

Instream

T-13437

Name City of Bend
Attn: Patrick Griffiths
 Address 122975 Boyd Acres Rd
Bend Oregon 97701
pgriffiths@bendoregon.gov

DESCRIPTION OF WATER RIGHT(S)

Name of Stream Deschutes riverTrib. of Columbia RiverUse Industrial, Pond mkt. mining, Quasi muni, muni, IrrigationCounty Crook, Deschutes

Quantity of water (CFS) _____ No. of Acres _____

Name of ditch _____

App# Decree Per # Deschutes R. Cert # 949510 PR Date _____

App# _____ Per # _____ Cert # _____ PR Date _____

App# _____ Per # _____ Cert # _____ PR Date _____

App# _____ Per # _____ Cert # _____ PR Date _____

App# _____ Per # _____ Cert # _____ PR Date _____

Change in USE, POW
 Date Filed 5/13/2020
 Initial notice date 5/26/2020
 DPD issued date 9-29-2020
 PD issued date 12/22/2020
 PD notice date 12/22/2020
 Date of FO _____ Vol _____ Page _____

C-Date _____
 COBU due date _____
 COBU Received date _____
 Certificate issued _____

FEES PAID

Date 5-13-2020 Amount \$1,045.00 Receipt # 132508

FEES REFUNDED

Date _____ Amount _____ Receipt # _____

Assignments: _____

Irrigation District Central Oregon Irrigation districtAgent GSI water Solutions - awen mcmurtrey amcmurtrey@GSIWS.com

CWRE _____

CC's list Bureau of reclamation, City of bend, Deschutes county Planning,
Jefferson County Planning, Wasco county, Sherman County, Confed tribes
of Warm Springs

☐ - Oversized map - Location _____

STATE OF OREGON
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # 133980

INVOICE # _____

RECEIVED FROM: 651 Water Solutions, Inc.

BY: _____

APPLICATION	
PERMIT	
TRANSFER	<u>T-13437</u>

CASH: ☐ CHECK # 23034 OTHER: (IDENTIFY) ☐

TOTAL REC'D \$ 1,022.40

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES 46118 \$
0207 OTHER: (IDENTIFY) Newspaper Notice \$ 1,022.40

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

4270 WRD OPERATING ACCT

MISCELLANEOUS

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

WATER RIGHTS:

0201	SURFACE WATER	\$	0202	\$
0203	GROUND WATER	\$	0204	\$
0205	TRANSFER	\$		

WELL CONSTRUCTION

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

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	\$	CARD #	
0210	MONITORING WELLS	\$	CARD #	
	OTHER (IDENTIFY)			

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)	\$
0231	HYDRO LICENSE FEE (FW/WRD)	\$
	HYDRO APPLICATION	\$

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ \$ _____

RECEIPT: 133980

DATED: 11-19-2020

BY: [Signature]

Affidavit of Publication

STATE OF OREGON, COUNTY OF DESCHUTES

I, **Leanna Williams**, 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

PO Box 6020, Bend, Oregon 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: WATER RESOURCES DEPARTMENT

PO Number:

Legal Description: Legal Notice
Notice of Preliminary Determination for
Water Right Transfer T-13437 (Mitigation Credit Project MP-263)

RECEIVED

JAN 11 2021

OWRD

T-13437 filed by City of Bend, 62975 Boyd Acres Road, Bend, OR 97701, 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:

12/29/2020, 01/05/2021

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

Leanna W.
Signature

Dated at Bend, Oregon, this 5th day of January, 2021

AdName: 133329

State of Oregon, County of Deschutes

Subscribed and Sworn to before me this 5 day of Jan, 2021 by

Linda Lea Preston

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 _____

Legal Notices & Public Notices	1001 Legal Notices & Public Notices
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OR 97701, proposes to change the place of use and character of use to instream use under Certificate 94956. The right allows the use of up to 0.255 cubic foot per second (CFS) from the Deschutes River in Sec. 31, T17S, R12E, W.M. for municipal use in Sec. 32, T17S, R12E, W.M. The applicant proposes to create an instream use in the Deschutes River from the point of diversion to the mouth of the Deschutes River at a maximum of 0.255 CFS, 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, 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 & OAR 690-521-0400.

ensure the Department receives the protest by the deadline specified above. Call (503) 986-0815 to obtain additional information. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.

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 01/05/2021. Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to

Legal Notice
Notice of Preliminary
Determination for
Water Right Transfer
T-13437 (Mitigation
Credit Project MP-
263)

T-13437 filed by City of
Bend, 62975 Boyd
Acres Road, Bend,



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

February 18, 2021

Applicant

CITY OF BEND
62975 BOYD ACRES ROAD
BEND, OREGON 97701
pgriffiths@bendoregon.gov

Re: Instream Transfer T-13437 & Mitigation Credit Project MP-263

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 the **City of Bend**.

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 **41.97** 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 mitigation credits may be used in the **Middle Deschutes and/or General Zones of Impact** as described above. 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.

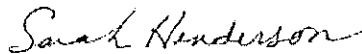
If you decide to assign the mitigation credits to someone other than a groundwater user, the Department would like to suggest that the enclosed Assignment of Mitigation Credits form (chain-of-custody) be used to assign credits to another party. An additional Assignment of Mitigation Credit form is also 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) 986-0884.

Sincerely,



Sarah Henderson
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-13437 (MP-263)**Error! Reference source not found.**
 Jeremy Giffin, District 11 Watermaster (*via e-mail*)
 Owen McMutrey, Agent for the applicant (*via e-mail*) (omcmurtrey@qsiws.com)
 Adam Sussman, Agent for the applicant (*via e-mail*) (asussman@qsiws.com)
 U.S. Bureau of Reclamation (cchad@usbr.gov) (emcgarry@usbr.gov)
 Central Oregon Irrigation District (lesliec@coid.org)
 Ann Reece, District Program Coordinator, OWRD

encs



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

EXAMPLE ONLY - DESCHUTES BASIN MITIGATION CREDIT DOCUMENTARY EVIDENCE FORM

This form is to be completed when mitigation credits are obtained from a mitigation credit holder, other than a mitigation bank, by a ground water application/permit/certificate holder to satisfy a mitigation obligation under the Deschutes Ground Water Mitigation rules. Please print in ink or type all information. If there are any questions about this form, please contact the Department.

Ground Water User Information:

Name: Ken Smith

Mailing Address (Street, City, State, Zip): 967 Fairmont Drive, Bend, OR 97701

Phone Number (Home and Work - including area code): (541) 388-0000 (Home) (541) 389-0000 (work) _____ (other)

E-Mail (optional): _____

Ground Water Application, Permit, or Certificate #: G-99999

Mitigation Obligation (amount) (see Notice of Mitigation Obligation or Initial Review for this information): 5.0 acre-feet

Zone of Impact (see Notice of Mitigation Obligation or Initial Review for this information): General Zone of Impact

Mitigation Credit Holder Information:

Mitigation Credit Holder Name: Tom Cooper

Mailing Address: 9090 Perfect Loop, Bend, Oregon 97709

Phone Number (including area code): _____ (Home) (541) 777-9999 (work) _____ (other)

E-Mail (optional): _____

If mitigation credits have changed hands beyond the original credit holder, a complete assignment record (chain-of-custody) for the mitigation credits should be included with this documentary evidence form to help demonstrate that the credits are valid. This information may be obtained from the mitigation credit holder.

Mitigation Credit Information:

In the following table, identify the mitigation project identification number(s), the number of credits assigned from each mitigation project, the zone of impact in which the credits are to be used (note - many credits may be used within more than one zone of impact) and the type of mitigation project upon which the credits are based.

Project Type Codes: Allocation of Conserved Water = ACW Permanent Instream Transfers = PT Storage Release = SR
Aquifer Recharge = AR Other = Other (if other, please describe under project type in space provided below)

<u>Mitigation Project ID</u>	<u># Mitigation Credits Assigned</u>	<u>Zone of Impact</u>	<u>Mitigation Project Type Code (see above)</u>
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<u>MP-99</u>	<u>5.0</u>	<u>General</u>	<u>PT</u>
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Add additional mitigation projects and credits by attaching additional forms or additional pages, using above format, if necessary.

Mitigation Project Operator (if other than original credit holder): _____ (for example, name of storage project or aquifer recharge project operator)

Mailing Address: _____

Phone Number (including area code): _____

For Stored Water Releases (if applicable):

Name of Reservoir: _____

Reservoir Permit/Certificate: _____ Contract Number(s): _____

The above described mitigation credits have been transferred from _____, mitigation credit holder, to _____, ground water application/permit/certificate holder.

signature of Tom Cooper
Mitigation Credit Holder Signature

8-15-2006
Date

signature of Ken Smith
Ground Water Application/Permit/Certificate Holder Signature

8-15-2006
Date



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

EXAMPLE ONLY - ASSIGNMENT RECORD FOR MITIGATION CREDITS
CHAIN OF CUSTODY

Mitigation Credit Project: MP-99 Mitigation Credits: 10.0

Mitigation Credit Holder: John Smith

10.0 Mitigation credits have been assigned to (Name): Brian Jones

Mailing Address: 5151 Tiger Drive, Bend, OR 97701

Phone Number: (541) 389-9999

Signature of John Smith 12/13/2005
Current Mitigation Credit Holder Signature Date

Signature of Brian Jones 12/13/2005
New Mitigation Credit Holder Signature Date

Mitigation Credit Holder: Brian Jones

5.0 Mitigation credits have been assigned to (Name): Judith Niles

Mailing Address: 6000 Balmy Road, Redmond, Oregon 97756

Phone Number: (541) 677-8888

Signature of Brian Jones 5/6/2006
Current Mitigation Credit Holder Signature Date

Signature of Judith Niles 5/6/2006
New Mitigation Credit Holder Signature Date

Mitigation Credit Holder: Brian Jones

5.0 Mitigation credits have been assigned to (Name): Jackson Long

Mailing Address: 800 Finders Way, Prineville, Oregon 97754

Phone Number: (541) 888-9999

Signature of Brian Jones 6/8/2006
Current Mitigation Credit Holder Signature Date

Signature of Jackson Long 6/8/2006
New Mitigation Credit Holder Signature Date



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Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

EXAMPLE ONLY - ASSIGNMENT RECORD FOR MITIGATION CREDITS
CHAIN OF CUSTODY (Additional Form)

Mitigation Credit Project: MP-99

Mitigation Credits: 5.0 (# held by current credit holder)

Mitigation Credit Holder: Judith Niles

5.0 Mitigation credits have been assigned to (Name): Tom Cooper

Mailing Address: 9090 Perfect Loop, Bend, Oregon 97709

Phone Number: (541) 777-9999

signature of Judith Niles 7-10-2006
Current Mitigation Credit Holder Signature Date

signature of Tom Cooper 7-10-2006
New Mitigation Credit Holder Signature Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature Date

New Mitigation Credit Holder Signature Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature Date

New Mitigation Credit Holder Signature Date



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

**OREGON WATER RESOURCES DEPARTMENT
ASSIGNMENT RECORD FOR MITIGATION CREDITS
CHAIN-OF-CUSTODY**

Mitigation Credit Project: MP-263 Mitigation Credits: 41.97

Mitigation Credit Holder: City of Bend, 62975 Boyd Acres Road, Bend, Oregon 97701

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

ASSIGNMENT RECORD FOR MITIGATION CREDITS
CHAIN OF CUSTODY (Additional Form)

Mitigation Credit Project: MP-263 Mitigation Credits: (# held by current credit holder)

Mitigation Credit Holder: _____

Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature _____ Date

New Mitigation Credit Holder Signature _____ Date

Mitigation Credit Holder: _____

Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature _____ Date

New Mitigation Credit Holder Signature _____ Date

Mitigation Credit Holder: _____

Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature _____ Date

New Mitigation Credit Holder Signature _____ Date



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

DESCHUTES BASIN MITIGATION CREDIT DOCUMENTARY EVIDENCE FORM

This form is to be completed when mitigation credits are obtained from a mitigation credit holder, other than a mitigation bank, by a ground water application/permit/certificate holder to satisfy a mitigation obligation under the Deschutes Ground Water Mitigation rules. Please print in ink or type all information. If there are any questions about this form, please contact the Department.

Phone: (503) 986-0884

Ground Water User Information:

Name: _____

Mailing Address (Street, City, State, Zip): _____

Phone Number (Home and Work-including area code): _____ E-Mail (optional): _____

Ground Water Application, Permit, or Certificate #: _____

Mitigation Obligation (amount) (see Notice of Mitigation Obligation or Initial Review for this information): _____

Zone of Impact (see Notice of Mitigation Obligation or Initial Review for this information): _____

Mitigation Credit Holder Information:

Mitigation Credit Holder Name: _____

Mailing Address: _____

Phone Number (including area code): _____ E-Mail (optional): _____

If mitigation credits have changed hands beyond the original credit holder, a complete assignment record should be included with this documentary evidence form to help demonstrate that the credits are valid. This information may be obtained from the mitigation credit holder.

