proposed change, as modified, would not result in enlargement of the right.
18. The proposed change, as modified, would not result in injury to other water rights.
19. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
20. The protection of flows, as modified, within the proposed reach is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and channel losses have been accounted for within Reach No. 2; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water.

21. Within the reach on the Little Deschutes River there is an existing instream water right, Certificate 73226, with a priority date of October 11, 1990, that was established under ORS 537.341 (state agency application process), for the purpose of fish migration, spawning, egg incubation, fry emergence and juvenile rearing. There are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), for the purposes of conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values; pollution abatement; and recreation.
22. Within the proposed instream reach on the mainstem Deschutes River, there are numerous existing instream water rights. There is one instream water right, Certificate 59777, established under ORS 537.346 (minimum streamflow conversion) for the purpose of supporting aquatic life and minimizing pollution, from the confluence of the Little Deschutes River to the confluence with Spring River. There is another instream water right, Certificate 59778, also established under ORS 537.346 for the purpose of supporting aquatic life and minimizing pollution, from the confluence with Spring River to the Central Oregon Irrigation District (COID) North Canal Dam. There is also a pending instream water right application, IS-70695, filed by the ODFW pursuant to ORS 537.341 (state agency application process), with the Department to establish an instream water right from the COID North Canal Dam to Lake Billy Chinook. These existing and pending instream water rights have priority dates ranging from 1983 to 1990. The remaining instream water rights were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Most of these instream rights are located between the Central Oregon Canal and Lake Billy Chinook and have priority dates ranging from 1885 to 1961.
23. The existing instream water rights, established under and ORS 537.341 (state agency application process) and ORS 537.346 (minimum streamflow conversion), within the proposed reach on the Little Deschutes River and the Deschutes River are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under an earlier priority date.
24. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer and instream lease process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach on the Little Deschutes River and the Deschutes River, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values, pollution abatement and recreation.

25. During the period April 1 through October 31, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
26. The total monthly quantities of water to be protected under the existing and proposed instream rights within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
27. Instream Lease IL-1742, involving portions of the right proposed for transfer to instream use, terminated on October 31, 2024, and is of no further force or effect. The subsequent credits created by the instream lease expired on December 31, 2024.

Preliminary Award of Deschutes Basin Mitigation Credits

28. Wanek Ranch (the Applicant) has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Applicant has requested that any mitigation credits generated from this project be assigned to Wanek Ranch, LLC.
29. The Department assigned this mitigation credit project number MP-311.
30. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on August 29, 2023. No comments were received in response to this notice.
31. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Environmental Quality (DEQ), and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on August 24, 2023. Comments from DEQ were received in response to this notice and in favor of the application.
32. As part of the public notice of the mitigation project, the Department identified that the project may result in 270.0 mitigation credits. This preliminary determination was based upon the proposal to transfer 150.0 acres of irrigation use to instream use with a priority date of 1897 (138.5 acres of irrigation use) and April 30, 1902 (11.5 acres of irrigation use). Irrigation of 150.0 acres has an average consumptive use of 270.0 acre-feet (150.0 acres * 1.8 AF/acre = 270.0 AF). However, this volume may only be protected instream to the mouth of the Little Deschutes River (the Little Deschutes Zone of Impact).
33. The Department also identified that a portion of the mitigation credits may be available for use in the Upper Deschutes, Middle Deschutes and General Zones of Impact, because the reach of the instream use described in Finding of Fact No. 16 extends through the lower portion of the Upper Deschutes Zone of Impact and then into the Middle Deschutes Zone

of Impact and ending at the General Zone of Impact. However, these credits must be reduced by 7% to account for the losing reach as identified in Finding of Fact No. 15.

34. Therefore, a maximum of 270.0 mitigation credits may be awarded to this mitigation credit project. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Little Deschutes Zone of Impact. Of the **270.0** mitigation credits within the **Little Deschutes** Zone of impact awarded to this mitigation project, up to **251.1** mitigation credits may be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**.
35. A maximum of 600.0 AF is proposed to be transferred to instream use and up to 270.0 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
36. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.
37. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application. As identified in Finding of Fact No. 27, instream lease IL-1742 terminated October 31, 2024 and the credits created by the instream lease expired on December 31, 2024.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-14309 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

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

If Transfer Application T-14309 is approved, the final order will include the following:

1. *The changes in character of use and place of use to instream use proposed in application T-14309 are approved.*
2. *Water right certificate 95746 is modified. The Department will issue a superseding certificate describing the right when it determines that it is necessary for record keeping.*
3. *The instream water right shall provide for the protection of streamflows as follows:*

Instream Reach 1: From POD (as described in Finding of Fact No. 6) to the mouth of the Little Deschutes River

Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.92	1.85	0.92	554.0
April 30, 1902	0.08	0.15	0.08	46.0
Totals	1.00	2.00	1.00	600.0

Instream Reach 2: In the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

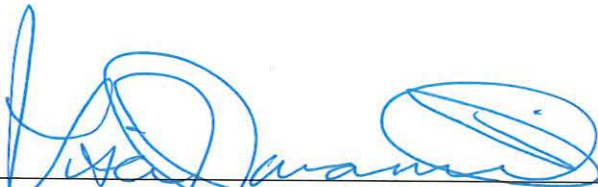
Priority Date	April 1 - May 22 (CFS)	May 23 - August 19 (CFS)	August 20 - Oct. 31 (CFS)	Volume (AF)
1897	0.86	1.72	0.86	515.2
April 30, 1902	0.07	0.14	0.07	42.7
Totals	0.93	1.86	0.93	557.9

4. *Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.*
5. *Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.*
6. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
7. *The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 95746 and any related decree.*
8. *The former place of use of the transferred water shall no longer receive water as part of this right.*
9. **Preliminary Award of Mitigation Credits:** *Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of **270.0 credits**, as described herein, may be awarded to this mitigation project and assigned to Wanek Ranch, LLC. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Little Deschutes Zone of Impact**. Of the 270.0 mitigation credits awarded to*

*this project, up to 251.1 credits may also be used in the **Upper Deschutes, Middle Deschutes, and General Zones of Impact**. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under a new instream water right.*

- 10. Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.*
- 11. The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this day APR 08 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

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

Protests

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

statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later.

