

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

In the Matter of Transfer Application) FINAL ORDER
T-10740, Deschutes County) APPROVING A DISTRICT
) PERMANENT TRANSFER FOR
) NON-USE

Authority

ORS 540.570 to 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department’s procedures and criteria for evaluating district transfer applications.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT (COID)
1055 SW LAKE CT.
REDMOND, OR 97756

Findings of Fact

1. As stated in Findings of Fact two through five below, water was not put to beneficial use on the authorized lands during the 2004, 2005, 2006, 2007 or 2008 irrigation seasons.
2. On November 9, 2007 and October 1, 2008, COID notified the landowners that they must use their water right or it would be taken from them because Oregon law provides that five consecutive years of non-use will result in forfeiture of vested water rights under ORS 540.610. The notices also informed the landowners that they had a right to transfer their water right to another place of use. Further, the notices informed the landowners about the confiscation policy instituted by COID.
3. On November 9, 2007, and October 1, 2008, COID notified the respective landowners and all parties holding recorded security interest in their lands that, pursuant to the District’s confiscation policy, COID planned to file a petition to transfer the unused water rights to other lands.
4. On November 24, 2008, COID notified the respective landowners that COID had filed an application to transfer the water from the authorized place of use due to five consecutive years of non-use.
5. On November 28, 2008, the Department received a district transfer application from COID to permanently change the place of use under Certificates 83571 and 76714. The Department assigned the application number T-10740.

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.

6. Notice of the application for transfer was published pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.

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

Certificate: 83571 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: IRRIGATION of 0.50 acre

Priority Date: OCTOBER 31, 1900 and DECEMBER 2, 1907

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 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

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

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

Season 2: Limited to 1/60 CFS per acre

Season 3: Limited to 1/32.4 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 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
11	17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	POD #	Notice #
16 S	12 E	WM	10	SE SE	0.50	1600	Brian, Gary	11	T-2008-041

8. Transfer Application T-10740 proposes to change the places of use to:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	POD #	Notice #
16 S	12 E	WM	14	SW SE	0.50	1000	COID	11	T-2008-041

9. 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:

POD # 11				
Priority Date	Season 1	Season 2	Season 3	Duty (AF)
October 31, 1900 (cfs)	0.006	0.008	0.011	4.94
December 2, 1907 (cfs)			0.004	

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.

10. 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 #7), 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 point of diversions (POD)(described in Finding of Fact #7), the portion of the right involved in this transfer would be limited as described in the following tables:

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

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: SUPPLEMENTAL IRRIGATION of 0.50 acre

Priority Date: February 28, 1913

Limit/Duty: limited to 50,000 acre-feet of stored water only

Source: Crane Prairie Reservoir, constructed under Permit R-1687, a tributary of the Deschutes River

The water right evidenced by Certificate 76714 allows the use of up to 50,000 acre-feet of water stored in Crane Prairie Reservoir, a tributary of the Deschutes River, for supplemental irrigation. The diversion rate is not specified and use is limited to the total volume of stored water to make up any deficiency in supply of the live flow water right appurtenant to specified lands.

Authorized Point of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11	17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	POD #	Notice #
16 S	12 E	WM	10	SE SE	0.50	1600	Brian, Gary	11	T-2008-041

12. Transfer Application T-10740 proposes to change the places of use to:

SUPPLEMENTAL IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	POD #	Notice #
16 S	12 E	WM	14	SW SE	0.50	1000	COID	11	T-2008-041

Transfer Review Criteria (ORS 540.572; OAR 690-385-5000)

13. On November 28, 2008, COID filed transfer application T-10740, which proposed to transfer water from the authorized lands due to non-use. COID filed Transfer Application T-10740 prior to the end of the fifth year of non-use as required by OAR 690-385-5600.
14. The authorized places of use are within the legal boundaries of COID and are “no longer irrigated” within the meaning of ORS 540.572.
15. COID is managed by a full-time manager. ORS 540.574(1)(a).
16. COID is implementing a water conservation plan that was approved by the Department on December 17, 2004. ORS 540.574(1)(b).
17. COID met all notice requirements of ORS 540.572 and OAR 690-385-5100 prior to filing Transfer Application T-10740.
18. The landowner did not notify COID or the Department, that they objected to the District’s actions, nor did they notify COID or the Department that they had any evidence sufficient to rebut the presumption of forfeiture as required by ORS 540.572(4)(b)(C).
19. Transfer application T-10740 contains the information and map required under OAR 690-385-2000, 690-385-2200 and 690-385-4000.
20. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
21. The proposed change in place of use will not result in enlargement of the rights.
22. The proposed change in place of use will not result in injury to other water rights.
23. The district permanent transfer application satisfies the criteria of OAR 690-385-4000 contains the information required under OAR 690-385-2000 and includes maps meeting the requirements of OAR 690-385-2200.
24. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
25. The proposed change in place of use will not result in enlargement of the rights.
26. The proposed change in place of use will not result in injury to other water rights.

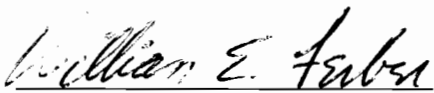
Conclusions of Law

The proposed change in place of use as proposed in Transfer Application T-10740 satisfies the requirements of ORS 540.574(3) and 540.580.

Now, therefore, it is ORDERED:

1. The proposed change in place of use to the water rights evidenced by Certificates 83571 and 76714 is approved.
2. 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 Certificates 83571 and 76714 and any related decree.
3. The former places of use shall no longer be irrigated as part of these water rights.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2010.
5. A Claim of Beneficial Use (COBU) shall be submitted by the applicant to the Department by October 1, 2011.
6. Water right Certificates 83571 and 76714 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.

Dated at Salem, Oregon this 22nd day of January, 2009.

for 
Phillip C. Ward, Director

Mailing Date: JAN 27 2009