Mitigation Credit Information:

In the following table, identify the mitigation project identification number(s), the number of credits assigned from each mitigation project, the zone of impact in which the credits are to be used (note - many credits may be used within more than one zone of impact) and the type of mitigation project upon which the credits are based.

Project Type Codes: Allocation of Conserved Water = ACW Permanent Instream Transfers = PT Storage Release = SR
Aquifer Recharge = AR Other = Other (if other, please describe under project type in space provided below)

Mitigation Project ID	# Mitigation Credits Assigned	Zone of Impact	Mitigation Project Type Code (see above)
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MP- _____

Add additional mitigation projects and credits, using above format, by attaching additional pages if necessary.

Mitigation Project Operator (if other than original credit holder): _____ (for example, name of storage project or aquifer recharge project operator)

Mailing Address: _____

Phone Number (including area code): _____

For Stored Water Releases (if applicable):

Name of Reservoir: _____

Reservoir Permit/Certificate: _____ Contract Number(s): _____

The above described mitigation credits have been transferred from _____, mitigation credit holder, to _____, ground water application/permit/certificate holder.

Mitigation Credit Holder Signature

Date

Ground Water Application/Permit/Certificate Holder Signature

Date

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING A CHANGE IN
Application T-13437 and Mitigation Project	)	PLACE OF USE AND CHARACTER OF USE
MP-263, Deschutes County	)	AND PRELIMINARY AND FINAL AWARD OF
	)	MITIGATION CREDITS AND PARTIAL
	)	CANCELLATION OF A WATER RIGHT

Authority

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

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

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

ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

Applicant

CITY OF BEND
62975 BOYD ACRES ROAD
BEND, OREGON 97701

Findings of Fact

1. On May 13, 2020, the City of Bend filed an application to change a portion of the place of use and character of use under Certificate 94956 to instream use. The Department assigned the application number T-13437.

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. Notice of the application for transfer was published on May 26, 2020, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, June 25, 2020.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Deschutes County Community Development, Jefferson County Community Development, Wasco County Planning Department, City of Bend Planning Department, Sherman County Planning Department, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments and the Bureau of Reclamation upon receipt of Transfer Application T-13437.
4. On September 29, 2020, the Department issued a draft Preliminary Determination proposing to approve Instream Transfer Application T-13437 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 28, 2020, for the applicant to respond. The applicant requested revisions to the draft prior to the issuance of a Preliminary Determination.
5. On October 20, 2020, the Department issued a revised draft Preliminary Determination proposing to approve Instream Transfer Application T-13437. The revised draft Preliminary Determination email set forth a deadline of November 18, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
6. On December 22, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13437 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 December 22, 2020, and in the Bend Bulletin newspaper on December 29, 2020 and January 5, 2021 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: 94956 in the name of Central Oregon Irrigation District
Use: 15.0 equivalent acres of Municipal Use
Priority Date: October 31, 1900, December 2, 1907
Season of Use: April 1 through October 31, further limited as follows:
Season 1: April 1 through April 30 & October 1 through October 31
Season 2: May 1 through May 14 & September 15 through September 30
Season 3: May 15 through September 14
Maximum Quantity (Rate) that can be applied to an acre:
Season 1: limited to 1/145.45th cubic foot per second (CFS) per acre
Season 2: limited to 1/109.09th CFS per acre
Season 3: limited to 1/58.91th CFS per acre
Maximum Duty that can be applied to an acre:
 Not to exceed 5.45 acre-feet (AF) per acre per year.

The above listed rates and duty do not reflect a 45% transmission loss allowed on the main canals as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q Q	POD Name / Measured Distances
17 S	12 E	WM	31	NE SE	POD NO. 4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres Equivalent	Water User
17 S	12E	WM	32	SW NW	15.0	City of Bend

8. Certificate 94956 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 7), the total rate and duty of the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact No. 7), the portion of the right involved in this instream transfer would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD 4 under Certificate 94956 shall be reduced

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.103 CFS	0.138 CFS	0.182 CFS	81.76 AF
December 2, 1907			0.073 CFS	

9. A total of 81.76 AF, excluding transmission losses, may be beneficially used annually for municipal use under the portion of Certificate 94956 proposed for transfer.
10. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right Certificate 94956 is appurtenant and proposed to be transferred to instream use. The applicant has requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437.
11. Transfer Application T-13437 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values; recreation; and pollution abatement. The application also proposes to establish mitigation in the Deschutes Ground Water Study Area.
12. Transfer Application T-13437 proposes to change the place of use of the right to create an instream reach from Drake Park South (POD No. 4) to the mouth of the Deschutes River.

13. The applicant proposes that water be protected instream during the period April 1 through October 26. Season 1 would end on October 26.

14. The applicant proposed the following quantities water to be transferred instream:

Certificate	Priority Date	Rate Instream	Volume Instream
94956	October 31, 1900	Season 1: 0.103 CFS Season 2: 0.138 CFS Season 3: 0.255 CFS	81.76 AF

15. There are several existing instream water rights located within the same instream reach proposed by the applicant.

16. The applicant proposes that any instream water right established as a result of this instream transfer to 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 also proposes that any instream water right 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 application process), with an earlier priority date.

17. The applicant has requested to protect water instream under the October 31, 1900 priority date. Water is diverted at the point of diversion during Season 3 under both the 1900 and 1907 priority dates. The quantity of water diverted under the 1907 priority date during Season 3 makes up a balance of water allowed by the Decree for transmission losses. Transmission losses account for 45 percent of the water diverted at the point of diversion and are not transferable to instream use. The quantities of water proposed by the applicant to be transferred instream, as described in Finding of Fact No. 14, do not include the 45 percent transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.

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

18. The portion of the right proposed for transfer under T-13437 was leased instream under IL-1377 during the term May 23, 2014 through October 31, 2016. Consequently, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

19. A diversion structure and pipe/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-13437.

20. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use generally return to the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of

water that may be protected instream requires modification to account for return flows at the Madras Gage.

21. The volume of water that can be protected at the Madras Gage is equal to the estimated consumptive use of a municipal water right at the seasonal rates and duty (described in Finding of Fact No. 7). For municipal water rights in the Deschutes Basin, OWRD presumes a consumptive use coefficient of 30 percent during the months of April, May, and October and 60 percent from June through September. The variable seasonal rates and duties and consumptive use percentages amount to 51.3 percent consumptive use for municipal use over the full season authorized by Certificate 94956.
22. The quantities to be protected instream require modification to prevent injury and enlargement, and is as follows:

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.97	April 1 – October 26

23. The proposed change, as modified, would not result in enlargement of the right.
24. The proposed change, as modified, would not result in injury to other water rights.
25. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
26. The protection of flows within the proposed reach is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
27. Within the proposed reach on the Deschutes River, there are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of

conserved water process) located between Drake Park South POD and the mouth of the Deschutes River, which includes the use of water for fish habitat, aquatic life, recreation, aesthetics, and pollution abatement. There are two instream water rights (Certificates 73188 and 73237) established through the state agency application process (ORS 537.341) below Lake Billy Chinook for the purposes of fish habitat and various fish life stages, recreation and aesthetics, with priority dates of October 2, 1989 and January 16, 1996, respectively. There is presently one instream water right (Certificate 59777) within the proposed reach created as a result of ORS 537.346 (conversion of minimum perennial streamflow). There is one pending instream water right application, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341, to establish an instream water right from the COID North Canal to Lake Billy Chinook for anadromous and resident fish rearing, which if approved, will have a priority date of September 19, 1990.

28. In addition, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat and recreation is a matter of statutory policy. At times, flows within the proposed reach for the designated Scenic Waterway are not met during the requested periods for instream protection.
29. Portions of the proposed reach on the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.
30. Within the proposed reach on the Deschutes River, the pending instream water right application to be established under ORS 537.341 (state agency application process) is sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but may not always be met. The pending instream water right application, if approved, will have a priority date junior in comparison to other water rights on the Deschutes River. The instream use proposed by this transfer application will have a priority date of October 31, 1900. By replacing a portion of instream water rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
31. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
32. During the period April 1 to October 26, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to

ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

33. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

34. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 94956 is proposed for transfer for instream use. The applicant has not submitted an affidavit certifying that affected portions under Certificate 76714 have been abandoned. The applicant has requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437 but does not reduce the total quantity of stored water available for supplemental irrigation.

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

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: MUNICIPAL USE for 15.0 equivalent acres

Priority Date: FEBRUARY 28, 1913

Source: CRANE PRAIRIE RESERVOIR, constructed under permit R-1687, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	31	NE SE	CENTRAL OREGON 4: 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres Equivalent	Water User
17 S	12E	WM	32	SW NW	15.0	City of Bend

Preliminary Award of Deschutes Basin Mitigation Credits

36. The City of Bend 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 the City of Bend.
37. The Department assigned this mitigation credit project number MP-263.
38. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on May 26, 2020. No comments were received in response to this notice.
39. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of

Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on May 26, 2020. Comments were received from DEQ in favor of the application.

40. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
41. The number of mitigation credits may be determined by multiplying the number of equivalent acres of municipal use to be transferred instream by the max volume per acre and then multiplying by the consumptive use factor for the municipal use (15.0 acres equivalent * 5.45 acre feet per acre * 51.3 % consumptive use = 41.97 acre feet of mitigation water). Therefore, **41.97** mitigation credits may be awarded to this mitigation credit project and assigned to the City of Bend. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the General and Middle Deschutes Zones of Impact.
42. A total of 81.76 AF is proposed to be transferred to instream use and 41.97 AF of that total, 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.
43. The Department shall award final mitigation credits upon completion of the approved project. Issuance of the instream water right certificate confirms completion of the project and provides verification of the project's completion.
44. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water is protected instream under a new instream water right certificate created as a result of this instream transfer application.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-13437 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, OAR 690-077-0075, and the abandoned portion of the right should be cancelled.

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 changes in character of use and place of use to instream use proposed in application T-13437 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 94956 is modified. The Department shall issue a new water right certificate to supersede certificate 94956 upon a determination that it is necessary for recordkeeping purposes. A new certificate confirming the instream water right will be

issued. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 94956 by the following:

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.103 CFS	0.138 CFS	0.182 CFS	81.76 AF
December 2, 1907			0.073 CFS	

3. Certificate 76714 is modified. The Department shall issue a new water certificate on a determination that it is necessary for recordkeeping purposes to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact No. 35. Modification of this supplemental water right will be decreased by 15.0 acres equivalent of municipal use to which stored water may be applied for supplemental use under the right. However, the total quantity of stored water use under the right shall remain unchanged.
4. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River from the POD No. 4 (Drake Park South) (as described in finding of Fact No. 7) to the mouth of the Deschutes River.
5. The quantities to be protected instream is as follows:

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

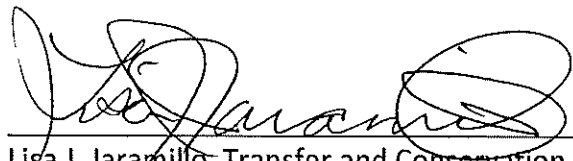
Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.97	April 1 – October 26

6. 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.
7. 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.
8. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

9. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 94956 and any related decree as may be germane to instream rights.
10. The former place of use of the transferred water shall no longer receive water as part of the portion of this right transferred to instream use.
11. **Preliminary and 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. Mitigation credits, in the amount of **41.97** credits, as described herein, are awarded to this mitigation project and assigned to the City of Bend. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **General and Middle Deschutes Zones of Impact**. 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.
12. Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.
13. The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.

Dated at Salem, Oregon this 18 day of February 2021.



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

Mailing date: FEB 19 2021

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 Deschutes River, tributary to the Columbia River, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.

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 12 at Page 282, and in Volume 16, at Pages 1 and 390. The date of priority is October 31, 1900.

The location of the diversion authorized previously under Certificate 94956 is located approximately at:

Twp	Rng	Mer	Sec	Q Q	Measured Distances
17 S	12 E	WM	31	NE SE	POD NO. 4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

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

Instream Reach No. 1: From POD No. 4 (described above) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.97	April 1 – October 26

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.

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-263
Mitigation Credits Awarded: 41.97
Zone of Impact: These mitigation credits may be used to satisfy a mitigation obligation within the General and Middle Deschutes Zone of Impact.

The number of mitigation credits awarded is a portion of the total volume transferred instream, being up to 81.76 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.

The right is subject to all other terms and conditions of Certificate 94956, 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 118, Page 502, approving Instream Transfer T-13437, and supersedes a portion of Certificate 94956, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed FEB 18 2021.