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

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

Requests for Standing

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

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

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

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been

filed under OAR 690-380-4030. In accordance with OAR 690-380-4200, notice and conduct of the hearing shall:

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

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

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

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

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

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

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

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

Watermaster Review Form: Water Right Transfer



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

Transfer Application: T-14309

Review Due Date: 09/20/2023

Applicant Name: Wanek Ranch LLC

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

Reviewer(s): Giffin

Date of Review: 08/22/2023

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 back to 1902 on dry years and 1913 on wet years.
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:

Yes there are losses in the stream channel and the transfer, if approved, should match the losses that are charged to the current leases of these rights as well as all instream transfers from the same originating right.

☐ 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:

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. For POU changes that involve micro-irrigation: ☒ N/A

- a. Has the applicant made changes (absent a transfer) to convert to micro-irrigation within the current place of use boundary of the water right proposed for transfer, and previously demonstrated to the Department through monitoring and site inspections by the Watermaster that the proposed transfer will not result in injury or enlargement?

☐ Yes ☐ No If "Yes", explain:

- b. Has a temporary transfer of this nature been previously filed and approved on the same lands (or portions thereof) as those lands involved in this transfer?

☐ Yes ☒ No If "Yes", answer the following:

- i. Were there any problems with more acres being irrigated (or wetted) than were authorized under the temporary transfer? ☐ Yes ☐ No If "Yes", explain:
- ii. Did the designated areas that were to remain dry (or not wetted) under the temporary transfer actually remain dry? ☐ Yes ☐ No If "No", explain:
- iii. Did the applicant comply with and meet all of the conditions of the temporary transfer? ☐ Yes ☐ No If "No", explain:
- iv. Do you have any other observations regarding the temporary transfer? ☐ Yes ☐ No If "Yes", describe:
- v. Did the applicant demonstrate to the Department through monitoring and site inspections by the Watermaster that neither injury nor enlargement occurred as a result of the temporary transfer? ☐ Yes ☐ No If "No", explain:

- c. To the best of your knowledge, if this transfer is approved, does it appear that:

- i. "Injury" will occur to other water rights that share the same source? ☐ Yes ☒ No If "Yes", explain:

As long as loss factors are assessed to the new proposed ISWR.

- ii. "Enlargement" of the water right being transferred will occur? ☐ Yes ☒ No If "Yes", explain:

As long as loss factors are assessed to the new proposed ISWR.

12. 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:

13. What alternatives may be available for addressing any issues identified above:

14. 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 and provided below:

☐ For POU changes that involve micro-irrigation, provide the monitoring and reporting conditions necessary to prevent injury/enlargement:

☐ 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 4)

*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 ☐ with the exception that water rights issued to the Bureau of Reclamation or an irrigation district (or similar entity) are not subject to this condition.*

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 4)

*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:

☐ Weir
☐ Parshall Flume
☐ Other: ____

☐ Submerged Orifice
☐ Flow Restrictor

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



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

August 21, 2023

WANEK RANCH LLC

PO BOX 1287

LA PINE, OR 97739

Reference: Instream Transfer T- 14309

On August 17, 2023, we received your water right Transfer application. The application was accompanied by \$1840.00. Our receipt number 141423 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.

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) 986-0935.

Cc: Watermaster Dist. #11 (via email)
City of LaPine
Deschutes County
Jefferson County Community Development
City of Bend
Klamath County Planning
Confederated Tribes of the Warm Springs Reservation
Owen McMurtrey, Agent
Bureau of Reclamation

Enclosure

STATE OF OREGON
WATER RESOURCES DEPARTMENT

RECEIPT # 141423

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 T-14309

CASH: ☐ CHECK: # 026209 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 1,840.00

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 46110

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

WATER RIGHTS:

0201 SURFACE WATER EXAM FEE 0202 RECORD FEE \$
0203 GROUND WATER EXAM FEE 0204 RECORD FEE \$
0205 TRANSFER EXAM FEE \$ 1,840.00

WELL CONSTRUCTION

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

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 (FW/WRD) \$
0231 HYDRO LICENSE FEE (FW/WRD) \$
HYDRO APPLICATION \$

TREASURY OTHER / RDX

FUND TITLE

OBJ. CODE VENDOR #

DESCRIPTION \$

RECEIPT:

141423

DATED: 8/17/2023

BY: [Signature]

Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

GSI WATER SOLUTIONS INC

Check Date: 8/9/2023

Invoice Number	Date	Voucher	Amount	Discounts	Previous Pay	Net Amount
TA_Wanek Ranch 8/9	8/9/2023	0022500	1,840.00			1,840.00
Oregon Water Resources Department			1,840.00			1,840.00
Beneficial Checking 1		00275				
		TOTAL				

026209

RECEIVED
AUG 17 2023
OWRD

Application for
Water Right Instream Transfer
Part 1 of 6 – Minimum Requirements Checklist



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

This transfer application will be returned if Parts 1 through 6 and all required attachments are not completed and included.

For questions, please call (503) 986-0900, and ask for Transfer Section.

FOR ALL INSTREAM TRANSFER APPLICATIONS

RECEIVED
AUG 17 2023

OWRD

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

- ☒ Part 1 – Completed Minimum Requirements Checklist.
- ☒ Part 2 – Completed Map Checklist.
- ☒ Part 3 – Application Fee, payable by check to the Oregon Water Resources Department, and completed Fee Worksheet, page 3. Try the new online fee calculator at: http://apps.wrd.state.or.us/apps/misc/wrd_fee_calculator. If you have questions, call Customer Service at (503) 986-0801.

Note: Instream transfers are considered both a change in place of use and character of use. In addition, an automatic 50% fee waiver applies to all instream transfers.

- ☒ Part 4 – Completed Applicant Information and Signature.
- ☒ Part 5 – Completed Instream Use Information.
- ☒ Part 6 – Information about the Transferred Water Rights: **How many water rights are to be transferred? 1 List them here: 95746**
Please include a separate Part 6 for each water right. (See instructions on page 8)

Attachments:

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

(For Staff Use Only)

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

___ 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- _____ 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.

RECEIVED
AUG 17 2023
OWRD

Part 3 of 6 – Fee Worksheet

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

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

1. For irrigation calculate cfs for each water right involved as follows:
 - a. Divide total authorized cfs by total acres in the water right (*for C12345, 1.25 cfs ÷ 100 ac*); then multiply by the number of acres to be transferred to get the transfer cfs ($\times 45 \text{ ac} = 0.56 \text{ cfs}$).
 - 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 ac \times 0.0125 cfs/ac = 0.56 cfs*)
2. Add cfs for the portions of water rights on all the land included in the transfer; however **do not count cfs for supplemental rights on acreage for which you have already calculated the cfs fee for the primary right on the same land**. The fee should be assessed only once for each “on the ground” acre included in the transfer. (*In this example, blank 3a would be only 0.56 cfs, since both rights serve the same 45.0 acres. Blank 3b would be 0 and Line 3 would then also become 0*).

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Part 4 of 6 – Applicant Information and Signature

Is this a ☒ Permanent Instream Transfer or ☐ Time-Limited Instream Transfer?

Applicant Information

APPLICANT/BUSINESS NAME Wanek Ranch, LLC			PHONE NO.	ADDITIONAL CONTACT NO.
ADDRESS P.O. Box 1287			FAX NO.	
CITY La Pine	STATE OR	ZIP 97739	E-MAIL artla@yahoo.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.				

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

AGENT/BUSINESS NAME GSI Water Solutions, Inc. c/o Owen McMurtrey			PHONE NO. (541) 257-9005	ADDITIONAL CONTACT NO.
ADDRESS 1600 SW Western Boulevard			FAX NO.	
CITY Corvallis	STATE OR	ZIP 97333	E-MAIL omcmurtrey@gsiws.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:

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

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

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

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

Check one box

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

Check the following boxes that apply:

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

IRRIGATION DISTRICT NAME	ADDRESS	
CITY	STATE	ZIP

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

ENTITY NAME	ADDRESS	
CITY	STATE	ZIP



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

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

ENTITY NAME Deschutes County	ADDRESS P.O. 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

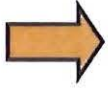
ENTITY NAME City of Bend Planning Department	ADDRESS 710 NW Wall Street	
CITY Bend	STATE OR	ZIP 97701

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 P.O. Box C	
CITY Warm Springs	STATE OR	ZIP 97761

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

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



Wendy W. Potok
Applicant Signature

Wendy Potok
Print Name (and Title if applicable)

August 9, 2003
Date

Applicant Signature

Print Name (and Title if applicable)

Date

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

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Part 5 of 6 – Proposed Instream Use Information

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

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

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Instream use proposed to be created by the instream transfer:

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

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

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

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

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

Identify the location of the proposed instream water right.

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

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

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

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

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

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

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

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

- ☒ Yes ☐ No. If no, please explain your intent: _____.

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

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

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

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

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

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

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Part 6 of 6 – Water Right Information

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

CERTIFICATE # 95746

Name on Certificate: La Pine Cooperative Water Association

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

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

Description of Water Delivery System

System capacity: 26.874 cubic feet per second (cfs) OR

_____ gallons per minute (gpm)

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

Other Water Rights

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

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



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

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

(Note: If the POD name is not specified on the certificate, assign it a name or number here.

Also, if the POD is not described in the Certificate, provide a description below)

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

Will the proposed instream transfer affect the entire water right?