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

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:

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Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
90239	1897	LITTLE DESCHUTES RIVER	APRIL 1 – NOVEMBER 1	0.58 CFS @ 1/40 TH ; 0.29 CFS @ 1/80 TH	93.2 AF
TOTAL VOLUME					93.2 AF

***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 rate allowed by the right(s) and the total volume may not exceed to maximum volume allowed by the right(s).

Additional Information: The water right is for 0.58 cfs from April 1 to May 20 and 0.29 cfs (at 1/80th) from April 1 to May 20 and August 20 and 0.29 cfs (at 1/80th) from August 20 to November 1.

Identify the location of the proposed instream use:

- ☐ Water is requested to be placed in the river at the following location (i.e. the point of diversion): _____

- ☒ Water is requested to be placed in the river at the following location (i.e. the point of diversion): _____
- Location of proposed reach (i.e. the point of diversion and the point of return): from the authorized POD in the SWSW, Section 34, T23S R9E, WM to the mouth of the Little Deschutes River, into the Deschutes River and down to Lake Billy Chinook (~River Mile 120).

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): _____

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 # 90239

Name on Certificate: LA PINE COOPERATIVE WATER ASSOCIATION

Date(s) of Priority: 1897

Source(s) of Water to be Affected by the Transfer: LITTE DESCHUTES RIVER

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Description of Water Delivery System

System capacity: 26.9 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 SWSW, Section 34, T23S R9E, WM, and has a capacity to divert the entire water right in Certificate 90239, which can reach 26.9 during the peak irrigation season.

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: _____.

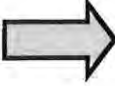
 Pursuant to ORS 540.510, any "layered" water use such as an irrigation right that is supplemental to a primary right proposed for transfer must be included in the transfer or be cancelled. Any change to a ground water registration must be filed separately in a ground water registration modification application.

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	23	S	9	E	34	SW	SW	3400	550' N, 1150' W of SW Cor Sec 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 # 90239

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)
2	S	9	E	14	NE	NW		100		15.0	Irrigation	4/1/1900	POD #1 POD #2
“	“	“	“	“	“	“	“	“	“	EXAMPLE	“	“	“
22	S	10	E	34	NE	NW		2803		23.3	IR	1897	POD
TOTAL ACRES										23.3			

Additional remarks:_____.

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Application for Water Right Transfer Evidence of Use Affidavit



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

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

State of Oregon)
) ss

County of DESCHUTES)

I, JOHN A. SHORT / WATER RIGHT SERVICES, LLC, in my capacity as WATER RIGHT SPECIALIST,

mailing address P.O. BOX 1830, BEND, OR 97709

telephone number (541)389-2837, 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:

Certificate #	Township		Range		Mer	Sec	¼ ¼		Gov't Lot or DLC	Acres (if applicable)
90239	22	S	10	E	WM	34	NE	NW		23.3

OR

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

☐ Part or all of the water right was leased instream at some time within the last five years. The
instream lease number is: _____ (Note: If the entire right proposed for
transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**

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

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

(continues on reverse side)

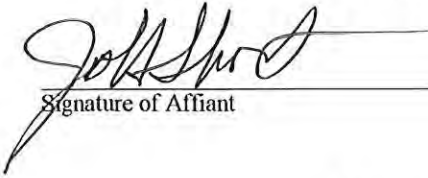
3. The water right was used for: (e.g., crops, pasture, etc.): CROPS, PASTURE

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.

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Signature of Affiant

12-16-2020
Date

Signed and sworn to (or affirmed) before me this 16 day of Dec, 2020.




Notary Public for Oregon

My Commission Expires: 8-30-2021

Supporting Documents	Examples
☐ 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
☐ Copies of receipts from sales of irrigated crops or for expenditures related to use of water	• Power usage records for pumps associated with irrigation use • Fertilizer or seed bills related to irrigated crops • Farmers Co-op sales receipt
☐ Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	• 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
☒ Aerial photos containing sufficient detail to establish location and date of photograph	Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added. Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com
☐ Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number



RENEWAL DATE 12/31/2020

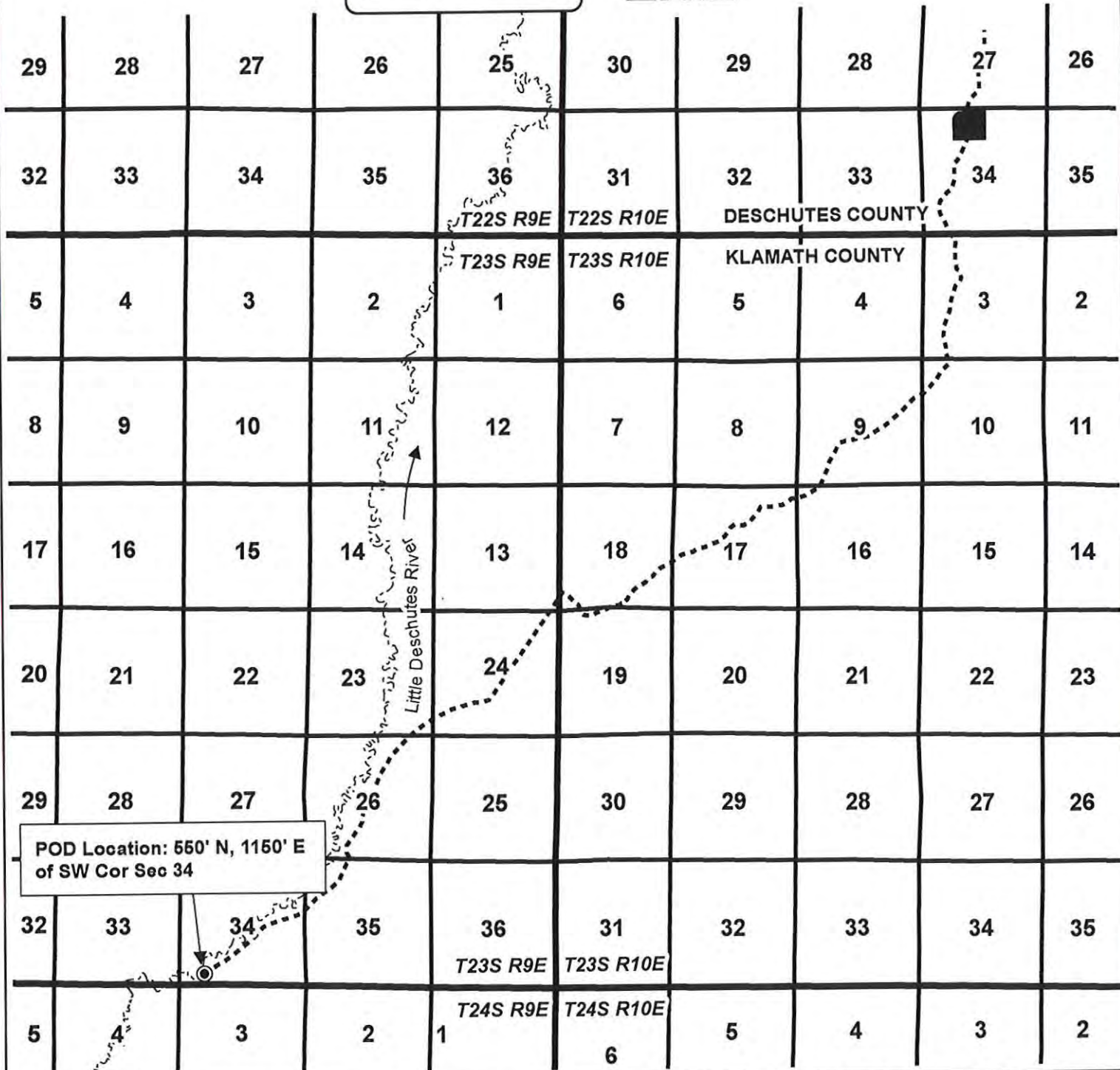
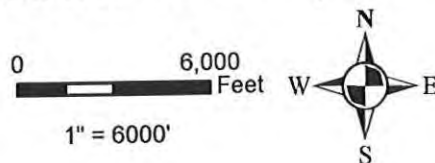
Legend:

- POD
- Canal
- River
- Township
- Section
- Place of Use

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T22S R10E, WM,
DESCHUTES COUNTY, OR &
T23S R10E & T23S R9E, WM
KLAMATH COUNTY, OR



POD Location: 550' N, 1150' E
of SW Cor Sec 34

INSTREAM TRANSFER OFF MAP
Hettervig Properties, LLC

Date: 12/15/2020

C-90239

This map is not intended
to provide legal dimensions
or locations of property
ownership lines.

WATER RIGHT SERVICES, LLC

PO BOX 1830, BEND, OR 97709

WWW.OREGONWATER.US 541-389-2837

johnshort@usa.com

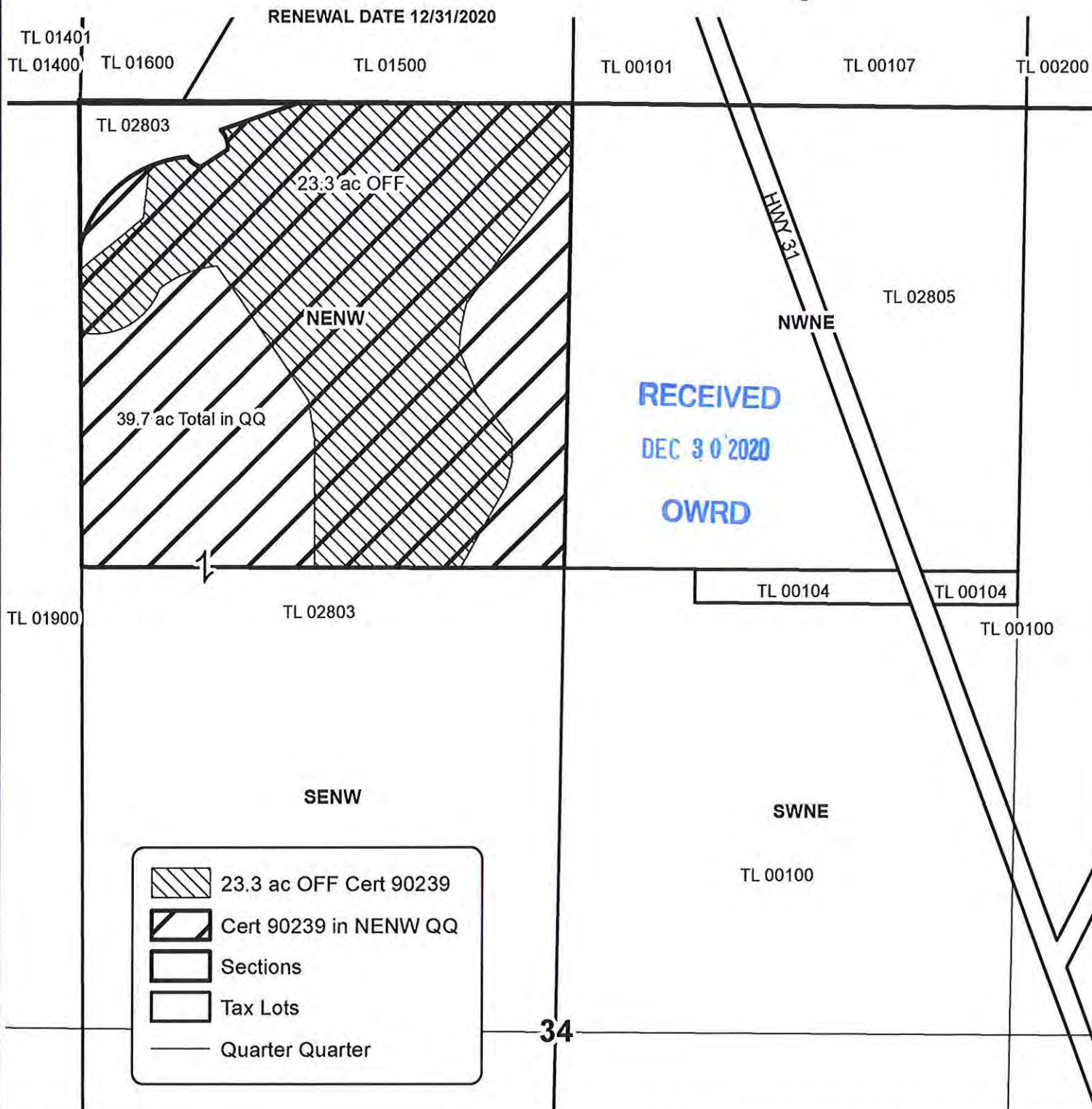
CCB # 197121



DESCHUTES COUNTY, OR
T22S R10E, WM



0 400 Feet
1" = 400'



INSTREAM TRANSFER OFF MAP
Hettervig Properties, LLC

Date: 12/15/2020

C-90239

This map is not intended
to provide legal dimensions
or locations of property
ownership lines.