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

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

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

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

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

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

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

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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)
County of DESCHUTES) ss

I, WENDY POTOK, in my capacity as _____,

mailing address P.O. BOX 1287, LA PINE, OREGON 97739

telephone number (____)____, being first duly sworn depose and say:

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

☒ Personal observation ☐ Professional expertise

2. I attest that:

☐ Water was used during the previous five years on the **entire** place of use for Certificate # _____; **OR**

☒ My knowledge is specific to the use of water at the following locations within the last five years (**place of use leased instream under IL-1742, IL-1743, and IL-1450**):

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

OR

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

(continues on reverse side)

3. The water right was used for: (e.g., crops, pasture, etc.): INSTREAM LEASE

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

Signature of Affiant

Date 14309

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

Notary Public for Oregon

My Commission Expires: _____

Supporting Documents	Examples
<input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate)	Copy of 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 type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none">● 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	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com</p>
<input checked="" type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number – <u>IL-1743, IL-1742, IL-1450. See attached final orders of approval and cancellation.</u>

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BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

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

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

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Lessor

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

Lessee

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

Findings of Fact

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

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

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

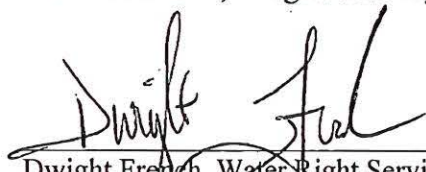
Conclusions of Law

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

Now, therefore it is ORDERED:

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

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



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

Mailing date: MAR 12 2019

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

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BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

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

Authority

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

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Lessor

Wanek Ranch LLC
P.O. BOX 1098
La Pine, OR. 97739
artla@yahoo.com

Lessee

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

Findings of Fact

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

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

Use: Irrigation of 133.6 acres

Season of Use: April 1 to November 1

Priority Dates: April 30, 1902

Quantity: **Rate/Volume:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40th of one cubic foot per second, or its equivalent for each acre irrigation, from May 23 to August 20, and 1/80th of one cubic foot per second, or its equivalent for each acre irrigated, from

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

April 1 to May 23 and from August 20 to November 1, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

April 1 to May 23 & Aug. 20 to Nov. 1	May 23 to Aug 20	Duty
1.67 CFS	3.34 CFS	534.4 AF

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot original (new)	Acres
22 S	10 E	WM	22	SW SE	101	2.7
22 S	10 E	WM	22	SW SE	103 (109)	1.6
22 S	10 E	WM	22	SE SE	101	4.2
22 S	10 E	WM	22	SE SE	103 (109)	0.5
22 S	10 E	WM	27	NW NE	103 (102)	20.6
22 S	10 E	WM	27	NW NE	103	14.6
22 S	10 E	WM	27	NE NE	103 (102)	4.4
22 S	10 E	WM	27	NE NE	103	4.6
22 S	10 E	WM	27	SW NE	103	7.5
22 S	10 E	WM	27	SW NE	108 (104)	20.1
22 S	10 E	WM	27	SW NE	108	6.5
22 S	10 E	WM	27	SE NE	103	3.5
22 S	10 E	WM	27	SE NE	108 (104)	8.3
22 S	10 E	WM	27	SE NE	108	4.0
22 S	10 E	WM	27	NW SE	108	11.3
22 S	10 E	WM	27	NW SE	108 (105)	13.5
22 S	10 E	WM	27	NE SE	108	5.3
22 S	10 E	WM	27	NE SE	108 (105)	0.4
Total						133.6

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- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
- A portion of the water diverted at the POD returns to the Little Deschutes River below the POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for both surface and subsurface return flows.

The hydrogeologic evaluation of where subsurface return flows occur is generally based on the following information: 1) the local shallow and regional ground water elevations, 2) the shallow and regional head gradient (i.e. ground water flow direction), 3) elevation of nearby streams, 4) elevation of closest gaining stream reaches, 5) distance from nearby streams and gaining stream reaches, and 6) local geologic information. When evaluating for return flows, the Department generally considers the place of use as a whole and where the majority of return flows occur based upon the presence of surface return flows (overland flow) and the factors described above for any subsurface return flows.

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

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

5. The lease application requests to protect water instream from Little Deschutes River into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Little Deschutes River.
6. The segment of the reach on the main stem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the main stem Deschutes River requires additional modification to prevent injury and enlargement.
7. At the instream rates and volumes requested, the Department cannot protect water instream during the full instream period. However, water may be protected instream over the full instream period by reducing the proposed instream rates.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Little Deschutes River, tributary to the Deschutes River

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

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

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

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

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

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

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

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

Preliminary Award of Deschutes Basin Mitigation Credits

18. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
19. The Department assigned this mitigation credit project number MP-248.
20. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2). Comments were received by the Oregon Department of Environmental Quality, in favor of the instream lease.

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

Conclusions of Law

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

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

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.

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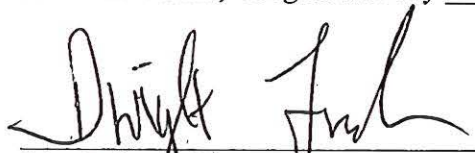
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2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3.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

Dated at Salem, Oregon this day MAY 24 2019.



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

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Mailing date: MAY 28 2019

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

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

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

Authority

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

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Lessor

Wanek Ranch LLC
P.O. BOX 1098
La Pine, OR. 97739
artla@yahoo.com

Lessee

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

Findings of Fact

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

2. The portion of the right to be leased is as follows:

Certificate:	90239 in the name of La Pine Cooperative Water Association (confirmed by the Deschutes River Decree, of record at Salem, in the Order Record of the Water Resources Director in Volume 16, Page 185)
Use:	Irrigation of 105.1 acres
Season of Use:	April 1 to November 1
Priority Dates:	April 30, 1902
Quantity:	Rate/Volume: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40 th of one cubic foot per second, or its equivalent for each acre irrigation, from May 23 to August 20, and 1/80 th of one cubic foot per second, or its equivalent for each acre irrigated, from

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

April 1 to May 23 and from August 20 to November 1, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
22 S	10 E	WM	22	SW NE	101	37.4
22 S	10 E	WM	22	SE NE	101	1.0
22 S	10 E	WM	22	NW SE	101	39.3
22 S	10 E	WM	22	SW SE	101	27.4
Total						105.1

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- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
- A portion of the water diverted at the POD returns to the Little Deschutes River below the POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for both surface and subsurface return flows.