WATER RIGHT SERVICES, LLC

PO BOX 1830, BEND, OR 97709

WWW.OREGONWATER.US 541-389-2837

johnshort@usa.com

CCB # 197121



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 22nd, 2020

Via - Email

Applicant

CITY OF BEND

62975 BOYD ACRES ROAD

BEND, OREGON 97701

pgriffiths@bendoregon.gov

SUBJECT: Water Right Transfer Application T-13437 (MP-263)

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve instream transfer application T-13437 and mitigation project MP-263. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

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

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

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

Please do not hesitate to contact me at 503-986-0884 or Sarah.A.Henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson

Flow Restoration Program Coordinator

Transfer and Conservation Section

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-13437 and Mitigation	)	PROPOSING APPROVAL OF A CHANGE IN
Project MP-263, Deschutes County	)	PLACE OF USE AND CHARACTER OF USE
	)	AND PRELIMINARY AWARD OF
	)	MITIGATION CREDITS AND PARTIAL
	)	CANCELLATION OF A WATER RIGHT

Authority

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

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

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

ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

Applicant

CITY OF BEND
62975 BOYD ACRES ROAD
BEND, OREGON 97701

Findings of Fact

1. On May 13, 2020, the City of Bend filed an application to change a portion of the place of use and character of use under Certificate 94956 to instream use. The Department assigned the application number T-13437.

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. Notice of the application for transfer was published on May 26, 2020, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, June 25, 2020.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Deschutes County Community Development, Jefferson County Community Development, Wasco County Planning Department, City of Bend Planning Department, Sherman County Planning Department, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments and also the Bureau of Reclamation upon receipt of Transfer Application T-13437.
4. On September 29, 2020, the Department issued a draft Preliminary Determination proposing to approve Instream Transfer Application T-13437 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 28, 2020, for the applicant to respond. The applicant requested revisions to the draft prior to the issuance of a Preliminary Determination. This revised draft Preliminary Determination is being issued to describe the revisions.
5. On October 20, 2020, the Department issued a revised draft Preliminary Determination proposing to approve Instream Transfer Application T-13437 to the applicant. The revised draft Preliminary Determination email set forth a deadline of November 18, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
6. The portion of the right to be transferred is as follows:

Certificate: 94956 in the name of Central Oregon Irrigation District
Use: 15.0 equivalent acres of Municipal Use
Priority Date: October 31, 1900, December 2, 1907
Season of Use: April 1 through October 31, further limited as follows:
 Season 1: April 1 through April 30 & October 1 through October 31
 Season 2: May 1 through May 14 & September 15 through September 30
 Season 3: May 15 through September 14

Maximum Quantity (Rate) that can be applied to an acre:
 Season 1: limited to 1/145.45th cubic foot per second (CFS) per acre
 Season 2: limited to 1/109.09th CFS per acre
 Season 3: limited to 1/58.91th CFS per acre

Maximum Duty that can be applied to an acre:
 Not to exceed 5.45 acre-feet (AF) per acre per year.

The above listed rates and duty do not reflect a 45% transmission loss allowed on the main canals as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q Q	POD Name / Measured Distances
17 S	12 E	WM	31	NE SE	POD NO. 4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres Equivalent	Water User
17 S	12E	WM	32	SW NW	15.0	City of Bend

7. Certificate 94956 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 6), the total rate and duty of the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact No. 6), the portion of the right involved in this instream transfer would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD 4 under Certificate 94956 shall be reduced, if this instream transfer is approved.

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.103 CFS	0.138 CFS	0.182 CFS	81.76 AF
December 2, 1907			0.073 CFS	

8. A total of 81.76 AF, excluding transmission losses, may be beneficially used annually for municipal use under the portion of Certificate 94956 proposed for transfer.
9. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right Certificate 94956 is appurtenant and proposed to be transferred to instream use. The applicant has requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437.
10. Transfer Application T-13437 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values; recreation; and pollution abatement. The application also proposes to establish mitigation in the Deschutes Ground Water Study Area.
11. Transfer Application T-13437 proposes to change the place of use of the right to create an instream reach from Drake Park South (POD No. 4) to the mouth of the Deschutes River.
12. The applicant proposes that water be protected instream during the period April 1 through October 26. Season 1 would end on October 26.
13. The applicant proposed the following quantities water to be transferred instream:

Certificate	Priority Date	Rate Instream	Volume Instream
94956	October 31, 1900	Season 1: 0.103 CFS Season 2: 0.138 CFS Season 3: 0.255 CFS	81.76 AF

14. There are several existing instream water rights located within the same instream reach proposed by the applicant.
15. The applicant proposes that any instream water right established as a result of this instream transfer to 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 also proposes that any instream water right 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 application process), with an earlier priority date.
16. The applicant has requested to protect water instream under the October 31, 1900 priority date. Water is diverted at the point of diversion during Season 3 under both the 1900 and 1907 priority dates. The quantity of water diverted under the 1907 priority date during Season 3 makes up a balance of water allowed by the Decree for transmission losses. Transmission losses account for 45 percent of the water diverted at the point of diversion and are not transferable to instream use. The quantities of water proposed by the applicant to be transferred instream, as described in Finding of Fact No. 13, do not include the 45 percent transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.

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

17. The portion of the right proposed for transfer under T-13437 was leased instream under IL-1377 during the term May 23, 2014 through October 31, 2016. Consequently, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. A diversion structure and pipe/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-13437.
19. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use generally return to the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.

20. The volume of water that can be protected at the Madras Gage is equal to the estimated consumptive use of a municipal water right at the seasonal rates and duty (described in Finding of Fact No. 6). For municipal water rights in the Deschutes Basin, OWRD assumes a consumptive use coefficient of 30 percent during the months of April, May, and October and 60 percent from June through September. The variable seasonal rates and duties and consumptive use percentages amount to 51.3 percent consumptive use for municipal use over the full season authorized by Certificate 94956.

21. The quantities to be protected instream require modification to prevent injury and enlargement, and is as follows:

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.97	April 1 – October 26

22. The proposed change, as modified, would not result in enlargement of the right.

23. The proposed change, as modified, would not result in injury to other water rights.

24. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.

25. The protection of flows within the proposed reach is appropriate, considering:

- a) The instream water right begins at the recorded point of diversion;
- b) The location of confluences with other streams downstream of the point of diversion;
- c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.

26. Within the proposed reach on the Deschutes River, there are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located between Drake Park South POD and the mouth of the Deschutes River, which includes the use of water for fish habitat, aquatic life,

recreation, aesthetics, and pollution abatement. There are two instream water rights (Certificates 73188 and 73237) established through the state agency application process (ORS 537.341) below Lake Billy Chinook for the purposes of fish habitat and various fish life stages, recreation and aesthetics, with priority dates of October 2, 1989 and January 16, 1996, respectively. There is presently one instream water right (Certificate 59777) within the proposed reach created as a result of ORS 537.346 and one pending instream water right application, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 to establish an instream water right from the COLD North Canal to Lake Billy Chinook for anadromous and resident fish rearing, which if approved will have a priority date of September 19, 1990.

27. In addition, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat and recreation is a matter of statutory policy. Within the proposed reach, flows for the designated Scenic Water way are at times not met during the requested periods for instream protection.
28. Portions of the proposed reach on the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.
29. The proposed instream water right, to be established under ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River is sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but may not always be met and will have a priority date junior in comparison to other water rights on the Deschutes River. The proposed instream use will have a priority date of October 31, 1900. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
30. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
31. During the period April 1 to October 26, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

32. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

33. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 94956 is proposed for transfer for instream use. The applicant has not submitted an affidavit certifying that affected portions under Certificate 76714 have been abandoned. The applicant has requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437 but does not reduce the total quantity of stored water available for supplemental irrigation.

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

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: MUNICIPAL USE for 15.0 equivalent acres

Priority Date: FEBRUARY 28, 1913

Source: CRANE PRAIRIE RESERVOIR, constructed under permit R-1687, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	31	NE SE	CENTRAL OREGON 4: 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres Equivalent	Water User
17 S	12E	WM	32	SW.NW	15.0	City of Bend

Preliminary Award of Deschutes Basin Mitigation Credits

35. The City of Bend 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 the City of Bend.
36. The Department assigned this mitigation credit project number MP-263.
37. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on May 26, 2020. No comments were received in response to this notice.
38. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on May 26, 2020. Comments were received from DEQ in favor of the application.

39. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
40. The number of mitigation credits may be determined by multiplying the number of equivalent acres of municipal use to be transferred instream by the max volume per acre and then multiplying by the consumptive use factor for the municipal use (15.0 acres equivalent * 5.45 acre feet per acre * 51.3 % consumptive use = 41.97 acre feet of mitigation water). Therefore, **41.97** mitigation credits may be awarded to this mitigation credit project and assigned to the City of Bend. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the General and Middle Deschutes Zones of Impact.
41. A total of 81.76 AF is proposed to be transferred to instream use and 41.97 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.
42. The Department shall award final mitigation credits upon completion of the approved project. Issuance of the instream water right certificate confirms completion of the project and provides verification of the project's completion.
43. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water is protected instream under a new instream water right certificate created as a result of this instream transfer application.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-13437 appears to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

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

If Transfer Application T-13437 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-13437 are approved. The portion of the right that has been abandoned is cancelled.*
2. *Water right certificate 94956 is modified and a new instream water right certificate shall be issued. The Department shall issue a new water right certificate to supersede certificate 94956 upon a determination that it is necessary to produce a certificate to describe that portion of the right not affected by this transfer. A new certificate confirming the instream*

water right will be issued. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 94956 by the following:

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.103 CFS	0.138 CFS	0.182 CFS	81.76 AF
December 2, 1907			0.073 CFS	

3. Certificate 76714 is modified. The Department shall issue a new water certificate on a determination that it is necessary to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact No. 34. Modification of this supplemental water right will be decreased by 15.0 acres equivalent of municipal use to which stored water may be applied for supplemental use under the right. However, the total quantity of stored water use under the right shall remain unchanged.
4. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River from the POD No. 4 (Drake Park South) (as described in finding of Fact No. 6) to the mouth of the Deschutes River.
5. The quantities to be protected instream is as follows:

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

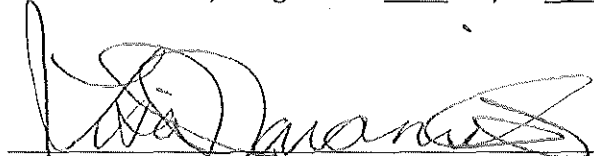
Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.9	April 1 – October 26

6. 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.
7. 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.
8. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

9. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 94956 and any related decree as may be germane to instream rights.*
10. *The former place of use of the transferred water shall no longer receive water as part of the portion of this right transferred to instream use.*
11. ***Preliminary Award of Mitigation Credits:*** *Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of 41.97 credits, as described herein, may be awarded to this mitigation project and assigned to the City of Bend. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **General and Middle Deschutes Zones of Impact**. 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.*
12. *Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.*
13. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

DEC 22 2020

Dated at Salem, Oregon this 22 day of December 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Tom M. Byler, 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 503-986-0884 or Sarah.A.Henderson@oregon.gov

Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. Mail. Please consider mailing early to ensure the Department receives the protest by the deadline.

Notice Regarding Service Members: Active duty service members have a right to stay these proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



RECEIVED

NOV 19 2020

OWRD

Transmittal

To:	OWRD	From:	Adam Sussman
Address:	725 Summer St NE, Suite A Salem, OR 97301	Date:	November 16, 2020
Re:	Newspaper Notice for Transfer T-13437		

☒ Attachments ☐ For Review ☐ Please Comment ☐ For Your Use

Date	Number of Copies	Description
11/16/20	1	Check for \$1,022.40 for Newspaper Notice Re: T-13437

Comments:



September 29, 2020

Applicant

CITY OF BEND

62975 BOYD ACRES ROAD

BEND, OREGON 97701

Reference: Water Right Transfer Application T-13437 / Mitigation Credit Project MP-263

Your water right transfer is in the first of three phases of processing. Enclosed is a draft of the Department's Preliminary Determination regarding Instream Transfer Application T-13437 and Mitigation Credit Project MP-263. The document reflects the Department's conclusion that, based on the information currently available, the instream transfer and mitigation project will be approved.

Items needed before the next phase of processing...

1. Please review the draft carefully to see if it accurately reflects the changes you intend to make, and to become familiar with all proposed conditions. **You will need to respond in writing** by the deadline provided below, whether you agree with the proposed action and conditions. Also we will appreciate having you let us know if there are typographical errors that need to be corrected.
2. Notice of this transfer will need to be published in a newspaper with general circulation in the area where the water rights are currently located. You will be responsible for the charges. Please confirm the Bend Bulletin as the newspaper you prefer to publish in so we can get an accurate estimate of the cost.

What happens next...