The hydrogeologic evaluation of where subsurface return flows occur is generally based on the following information: 1) the local shallow and regional ground water elevations, 2) the shallow and regional head gradient (i.e. ground water flow direction), 3) elevation of nearby streams, 4) elevation of closest gaining stream reaches, 5) distance from nearby streams and gaining stream reaches, and 6) local geologic information. When evaluating for return flows, the Department generally considers the place of use as a whole and where the majority of return flows occur based upon the presence of surface return flows (overland flow) and the factors described above for any subsurface return flows.

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

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

- The lease application requests to protect water instream from Little Deschutes River into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Little Deschutes River.

6. The segment of the reach on the main stem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the main stem Deschutes River requires additional modification to prevent injury and enlargement.
7. At the instream rates and volumes requested, the Department cannot protect water instream during the full instream period. However, water may be protected instream over the full instream period by reducing the proposed instream rates.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Little Deschutes River, tributary to the Deschutes River

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

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

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

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

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

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

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion and have been accounted for in Reach 3; and
 - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right and have been accounted for in Reach 2.
11. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

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

Preliminary Award of Deschutes Basin Mitigation Credits

18. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
19. The Department assigned this mitigation credit project number MP-249.
20. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2). Comments were received by the Oregon Department of Environmental Quality, in favor of the instream lease application.
21. As part of the public notice of the mitigation project, the Department identified that the project may result in 189.2 mitigation credits. Irrigation of 105.1 acres has an average consumptive use of 189.2 AF. However, this volume may only be protected instream in the Little Deschutes River. The quantity of water that may be protected instream downstream of the Little Deschutes River requires modification to account for streamflow losses on the Deschutes River, which reduces the amount of mitigation available from the project. In the Little Deschutes River up to 189.2 AF may be protected instream for mitigation purposes. This is the amount of mitigation available in the Little Deschutes Zone of Impact. Only up to 175.9 AF of this quantity may be protected instream into the Deschutes River. This is the amount of mitigation available in the Upper Deschutes, Middle Deschutes, and General Zones of Impact.

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

Conclusions of Law

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

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

Now, therefore it is ORDERED:

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

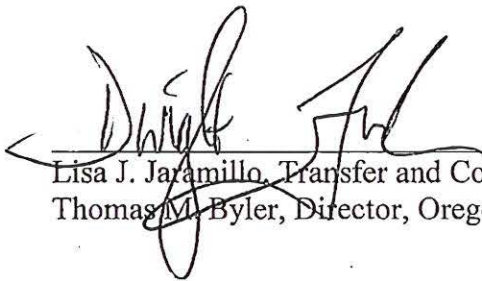
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allowed until the following calendar year, unless the Director determines that enlargement would not occur.

4. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of this Final Order results in completion of the project and verification by the Department that the project is complete. The Department concludes that the mitigation credit project is awarded mitigation credits, as described above, pursuant to OAR 690-521-0400 and ORS 537.746. Mitigation Credits, in the amount of **189.2** credits, as described herein, are awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation Credits may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Little Deschutes Zone of Impact**. Of the **189.2** mitigation credits awarded to this project, up to **175.9** of those credits may also be used in the **Upper Deschutes, Middle Deschutes and General Zones of Impact**.
5. Mitigation credits are valid until used (or until they expire or are terminated) to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.
6. The mitigation credits shall expire on December 31, 2023.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this day MAY 24 2019.



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

Mailing date: MAY 28 2019

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

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August 8, 2023

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

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

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

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

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

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

To Whom it May Concern:

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

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

Sincerely,

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

Owen McMurtrey
Water Resources Consultant
GSI Water Solutions, Inc.

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

Total: 150.0 218.1 368.1 368.1

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August 8, 2023

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

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

Dear Sarah:

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

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

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

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

Sincerely,

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

Owen McMurtrey
Water Resources Consultant

Enclosures

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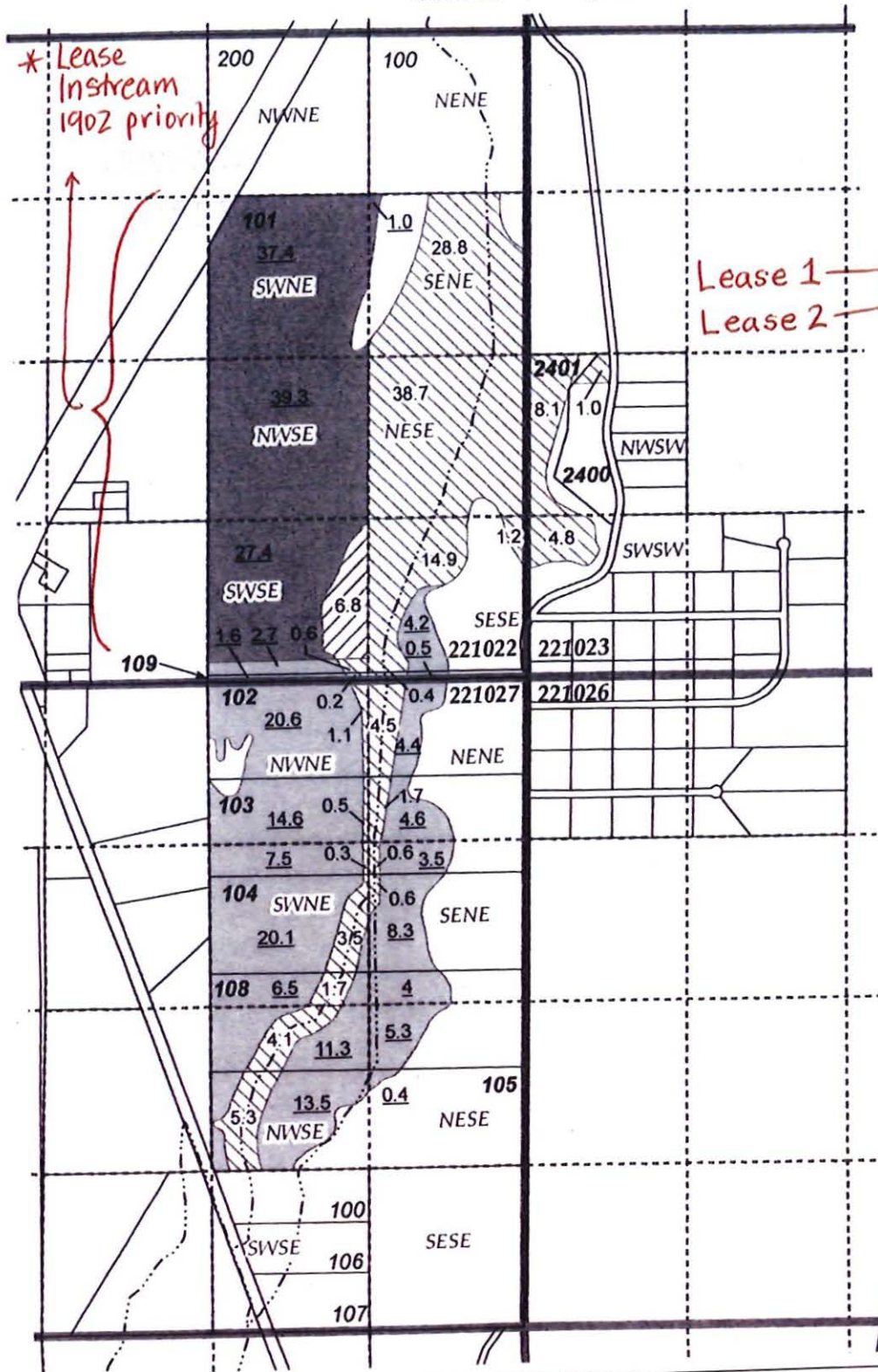
14309

DESCHUTES COUNTY T22S R10E Sections 22, 23, 27

SCALE: 1" = 1,320'



0 1,320 Feet



Certificate 90239 (priority date)

- Leased Acres (1897), 133.6 ac
- Leased Acres (1902), 105.1 ac *
- Acres to Remain On (1897), 122.6 ac
- Acres to Remain On (1902), 6.8 ac
- Taxlot
- PLSS Section
- PLSS 1/4 1/4 Section
- Canal

Lease 1 →
Lease 2 →

Received by OWRD

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Source:
2005/06 Deschutes County GIS taxlot alignment
OWRD Water Rights Information System

INSTREAM LEASE MAP FOR WANEK RANCHES, LLC

Deschutes River Conservancy

Taxlot #: 101,102,103,104,105,108,109,2400,2401

Date: 03/26/19

238.7 acres instream
129.4 acres remain

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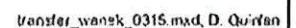
transfer_wanek_032619.mxd D. Quillian



SCALE: 1" = 1,320'