Once the Preliminary Determination is issued a publication period is required. Because of a change in character of use, the Department will publish notice of the transfer in a local newspaper having a general circulation in the area of the water right at least once per week for two consecutive weeks. You are responsible for sending a check to cover the cost of publication prior to the issuance of the Preliminary Determination and publication of notice.

Issuance of the Preliminary Determination will occur shortly after we receive:

1. Your written response to the conditions and proposed action in the draft Preliminary Determination (e-mail is acceptable); and

2. Confirmation of the name of the newspaper you wish the Department to use for publication of the notice of the Preliminary Determination.

If we do not receive the items listed above by October ____, 2020, a Preliminary Determination may be issued denying the application as incomplete.

Please do not hesitate to contact me at 503-986-0884 or sarah.a.henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Flow Restoration Program Coordinator
Transfer and Conservation Section

cc: Transfer Application file T-13437 (MP-263)
Jeremy Giffin, District 11 Watermaster (*via e-mail*)
Owen McMutrey, Agent for the applicant (*via e-mail*) (omcmurtrey@qsiws.com)
Adam Sussman, Agent for the applicant (*via e-mail*) (asussman@qsiws.com)
U.S. Bureau of Reclamation (cchad@usbr.gov) (emcgarry@usbr.gov)
Central Oregon Irrigation District (lesliec@coid.org)

encs

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

In the Matter of Instream Transfer
Application T-13437 and Mitigation
Project MP-263, Deschutes County

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D R A F T PRELIMINARY
DETERMINATION PROPOSING APPROVAL
OF A CHANGE IN PLACE OF USE AND
CHARACTER OF USE AND PRELIMINARY
AWARD OF MITIGATION CREDITS AND
PARTIAL CANCELLATION OF A WATER
RIGHT

Authority

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

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

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

ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

Applicant

CITY OF BEND
62975 BOYD ACRES ROAD
BEND, OREGON 97701

Findings of Fact

1. On May 13, 2020, the City of Bend filed an application to change a portion of the place of use and character of use under Certificate 94956 to instream use. The Department assigned the application number T-13437.
2. Notice of the application for transfer was published on May 26, 2020, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, June 25, 2020.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Deschutes County Community Development, Jefferson County Community Development, Wasco County Planning Department, City of Bend Planning Department, Sherman County Planning Department, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments and also the Bureau of Reclamation upon receipt of Transfer Application T-13437.

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

Certificate: 94956 in the name of Central Oregon Irrigation District

Use: 15.0 equivalent acres of Municipal Use

Priority Date: October 31, 1900, December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

Season 1: April 1 through April 30 & October 1 through October 31

Season 2: May 1 through May 14 & September 15 through September 30

Season 3: May 15 through September 14

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/145.45th cubic foot per second (CFS) per acre

Season 2: limited to 1/109.09th CFS per acre

Season 3: limited to 1/58.91th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 5.45 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q Q	Measured Distances
17 S	12 E	WM	31	NE SE	POD NO. 4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Acres Equivalent	Water User
17 S	12E	WM	32	SW NW	15.0	City of Bend

5. Certificate 94956 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 4), the total rate and duty of the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact No. 4), the portion of the right involved in this instream transfer would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD 4 under Certificate 94956 shall be reduced, if this instream transfer is approved.

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.187 CFS	0.249 CFS	0.330 CFS	148.27 AF
December 2, 1907			0.132 CFS	

6. A total of 81.76 AF, excluding transmission losses, may be beneficially used annually for municipal use under the portion of Certificate 94956 proposed for transfer.
7. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right Certificate 94956 is appurtenant and proposed to be transferred to instream use. The applicant has requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437.
8. Transfer Application T-13437 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values; recreation; and pollution abatement. The application also proposes to establish mitigation in the Deschutes Ground Water Study Area.
9. Transfer Application T-13437 proposes to change the place of use of the right to create an instream reach from Drake Park South (POD No. 4) to the mouth of the Deschutes River.
10. The applicant proposes that water be protected instream during the period April 1 through October 26. Season 1 would end on October 26.
11. The applicant proposed the following quantities water to be transferred instream:

Certificate	Priority Date	Rate Instream	Volume Instream
94956	October 31, 1900	Season 1: 0.103 CFS Season 2: 0.138 CFS Season 3: 0.255 CFS	81.76 AF

12. There are several existing instream water rights located within the same instream reach proposed by the applicant.
13. The applicant proposes that any instream water right established as a result of this instream transfer to 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 also proposes that any instream water right 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 application process), with an earlier priority date.
14. The applicant has requested to protect water instream under the October 31, 1900 priority date. Water is diverted at the point of diversion during Season 3 under both the 1900 and 1907 priority dates. The quantity of water diverted under the 1907 priority date during Season 3 makes up a balance of water allowed by the Decree for transmission losses. Transmission losses account for 45 percent of the water diverted at the point of diversion and are not transferable to instream use. The quantities of water proposed by the applicant to be transferred instream, as described in Finding of Fact No. 11, do not include the 45 percent transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.

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

15. The portion of the right proposed for transfer under T-13437 was leased instream under IL-1377 during the term May 23, 2014 through October 31, 2016. Consequently, water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
16. A diversion structure and pipe/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-13437.
17. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use generally return to the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.

18. The quantities to be protected instream require modification to prevent injury and enlargement, and is as follows:

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.9	April 1 – October 26

19. The proposed change, as modified, would not result in enlargement of the right.
20. The proposed change, as modified, would not result in injury to other water rights.
21. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
22. The protection of flows within the proposed reach is appropriate, considering:
- a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
23. Within the proposed reach on the Deschutes River, there are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located between Drake Park South POD and the mouth of the Deschutes River, which includes the use of water for fish habitat, aquatic life, recreation, aesthetics, and pollution abatement. There are two instream water rights (Certificates 73188 and 73237) established through the state agency application process (ORS 537.341) below Lake Billy Chinook for the purposes of fish habitat and various fish life stages, recreation and aesthetics, with priority dates of October 2, 1989 and January 16, 1996, respectively. There is presently one instream water right (Certificate 59777) within the proposed reach created as a result of ORS 537.346 and one pending instream water right application, filed by the Oregon Department of Fish and Wildlife pursuant to ORS 537.341 to establish an instream water right from the COID North Canal to Lake Billy

Chinook for anadromous and resident fish rearing, which if approved will have a priority date of September 19, 1990.

24. In addition, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat and recreation is a matter of statutory policy. Within the proposed reach, flows for the designated Scenic Water way are at times not met during the requested periods for instream protection.
25. Portions of the proposed reach on the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.
26. The proposed instream water right, to be established under ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River is sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but may not always be met and will have a priority date junior in comparison to other water rights on the Deschutes River. The proposed instream use will have a priority date of October 31, 1900. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
27. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
28. During the period April 1 to October 26, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
29. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

30. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 94956 is proposed for transfer for instream use. The applicant has not submitted an affidavit certifying that affected portions under Certificate 76714 have been abandoned. The applicant has requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-13437.

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

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: MUNICIPAL USE for 15.0 equivalent acres

Priority Date: FEBRUARY 28, 1913

Source: CRANE PRAIRIE RESERVOIR, constructed under permit R-1687, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	¼ ¼	Measured Distances
17 S	12 E	WM	31	NE SE	CENTRAL OREGON 4: 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE¼ SE¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Acres Equivalent	Water User
17 S	12E	WM	32	SW NW	15.0	City of Bend

Preliminary Award of Deschutes Basin Mitigation Credits

32. The City of Bend 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 the City of Bend.

33. The Department assigned this mitigation credit project number MP-263.

34. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on May 26, 2020. No comments were received in response to this notice.

35. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2) on May 26, 2020. Comments were received from DEQ in favor of the application.

36. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.

37. The number of mitigation credits may be determined by multiplying the number of equivalent acres of municipal use to be transferred instream by the max volume per acre and then multiplying by the consumptive use factor for the municipal use (15.0 acre feet equivalent * 5.45 acre feet per acre * 51.3 % consumptive use = 41.97 acre feet of mitigation water). Therefore, **41.97** mitigation credits may be awarded to this mitigation credit project and assigned to the City of Bend. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the General and Middle Deschutes Zones of Impact.
38. A total of 81.76 AF is proposed to be transferred to instream use and 41.97 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.
39. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete.
40. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water is protected instream under a new instream water right certificate created as a result of this instream transfer application.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-13437 appears to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

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

If Transfer Application T-13437 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-13437 are approved. The portion of the right that has been abandoned is cancelled.*
2. *Water right certificate 94956 is modified and a new instream water right certificate shall be issued. The Department shall issue a new water right certificate to supersede certificate 94956 upon a determination that it is necessary to produce a certificate to describe that portion of the right not affected by this transfer. A new certificate confirming the instream water right will be issued. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 94956 by the following:*

Priority Date	Season 1	Season 2	Season 3	Seasonal Duty/Volume Limit
October 31, 1900	0.187 CFS	0.249 CFS	0.330 CFS	148.27 AF
December 2, 1907			0.132 CFS	

3. *Certificate 76714 is modified. The Department shall issue a new water certificate on a determination that it is necessary to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact No. 31. Modification of this supplemental water right will be decreased by 15.0 acres equivalent of municipal use to which stored water may be applied for supplemental use under the right.*
4. *The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River from the POD No. 4 (Drake Park South) (as described in finding of Fact No. 4) to the mouth of the Deschutes River.*
5. *The quantities to be protected instream is as follows:*

Instream Reach No. 1: From POD No. 4 to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	Season 1: 0.103	81.76	April 1 – October 26
		Season 2: 0.138		
		Season 3: 0.255		

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
94956	10/31/1900	0.101	41.9	April 1 – October 26

6. *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.*
7. *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.*
8. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
9. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 94956 and any related decree as may be germane to instream rights.*

10. *The former place of use of the transferred water shall no longer receive water as part of the portion of this right transferred to instream use.*
11. ***Preliminary Award of Mitigation Credits:*** *Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of 41.97 credits, as described herein, may be awarded to this mitigation project and assigned to the City of Bend. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **General and Middle Deschutes Zones of Impact**. 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.*
12. *Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.*
13. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this ____ day of _____ 2020.

D R A F T

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

This draft Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0884 or Sarah.A.Henderson@oregon.gov.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 21, 2020

CITY OF BEND
PATRICK GRIFFITHS
62975 BOYD ACRES RD
BEND, OR 97701

Reference: Instream Transfer T- 13437

On May 13, 2020, we received your water right Transfer application. The application was accompanied by \$1045.00. Our receipt number 132508 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 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) 986-0815.

Cc: Watermaster Dist. #11 (via email)
Central Oregon Irrigation District
City of Bend
Deschutes County Planning
Jefferson County Planning
Wasco County Planning
Sherman County Planning
Confederated Tribes of Warm Springs
Owen McMurtrey, Agent
Bureau of Reclamation

STATE OF OREGON
WATER RESOURCES DEPARTMENT

725 Summer St. N.E. Ste. A

SALEM, OR 97301-4172

(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # 132508

INVOICE # _____

RECEIVED FROM: GSI Water Solutions Inc

BY: _____

APPLICATION

PERMIT

TRANSFER

T-13437

CASH: ☐ CHECK: # 22453 OTHER: (IDENTIFY) _____

TOTAL REC'D \$ 1,045.00

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

0407 COPY & TAPE FEES

\$

0410 RESEARCH FEES

\$

0408 MISC REVENUE: (IDENTIFY) _____

\$

TC162 DEPOSIT LIAB. (IDENTIFY) _____

\$

0240 EXTENSION OF TIME

\$

WATER RIGHTS:

EXAM FEE

RECORD FEE

0201 SURFACE WATER

\$

0202

\$

0203 GROUND WATER

\$

0204

\$

0205 TRANSFER

\$ 1,045.00

WELL CONSTRUCTION

EXAM FEE

LICENSE FEE

0218 WELL DRILL CONSTRUCTOR

\$

0219

\$

LANDOWNER'S PERMIT

0220

\$

OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211 WELL CONST START FEE

\$

CARD #

0210 MONITORING WELLS

\$

CARD #

OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233 POWER LICENSE FEE (FWWRD)

\$

0231 HYDRO LICENSE FEE (FWWRD)

\$

HYDRO APPLICATION

\$

TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____

\$

RECEIPT: 132508

DATED: 5-13-2020

BY: [Signature]

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



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

Application for Water Right Instream Transfer

Part 1 of 6 – Minimum Requirements Checklist

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

RECEIVED

MAY 13 2020

FOR ALL INSTREAM TRANSFER APPLICATIONS

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

OWRD

- ☒ 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: 94956 (Attachment A)**
Please include a separate Part 6 for each water right. (See instructions on page 8)

Attachments:

- ☒ Completed Instream Transfer Application Map. (**Attachment B**)
- ☒ Completed Evidence of Use Affidavit and supporting documentation. (**Attachment C**)
- ☐ ☒ N/A Affidavit(s) of Consent from Landowner(s) (if the applicant does not own the land the water right is on.)
- ☒ ☐ N/A Supplemental Form D – For water rights served by or issued in the name of an irrigation district. Complete when the transfer applicant is not the irrigation district. (**Attachment D**)
- ☒ 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. (**Attachment E**)

(For Staff Use Only)

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

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

Other/Explanation _____

Staff: _____ 503-986-0 _____

Date: ____/____/____

Part 2 of 6 – Map Checklist

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

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

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

RECEIVED

MAY 13 2020

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	\$2,090
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 \$520 and enter » » » » » » » » » » » » » » »	2	0
3	Enter the cfs for the portions of the rights to be transferred (see example below*): <u>0.255 (3a)</u> Subtract 1.0 from the number in 3a above: <u>0 (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>0 (3c)</u> and multiply 3c by \$350, then enter on line 3 » » » » » » » » »	3	\$2,090
4	Add entries on lines 1 through 3 above » » » » » » » » » » Subtotal:	4	\$2,090
5	Multiply line 4 by 0.5 and enter on line 5 » » » » » » » » » » » » » » »	5	\$1,045
6	Subtract line 5 from line 4 » » » » » » » » » » » » » » Transfer Fee:	6	\$1,045

*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 City of Bend, ATTN: Patrick Griffiths			PHONE NO. 541-317-3008	ADDITIONAL CONTACT NO.
ADDRESS 62975 Boyd Acres Road				FAX NO.
CITY Bend	STATE OR	ZIP 97701	E-MAIL pgriffiths@bendoregon.gov	
BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.				