SALEM, OR



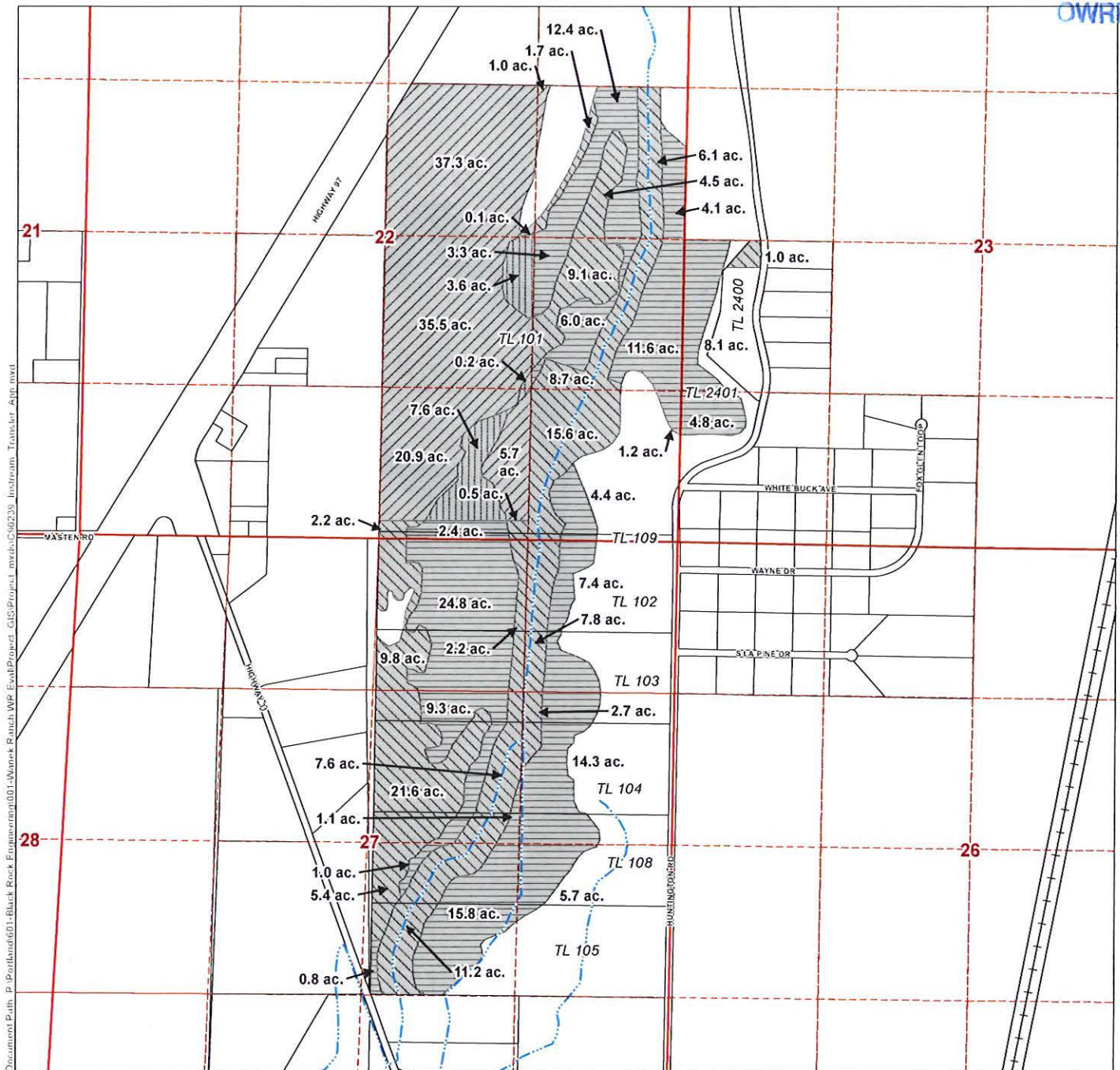
Application for a Water Right Instream Transfer in the Name of Wanek Ranch, LLC

FROM Lands - Certificate 95746
Deschutes County, Oregon
Township 22 South, Range 10 East (W.M.)

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LEGEND

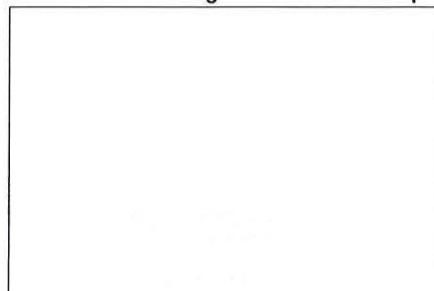
Place of Use (POU)

- Lands to Remain - 1902 Priority
- Lands to Remain - 1897 Priority
- From Lands - 1902 Priority
- From Lands - 1897 Priority

All Other Features

- Tax Lots
- Railroad
- Watercourses

Certified Water Rights Examiner Stamp



DISCLAIMER

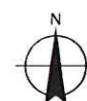
This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