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

AGENT/BUSINESS NAME GSI Water Solutions, Inc. ATTN: Owen McMurtrey			PHONE NO. 541-257-9001	ADDITIONAL CONTACT NO.
ADDRESS 1600 SW Western Boulevard, Suite 240				FAX NO.
CITY Corvallis	STATE OR	ZIP 97333	E-MAIL 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 is requesting to permanently transfer a 15 municipal acre/equivalent portion of Certificate 94956, which authorizes direct diversion of the following rates for municipal use:

0.103 cfs April 1 - April 30 and October 1 - October 31;

0.138 cfs May 1 - May 14 and September 16 - September 30;

0.255 cfs May 15 - Sept 15

In accordance with the methods described in the additional remarks section, the estimated consumptive use of the portion of Certificate 94956 propose for transfer is 41.97 acre-feet. The City is requesting to protect this volume instream and create 41.97 mitigation credits.

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

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

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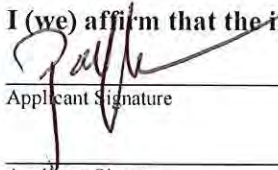
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Check one box

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

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

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


Applicant Signature

Patrick Griffiths, Water Resources Manager
Print Name (and Title if applicable)

5/1/20
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

Check the following boxes that apply:

- ☒ Check here if any of the water rights proposed for transfer are located within or served by an irrigation district or other water district before the transfer. (Tip: Complete and attach Supplemental Form D.)

IRRIGATION DISTRICT NAME Central Oregon Irrigation District	ADDRESS 1055 SW Lake Court	
CITY Redmond	STATE OR	ZIP 97756

- ☐ 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.

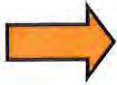
Water under Certificate 76714 is supplied by stored water from Crane Prairie storage, a U.S. Bureau of Reclamation storage facility. The U.S. Bureau of Reclamation should be copied on all correspondence for this application.

ENTITY NAME U.S. Bureau of Reclamation, Pacific NW Region	ADDRESS 1150 N Curtis Road, Suite 100	
CITY Boise	STATE ID	ZIP 83706-1234

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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 Bend	ADDRESS 710 NW Wall St.	
CITY Bend	STATE OR	ZIP 97703

ENTITY NAME Deschutes County Planning	ADDRESS 117 NW Lafayette Avenue	
CITY Bend	STATE OR	ZIP 97701

ENTITY NAME Jefferson County Planning Division	ADDRESS 85 Southeast D St.	
CITY Madras	STATE OR	ZIP 97741

ENTITY NAME Wasco County Planning Department	ADDRESS 2705 East 2nd Street	
CITY The Dalles	STATE OR	ZIP 97058

ENTITY NAME Sherman County Planning Department	ADDRESS 66365 Lonerock Rd.	
CITY Moro	STATE OR	ZIP 97039

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

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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:

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Originating Water Right Number (as identified in Part 5)	Priority Date	Source	Proposed Instream Period	Rate (cfs)*	Volume (ac-ft)**
94956	10/31/1900	Deschutes River	"Season 1" April 1-April 30; October 1-October 26	0.103	Not to exceed 81.76
94956	10/31/1900	Deschutes River	"Season 2" May 1-May 14; September 16-September 30	0.138	
94956	10/31/1900	Deschutes River	"Season 3" May 15-Sept 15	0.255	
TOTAL VOLUME					81.76

***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: The Applicant is proposing to permanently transfer a 15 municipal acre/equivalent portion of Certificate 94956 instream in order to obtain 41.97 mitigation credits.

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):
Instream Reach 1: From the location of POD 4 under Certificate 94956 located in Drake Park approximately 700 feet north and 120 feet west from the southeast corner of the NE¼ SE¼ of Section 31 to the Madras Gage at at River Mile (RM) 100.1.
Instream Reach 2: From the Madras Gage at RM 100.1 to the mouth of the Deschutes River.

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): See additional remarks section for proposed rates and seasons of use.

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): 59778, 73188, 73237, 76687, 80400, 80856, 81313, 81314, 81612, 83519, 81553, 82657, 83143, 83587, 83522, 83559, 83523, 81333, 82830, 83293, 83244, 85373, 84909, 85282, 85447, 82822, 82635, 85692, 85785, 85745, 84204, 82731, 82725, 88033, 85792, 87107, 88991, 86006, 87853, 90628, 90238, 90008, 88999, 87410, 90880, 91490, 91696, 92353, 93304, 93373, 91922, 93237, 91517, 91212, 86365, 94058.

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

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

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

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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 # 94956

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Name on Certificate: Central Oregon Irrigation District

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Date(s) of Priority: 10/31/1900 and 12/2/1907

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

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Description of Water Delivery System

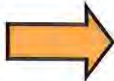
System capacity: POD 4 = 0.255 cubic feet per second (cfs) **OR**

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 Drake Park South diversion is located in the City of Bend on the Deschutes River. Water was historically diverted directly from the diversion, transmitted a short distance, and used for reasonable and usual municipal purposes. The 15 municipal acres/equivalent allowed from the Drake Park Diversion are currently leased instream.**

Other Water Rights

Are there other water right certificates, water use permits or ground water registrations associated with the "from" lands? ☒ Yes ☐ No **The acres/equivalent being transferred instream are for municipal use so "layering" does not apply. However, the applicant recognizes that the applicable portion of Certificate 76714 authorizing municipal use for the same acres-equivalent as Certificate 94956 will be cancelled as a result of this transfer. The applicant understands that this will not affect the right to store water in Crane Prairie Reservoir.**

If YES, list the certificate, water use permit, or ground water registration numbers: **76714.**



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 4, Drake Park South	10/31/1900 & 12/2/1907	17	S	12	E	31	NE	SE		700 feet North and 120 feet West from SE Corner of NESE of Section 31

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 # 94956

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)
2	S	9	E 14	NE NW	100	15.0	Irrigation	4/1/1900	POD #1 POD #2
"	"	"	"	"	"	EXAMPLE	"	"	"
17	S	12	E 32	SW NW		15 (Acres/Equivalent)	Municipal	10/31/1900; 12/2/1907	POD 4, Drake Park South
TOTAL ACRES						15 (Acres/Equivalent)			

Additional remarks:

Water right certificate 94956 is held by Central Oregon Irrigation District. Certificate 94956 authorizes direct diversion of 15 acres equivalent for municipal use at the following rates:

- 0.103 cfs in Season 1 (April 1 - April 30 and October 1 - October 31)
- 0.138 cfs in Season 2 (May 1 - May 14 and September 16 - September 30)
- 0.255 cfs in Season 3 (May 15 - September 15).

The City of Bend is requesting to permanently transfer instream the entire rate allowed from POD 4 in exchange for 41.97 mitigation credits. Mitigation credits were calculated as follows:

15 acres x 5.45 AF acre duty for direct diversions = 81.75 AF
81.75 AF times 51.3% municipal consumptive use coefficient during the season of use authorized by Certificate 94956 = 41.97 credits

The municipal consumptive use coefficient during the irrigation season was calculated as shown in Table 1, below, which takes into account both the consumptive use of municipal water rights in the Deschutes basin at different times of year and the seasonal rates authorized by Certificate 94956.

The instream water right created by the proposed transfer would account for seasonal differences in the consumptive use coefficient and rates authorized by Certificate 94956 as shown in Table 2.

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Additional Remarks (continued):

Table 1: Estimated consumptive use of water for municipal use under Certificate 94956.

Date Begin	Date End	Authorized Rate (cfs)	Authorized Volume (AF)	Consumptive Use Coefficient ¹	Estimated Consumptive Use
1-Apr	30-Apr	0.103	6.14	0.30	1.84
1-May	14-May	0.138	3.82	0.30	1.15
15-May	31-May	0.255	8.59	0.30	2.58
1-Jun	30-Jun	0.255	15.15	0.60	9.09
1-Jul	31-Jul	0.255	15.66	0.60	9.39
1-Aug	31-Aug	0.255	15.66	0.60	9.39
1-Sep	15-Sep	0.255	7.58	0.60	4.55
16-Sep	30-Sep	0.138	4.09	0.60	2.45
1-Oct	25-Oct ²	0.103	5.09	0.30	1.53
Total			81.76		41.97

Notes

¹ Monthly consumptive use estimates follow open file report "Determining Surface Water Availability in Oregon (Cooper 2002).

² Certificate 94956 is deficient, so it would not be protected instream for the full irrigation season.

Table 2: Proposed instream water right rates by reach and season. All rates are in cfs.

	Season 1	Season 2a	Season 2b	Season 3a	Season 3b
Instream Reach	April 1 through April 30 and October 1 through October 25	May 1 through May 14	September 16 through September 30	May 15 through May 31	June 1 through September 15
1: POD 4 to Madras Gage	0.103	0.138	0.138	0.138	0.255
2: Madras Gage to the Mouth	0.031	0.041	0.083	0.076	0.153

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STATE OF OREGON
COUNTY OF DESCHUTES
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

CENTRAL OREGON IRRIGATION DISTRICT
1055 SW LAKE COURT
REDMOND, OR 97756

confirms the right to use the waters of the DESCHUTES RIVER, a tributary to the COLUMBIA RIVER for

41993.17 ACRES FOR IRRIGATION (IR),
122.15 ACRES FOR INCHOATE IRRIGATION (IR),
2.80 ACRES/EQUIVALENT FOR DUST ABATEMENT (DA),
87.10 ACRES/EQUIVALENT FOR INDUSTRIAL USE (IM),
16.00 ACRES/EQUIVALENT FOR MINING (MI),
125.96 ACRES/EQUIVALENT FOR MUNICIPAL USE (MU),
218.66 ACRES/EQUIVALENT FOR POND MAINTENANCE (PM),
93.16 ACRES/EQUIVALENT FOR QUASI-MUNICIPAL USE (QM),
DOMESTIC USE (DO), AND
LIVESTOCK WATERING (LV).

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This right was confirmed by decree of the Circuit Court of the State of Oregon, Deschutes County. The decree is of record at Salem, in the Order Record of the Water Resources Director, in Volume 12 at Page 282, and in Volume 16 at Pages 1 and 390. The dates of priority are OCTOBER 31, 1900, for 918.340 CUBIC FEET PER SECOND (cfs), including inchoate acres, and DECEMBER 2, 1907 for the balance allowed by the decree (367.851 cfs) including inchoate acres.

The total quantity of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed a total of 1,286.191 cfs or the equivalents in the case of rotation, being 1,282.618 cfs (including 3.690 cfs inchoate) from Canal Diversions and 3.573 cfs from Direct Diversions.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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.