MAP NOTES

Date: June 2, 2016

Data Sources: Deschutes Co GIS, DRC, OGIC

14309

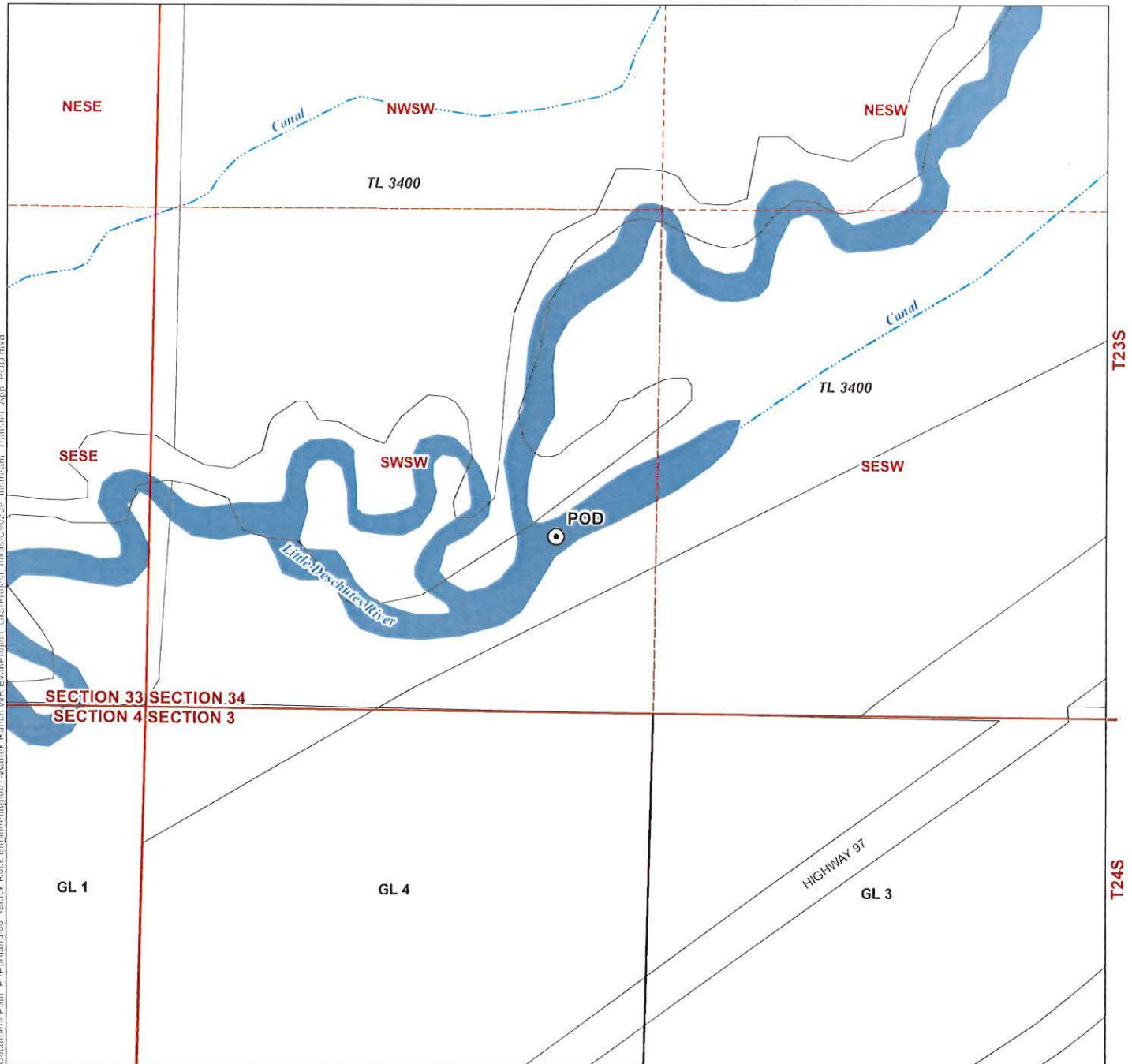


0 660 1,320
1 inch = 1,320 feet



Application for a Water Right Instream Transfer in the Name of Wanek Ranch, LLC

Point of Diversion - Certificate 95746
Klamath County, Oregon
Township 23 South, Range 9 East (W.M.)



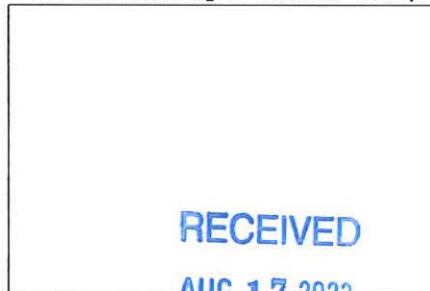
LEGEND

- Point of Diversion (POD)
- Tax Lot (TL)
- Government Lot (GL)
- Waterbodies
- Watercourses

POD LOCATION DESCRIPTION

POD
Located 550 feet North and 1,150 feet East from the SW corner of Section 34, Township 23 South, Range 9 East (W.M.)

Certified Water Rights Examiner Stamp



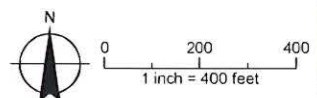
DISCLAIMER

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 10, 2016

Data Sources: Klamath Co GIS, US BLM, USGS



Application for Water Right Transfer Evidence of Use Affidavit



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

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

State of Oregon)
) ss

County of DESCHUTES

I, WENDY POTOK, in my capacity as _____,

mailing address P.O. BOX 1287, LA PINE, OREGON 97739

telephone number 541 480-7592, being first duly sworn depose and say:

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

☒ Personal observation

☐ Professional expertise

I attest that:

☐ Water was used during the previous five years on the entire place of use for
Certificate # _____; OR

☒ My knowledge is specific to the use of water at the following locations within the last five years
(place of use leased instream under IL-1742, IL-1743, and IL-1450):

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

OR

☐ Confirming Certificate # _____ has been issued within the past five years; OR

☒ Part or all of the water right was leased instream at some time within the last five years. The
instream lease number is: IL-1742, IL-1743, AND IL-1450 (TERMINATED 3/11/2019) (Note: If the entire right proposed
for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); OR

☐ The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use
would be rebutted under ORS 540.610(2) is attached.

☐ Water has been used at the actual current point of diversion or appropriation for more than
10 years for Certificate # _____ (For Historic POD/POA Transfers)

(continues on reverse side)

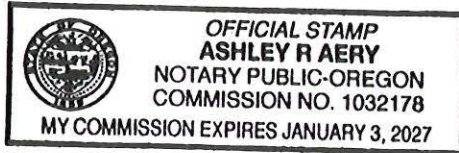
3. The water right was used for: (e.g., crops, pasture, etc.): INSTREAM LEASE

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above
statements, my application will be considered incomplete.

Wendy W. Potok
Signature of Affiant

August 22, 2023
Date

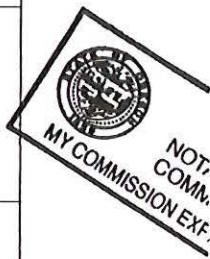
Signed and sworn to (or affirmed) before me this 22nd day of August, 2023.



Ashley Aery
Notary Public for Oregon

My Commission Expires: 1-3-2027

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 type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	<ul style="list-style-type: none">• 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	<p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com</p>
<input checked="" type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number – <u>IL-1743, IL-1742, IL-1450. See attached final orders of approval and cancellation.</u>



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