The points of diversion (POD) are located as follows:

AUTHORIZED POINTS OF DIVERSION						
POD #	TWP	RNG	MER	SEC	Q-Q	POD NAME / MEASURED DISTANCES
1	18S	11E	WM	13	SW¼ NE¼	CENTRAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
3	17S	12E	WM	31	SE¼ SE¼	COLUMBIA PARK: 740 FEET NORTH AND 490 FEET WEST FROM THE SE CORNER OF SECTION 31
4	17S	12E	WM	31	NE¼ SE¼	DRAKE PARK SOUTH: 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF THE NE¼ SE¼ OF SECTION 31
5	17S	12E	WM	32	SW¼ NW¼	DRAKE PARK NORTH: 2150 FEET SOUTH AND 750 FEET EAST FROM THE NW CORNER OF SECTION 32
6	17S	12E	WM	32	SW¼ NW¼	HARMON PARK: 700 FEET SOUTH AND 680 FEET WEST FROM THE NE CORNER OF THE SW¼ NW¼ OF SECTION 32
7	17S	12E	WM	32	NW¼ NE¼	PIONEER PARK SOUTH: 600 FEET SOUTH AND 450 FEET WEST FROM THE NE CORNER OF THE NW¼ NE¼ OF SECTION 32
8	17S	12E	WM	32	NW¼ NE¼	PIONEER PARK NORTH: 560 FEET WEST FROM THE NE CORNER OF THE NW¼ NE¼ OF SECTION 32
9	17S	12E	WM	32	NW¼ NE¼	T.I.D. BEND FEED CANAL: 2050 FEET WEST FROM THE NE CORNER OF SECTION 32.
10	17S	12E	WM	29	SW¼ NE¼	RIVERS EDGE GOLF CLUB: 1980 FEET SOUTH AND 1160 FEET EAST FROM THE N¼ CORNER OF SECTION 29
11	17S	12E	WM	29	SE¼ NE¼	C.O.I.D. NORTH CANAL: 850 FEET NORTH AND 630 FEET WEST FROM THE E¼ CORNER OF SECTION 29
12	15S	12E	WM	14	NW¼ SE¼	CLINE FALLS STATE PARK: 425 FEET SOUTH AND 1475 FEET WEST FROM THE E¼ CORNER OF SECTION 14
13	18S	12E	WM	5	SE¼ NW¼	RIVER BEND LIMITED PARTNERSHIP: SOUTH 65° 46' 27" WEST, 3621.45 FEET FROM THE NE CORNER OF SECTION 5
17	18 S	12 E	WM	5	NW SW	RIVER BEND PARK PUMP STATION: SOUTH 6° 24' 37" EAST 783.10 FEET FROM THE WEST ¼ CORNER OF SECTION 5

Diversion Rates Determined by Decree

The amount of water used for irrigation and other uses (described in terms of equivalent irrigated acres or acres/equivalent) is limited to a diversion not to exceed the quantity determined by decree of the Circuit Court of the State of Oregon for Deschutes County, dated March 24, 1933.

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Direct Diversions Rates and Duty

The amount of water used for irrigation and other uses for those lands NOT served by the main canal systems and diverted directly from the source, together with the amount of water secured under any other right existing for the same lands, is limited by the March 24, 1933, decree of the Circuit Court of the State of Oregon for Deschutes County to a diversion not to exceed:

RATE FOR DIRECT DIVERSION FROM SOURCE		
SEASON	PERIOD OF USE	RATE
Season 1	April 1 through April 30 and October 1 through October 31	1 cfs to 145.45 acres
Season 2	May 1 through May 14 and September 15 through September 30	1 cfs to 109.09 acres
Season 3	May 15 through September 14	1 cfs to 58.91 acres

The total quantity of water diverted directly from the source that may be applied to each acre irrigated or acre/equivalent during the irrigation season of each year may not exceed **5.45 acre-feet (AF)** as measured at the point of diversion from the source. The quantities specified for those lands served by direct diversion from the source, and that are not served from the main canal systems, do not include the allowance for the 45% transmission loss.

Rates for Direct Diversion Points of Diversions

POD 3	Priority Date	RATE (CFS) by SEASON			ACRES
		1	2	3	
COLUMBIA PARK	1900	0.014	0.019	0.026	2.10
	1907	--	--	0.010	

Direct Diversion; rates do not include 45% transmissions losses.

POD 4	Priority Date	RATE (CFS) by SEASON			ACRE-EQUIVALENTS
		1	2	3	
DRAKE PARK SOUTH	1900	0.103	0.138	0.182	15.00
	1907	--	--	0.073	

Direct Diversion; rates do not include 45% transmissions losses.

PODS 4 & 5	Priority Date	RATE (CFS) by SEASON			ACRES
		1	2	3	
DRAKE PARK NORTH DRAKE PARK SOUTH	1900	0.082	0.109	0.144	11.90
	1907	--	--	0.058	

Direct Diversion; rates do not include 45% transmissions losses.

MINING						
Twp	Rng	Mer	Sec	Q-Q	AC-EQ	POD
14 S	14 E	WM	30	SW NE	10.20	11
14 S	14 E	WM	30	SE NE	5.80	11
Total Acres-Equivalent (AC-EQ)					16.00	

MUNICIPAL USE							WATER USER
Twp	Rng	Mer	Sec	Q-Q	AC-EQ	POD	
15 S	13 E	WM	3	NESW	23.50 ¹	11	CENTRAL OREGON IRRIGATION DISTRICT
15 S	13 E	WM	16		87.46	11	CITY OF REDMOND
17 S	12 E	WM	32	SW NW	15.00	4	CITY OF BEND
Total Acres-Equivalent (AC-EQ)					125.96		

¹Limited to non-human consumption, non-potable uses only.

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POND MAINTENANCE						
Twp	Rng	Mer	Sec	Q-Q	AC-EQ	POD
14 S	13 E	WM	3	SE NW	0.40	11
14 S	13 E	WM	3	NE SW	2.10	11
14 S	13 E	WM	3	SW SW	4.15	11
14 S	13 E	WM	3	SE SW	0.75	11
14 S	13 E	WM	3	NW SE	1.90	11
14 S	13 E	WM	3	SW SE	6.90	11
14 S	13 E	WM	3	SE SE	0.60	11
14 S	13 E	WM	4	NW NE	1.50	11
14 S	13 E	WM	4	SW NE	0.30	11
14 S	13 E	WM	5	SW NW	24.16	11
14 S	13 E	WM	8	NW NE	0.10	11
14 S	13 E	WM	8	NE SW	0.20	11
14 S	13 E	WM	9	NE NE	2.55	11
14 S	13 E	WM	9	SE NE	3.80	11
14 S	13 E	WM	10	NW NE	13.98	11
14 S	13 E	WM	10	SW NE	2.80	11
14 S	13 E	WM	10	NE NW	2.75	11
14 S	13 E	WM	10	NW NW	5.25	11
14 S	13 E	WM	10	SW NW	6.08	11
14 S	13 E	WM	10	SE NW	2.75	11
14 S	13 E	WM	10	NE SW	1.44	11
14 S	13 E	WM	10	NE SE	1.20	11
14 S	13 E	WM	10	NW SE	8.04	11
14 S	13 E	WM	13	SE SE	0.50	11
14 S	13 E	WM	14	NW SE	0.60	11
14 S	13 E	WM	14	SW SE	1.20	11
14 S	13 E	WM	18	SW NE	1.00	11
14 S	13 E	WM	19	NE SE	14.97	11
14 S	13 E	WM	20	NW SW	0.20	11
14 S	13 E	WM	21	NW SE	1.20	11
14 S	13 E	WM	22	NW NW	0.88	11
14 S	13 E	WM	22	SE NW	0.60	11

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.

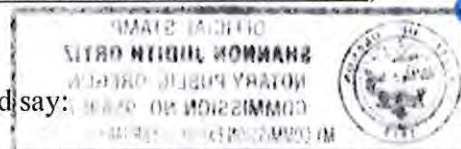
State of Oregon)
County of DESCHUTES) ss

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MAY 13 2020

I, PATRICK GRIFFITHS, in my capacity as CITY OF BEND UTILITY DEPARTMENT WATER RESOURCES MANAGER,
mailing address 62975 BOYD ACRES ROAD, BEND, OR, 97701

telephone number (541)317-3008, 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:

Certificate #	Township	Range	Mer	Sec	¼ ¼	Gov't Lot or DLC	Acres (if applicable)

OR

- ☐ Confirming Certificate # ____ has been issued within the past five years; **OR**
- ☒ Part or all of the water right was leased instream at some time within the last five years. The
instream lease number is: IL-1377 (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 Use

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]
Signature of Affiant

5-5-20
Date

Signed and sworn to (or affirmed) before me this 5th day of May, 2020.



[Signature]
Notary Public for Oregon

My Commission Expires: February 12, 2021

Supporting Documents	Examples
☐ 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
☐ Copies of receipts from sales of irrigated crops or for expenditures related to use of water	• Power usage records for pumps associated with irrigation use • Fertilizer or seed bills related to irrigated crops • Farmers Co-op sales receipt
☐ Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers	• 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
☐ Aerial photos containing sufficient detail to establish location and date of photograph	Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added. Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terra-server.com
☒ Approved Lease establishing beneficial use within the last 5 years	Copy of instream lease or lease number

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April 1 through April 30 & October 1 through October 31
 May 1 through May 14 & September 16 through September 30
 May 15 through September 15

Priority Date: October 31, 1900, and December 2, 1907

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/80th cubic foot per second (CFS) per acre

Season 2: limited to 1/60th CFS per acre

Season 3: limited to 1/32.4th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals (POD No. 1 & 11) as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: Deschutes River tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	13	SW NE	POD NO. 1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17 S	12 E	WM	31	NE SE	POD NO. 4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE ¼ SE ¼ OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	POD	Acres	Additional Place of Use Description Provided in Application - Tax Lot	Water Right Holder
17 S	13 E	WM	20	SE NW	1	2.5	200	City of Bend
17 S	12 E	WM	32	SW NW	4	15.0	-	
Total						17.5		

4. The season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 15 through September 30 described herein as Season 2

May 15 through September 14 described herein as Season 3

5. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 3), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact No. 3), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which

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the diversion at POD No. 1 & 4 under Certificate 83571 shall be reduced, if this instream lease is approved.

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POD No. 1

Priority Date	Season 1	Season 2	Season 3	Total Volume
October 31, 1900	0.031 CFS	0.041 CFS	0.055 CFS	24.64 AF
December 2, 1907	-	-	0.022 CFS	

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POD No. 4

Priority Date	Season 1	Season 2	Season 3	Total Volume
October 31, 1900	0.187 CFS	0.249 CFS	0.329 CFS	147.83 AF
December 2, 1907	-	-	0.132 CFS	

6. There is a supplemental irrigation water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact No. 3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
7. 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.
8. The Lessor and Lessee have requested to protect water instream from the PODs (described in Finding of Fact No. 3) to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use generally return to the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Deschutes River, tributary to the Columbia River

Instream Reach No. 1: From POD No. 1 to POD No. 4 (as described in Finding of Fact No.3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	Season 1: 0.017	13.63	April 1 – October 26
		Season 2: 0.023		
		Season 3: 0.042		

Instream Reach No. 2: From POD No. 4 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	Season 1: 0.120	95.38	April 1 – October 26
		Season 2: 0.161		
		Season 3: 0.297		

Instream Reach No. 3: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	0.091	38.5	April 1 – October 26

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10. Other conditions to prevent injury and enlargement are:

MAY 13 2020

The amount of water to be leased instream under Certificate 83571 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

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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 points of diversion within the specified stream reach.

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

12. The protection of flows within the proposed reach is appropriate, considering:

- The instream water use begins at the recorded point of diversion;
- The location of confluences with other streams downstream of the point of diversion.
- There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- Return flows resulting from the exercise of the existing water right would re-enter the river downstream of the PODs, within the reach of the instream water right. As such, the rate and volume of water protected within Instream Reach No. 3 has been reduced to prevent injury and enlargement (Finding of Fact No. 9).

13. 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.

14. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach the point do not exceed the estimated average natural flow.

15. 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.

16. 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.

17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
18. The Lessor and Lessee have requested that the lease terminate on October 31, 2016. The lease may commence on the date this final order is signed.
19. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During 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, 2016. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (April 1 through October 26) 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 not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 23 day of May, 2014.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

Mailing date: MAY 27 2014

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Supplemental Form D

Water Right Transfers Within the Boundaries of or Served by an Irrigation District or other Water Supplier (Association, Ditch Co., etc.)

[For transfers submitted under OAR Chapter 690 Division 380]

OREGON



WATER RESOURCES
DEPARTMENT

Oregon Water Resources Department

725 Summer Street NE, Suite A

Salem, Oregon 97301-1266

503-986-0900

www.oregon.gov/OWRD

The Department requires non-district applicants to communicate with districts/water suppliers during the planning and preparation of transfer applications involving water rights having a point of diversion or appropriation (POD/POA) or place of use (POU) served by or located within the boundaries of an irrigation district, or other type of water supplier to which assessments are paid. In some cases consent will be required from the district or water supplier.

This form must be included with any transfer application that involves rights served by or located within the boundaries of a district or other type of water supplier.

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1. APPLICANT INFORMATION

NAME CITY OF BEND UTILITY DEPARTMENT, ATTN: PATRICK GRIFFITHS			PHONE (HM)
PHONE (WK) 541-317-3008	CELL	FAX	
ADDRESS 62975 BOYD ACRES ROAD			
CITY BEND	STATE OR	ZIP 97701	E-MAIL** PGRIFITHS@BENDOREGON.GOV

2. DISTRICT or WATER SUPPLIER INFORMATION

DISTRICT/WATER SUPPLIER NAME CENTRAL OREGON IRRIGATION DISTRICT			PHONE (HM)
PHONE (WK) 541-504-7576	CELL	FAX	
ADDRESS 1055 SW LAKE COURT			
CITY REDMOND	STATE OR	ZIP 97756	E-MAIL**

** By providing an e-mail address, the applicant and/or the district/water supplier consents to receive all correspondence from the Department electronically. Copies of final order documents will also be mailed.

3. WATER RIGHTS ISSUED IN THE NAME OF, or LOCATED WITHIN, or SERVED BY AN IRRIGATION DISTRICT, OTHER DISTRICT, OR WATER SUPPLIER

a. List the water right(s) involved in this transfer:

	Application / Decree	Permit / Previous Transfer	Certificate	Is the water right in the name of a district, water supplier, or BOR*?
1.		-	94956	YES ☒
2.		-		YES ☐
3.		-		YES ☐

Attach additional pages for additional water rights if necessary.

*Bureau of Reclamation

- b. Determine a district's/water supplier's connection to your points of diversion (POD) or appropriation (POA) and places of use (POU). *[You may need to consult with your district/water supplier.]*

CURRENT ASSOCIATIONS Please answer the following "yes" or "no" questions:

- YES ☒ NO ☐ One or more of the current POD(s) / POA(s) involved in the transfer are served by a district/water supplier or rely on BOR water.
- YES ☐ NO ☒ All or a portion of the current POU involved in this proposed transfer receives water for either primary or supplemental irrigation from the district/water supplier; *i.e., the POU is currently layered with a district or BOR water supplied water right(s).*

PROPOSED ASSOCIATIONS Please answer the following "yes" or "no" questions:

- YES ☒ NO ☐ One or more of the proposed POD(s) / POA(s) involved in the transfer are currently served or will be served by a district/water supplier if the transfer is approved, or rely on BOR water.
- YES ☐ NO ☒ All or a portion of the proposed POU involved in this proposed transfer currently receives or will receive either primary or supplemental irrigation from the district/water supplier; *i.e., the POU will be layered with a district/water supplier or BOR water supplied water right(s).*

COMMENTS OR ADDITIONAL INFORMATION A 15 MUNICIPAL ACRE/EQUIVALENT PORTION OF CERTIFICATE 94956 IS BEING TRANSFERRED INSTREAM

4. APPLICANT'S SIGNATURE

- (1) I certify that I have notified the district/water supplier about the proposed water right transfer application by [check one]:
☒ email, ☐ phone, ☐ postal mail, ☐ in person, or ☐ other (please specify) _____
- (2) I certify that to the best of my knowledge the information contained in this Supplemental Form D is true and accurate.

Applicant Signature

Patrick Griffiths, Bend Water Resources Manage
Name (print)

Date

5. (WHEN REQUIRED) DISTRICT or WATER SUPPLIER CONSENT TO THE PROPOSED WATER RIGHT TRANSFER

District Manager or Water Supplier consent is required if any box on this form is marked "YES."

The district/water supplier certifies the following:

- (1) The district/water supplier has reviewed the applicant's proposed water right transfer application and maps; and
- (2) The district/water supplier consents to the proposed water right transfer application.

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YES ☐ NO ☒ After proof of completion, the confirming water right certificate is to remain in the name of the U.S. Bureau of Reclamation or the district/water supplier.

YES ☐ NO ☒ The district/water supplier will be responsible for submitting the claim of beneficial use prepared by a Certified Water Rights Examiner (CWRE).


Signature of District Manager /Water Supplier

Craig Horrell, Managing Director, COID
Name (print), Title

4.24.20
Date

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May 11, 2020

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

City of Bend Planning Department
710 NW Wall Street
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

Wasco County Planning Department
2705 East 2nd Street
The Dalles, OR 97058

Sherman County Planning Department
66365 Lonerock Road
Moro, OR 97039

To whom it may concern:

The Water Resources Department requires applicants intending to file an application to transfer a water right to instream purposes to notify local governments that could be affected, so that the local government can make sure that the proposed new use does not result in a land use that would be incompatible with its comprehensive plan.

As such, I am notifying you on behalf of the City of Bend (City) that the City intends to submit an application to the Oregon Water Resources Department proposing to transfer 15 acres-equivalent of water right certificate 94956 to instream use. The proposed place of instream use would be in the Deschutes River from approximately Drake Park in the City of Bend to the confluence with the Columbia River. The proposed rate to be protected instream varies from 0.031 to 0.255 cubic feet per second depending on the season and reach.

If you have any questions regarding the proposed application, or are interested in receiving additional information, please call me at (541) 257-9005.

Sincerely,

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

Owen McMurtrey
Water Resources Consultant

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May 11, 2020

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

RE: Application for a Water Right Instream Transfer in the name of City of Bend.

Dear Sarah:

GSI Water Solutions, Inc. (GSI) is submitting the enclosed Application for Water Right Instream Transfer on behalf of the City of Bend. Water right certificate 94956 is held by Central Oregon Irrigation District. Certificate 94956 authorizes direct diversion of 15 acres equivalent for municipal use at the following rates:

- 0.103 cfs in Season 1 (April 1 - April 30 and October 1 - October 31)
- 0.138 cfs in Season 2 (May 1 - May 14 and September 16 - September 30)
- 0.255 cfs in Season 3 (May 15 - September 15).

The City of Bend is requesting to permanently transfer instream the entire rate allowed from POD 4 in exchange for 41.97 mitigation credits. The additional remarks section of the application includes an explanation of methods used to estimate the consumptive use of the portion of Certificate 94956 proposed for transfer.

The required application documents and fee of \$1,045 are enclosed.

Please contact me if you have any questions. My phone number is 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: Application for Water Right Instream Transfer for Certificate 94956
Check in the amount of \$1,045

13437

Application for a Water Right Instream Transfer City of Bend

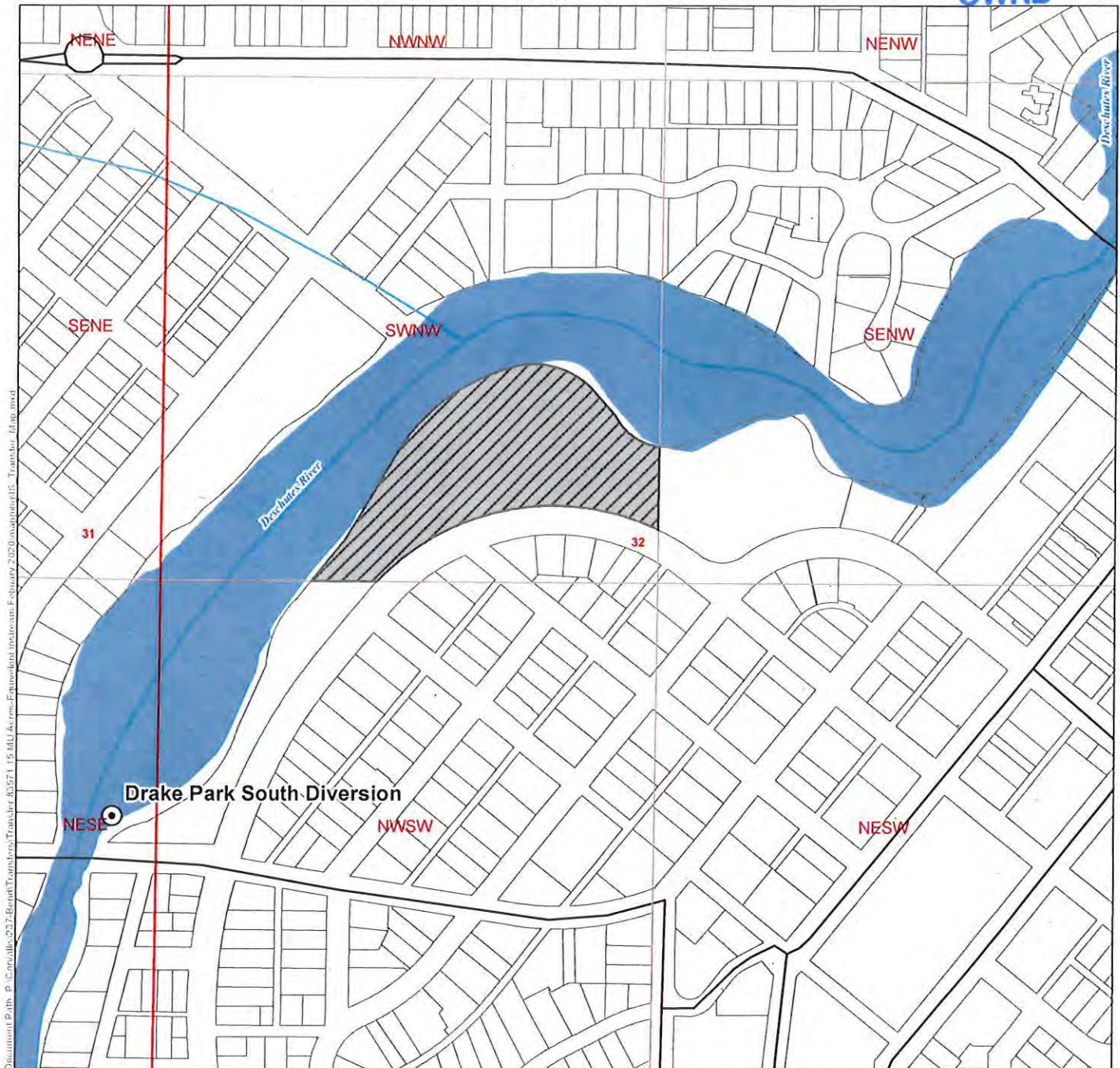
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Certificate 83571

Township 17 South, Range 12 East (W.M.)

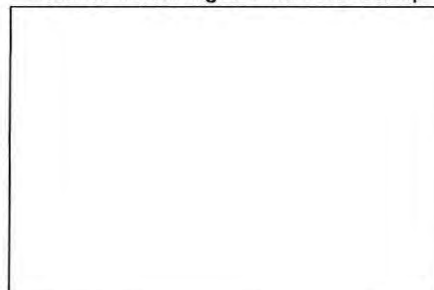
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LEGEND

- Point of Diversion (POD)
- POU to be Transferred Instream
- Tax Lot
- Government Lot (GL)
- Donation Land Claim (DLC)
- Railroad
- Road
- Watercourse
- Waterbody

Certified Water Rights Examiner Stamp



DISCLAIMER

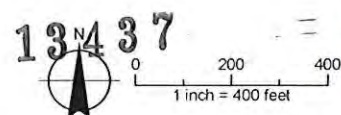
This map was prepared for the purpose of identifying the location of a water right only and it is not intended to provide legal dimensions or location of property ownership lines.

MAP NOTES

Date: February 26, 2020
Data Sources:

POD LOCATION DESCRIPTION

Point of Diversion
POD 4: 700 feet North and 120 feet West from SE Corner of NESE of Section 31 (W.M.)



Instream Water Right Transfer Application Checklist

Checked by SARAH H. Date 5/18/2020

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

- ☒ 1. Page 1 of application: Are all attachments that have been checked actually included? **YES**
If not, what is missing? _____
- ☒ 2. Are fees included and correct? **YES**
If not, the correct fee would be: _____, so the amount missing is: _____
- ☒ 3. Page 3 of application: Have all the applicants listed at the top of the page signed at the bottom? **YES**
If not, whose signature is missing? _____.
- ☒ 4. Are all signatures on the application and any affidavits "original"? (THE SIGNATURES DO NOT NEED TO BE ORIGINAL) (THIS QUESTION SHOULD BE TAKEN OUT)
If not, whose "original" signature is missing? _____
- ☒ 5. Are all listed certificates or permits shown by WRIS as non-cancelled? **YES**
If not, which are cancelled? _____
For each cancelled certificate, if there has been a remaining right certificate issued that covers the lands in the left side of Table 2, list its number _____ and check the #4 box at left on this checklist.
- ☒ 6. If any certificate is in the name of a "district", is a Supplemental Form D from that district enclosed?
☐ N/A ☒ Form D needed from **COID** (district) **GOT IT**
7. If all #1-#6 boxes on this checklist are checked (with no remaining deficiencies identified), accept the application. Put this check sheet in the transfer folder. If #1, #2, #3, #4, #5 or #6 is deficient, the application cannot be accepted. It should be returned and the **deficiencies listed in the "staff" section at the bottom of Application Page 1**, unless the applicant or agent can resolve the deficiencies within 2-3 days.

JULIE

Please email Sarah
PN Dates of this
Transfer, so she can
get the Mitigation
Project on the same
Public Notice. THANKS