

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11318, Deschutes County)	CHANGE IN POINTS OF DIVERSION

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

THREE SISTERS IRRIGATION DISTRICT
Attn: MARC THALACKER, MANAGER
PO BOX 2230
SISTERS, OR 97759

Co-Applicants

CITY OF SISTERS
Attn: EILEEN STEIN, CITY MANAGER
PO BOX 39
SISTERS, OR 97759

RICHARD MORROW
PO BOX 1671
SISTERS, OR 97759

SHARON AMESTOY
7209 SE MADISON
PORTLAND, OR 97215

DAVID HERMAN
57735 WHITEHORSE RANCH LANE
FIELDS, OR 97710

Agent

DESCHUTES RIVER CONSERVANCY
ATTN: GEN HUBERT, AGENT
700 NW HILL STREET
BEND, OR 97701

Co-Applicants

WILLIAM WILLITTS
251 S. ELM STREET
SISTERS, OR 97759-1079

JAY R. POULOS
4389 CROISAN RIDGE WAY S.
SALEM, OR 97302

BRUCE ROGNLIEN
1679 ALTA MURA RD.
PACIFIC PALISADES, CA 90272

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.

Findings of Fact

Background

1. On November 17, 2011, Three Sisters Irrigation District, and co-applicants listed above, filed an application to change the points of diversion under Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 85393, 85387 and 85388. The application also contained a request for a fee waiver under OAR 690-380-3400 (3) and a request for a map waiver under OAR 690-380-3410 (1)(c), and supplied the appropriate documentation from the Oregon Department of Fish & Wildlife. The Department approved the requests. The Department assigned the transfer application number T-11318.
2. Transfer application was filed in conjunction with Conserved Water Application CW-71.
3. On February 24, 2015, the Department issued an Order approving CW-71. As a result of the CW-71 Order, reduced rate certificates were issued which supersede the following certificates involved in this transfer.

Original Certificate	Original Rate	Superseding Certificate	Reduced Rate
86824	1.230	89817	0.959
83355	0.620	89818	0.484
85389	0.080	89819	0.062
85391	0.100	89820	0.078
86828	0.570	89821	0.445
86826	0.710	89822	0.554
85392	0.600	89823	0.468
85386	0.800	89824	0.624
85393	0.492	89825	0.384
85393	0.682	89844*	0.682

*- remaining right, not reduced in rate

4. Certificates 85387 and 85388 were superseded by Certificates 87243 and 87242 and inchoate portions under Transfer T-10907. The inchoate portions of Certificates 85387 and 85388 were confirmed under a Determination of Satisfactory Proof, recorded in Special Order Volume 91, Pages 428-430. As a result of the CW-71 Order, reduced rate certificates were issued which supersede 87243 and 87242 and the confirmed inchoate portions of the certificates under T-10907.

Original Certificate	Original Rate	Superseding Certificate	Reduced Rate
85387/87243	0.966	89826	0.753
85387/T-10907	0.474	89827	0.370
85388/87242	0.180	89828	0.140
85388/T-10907	0.190	89829	0.148

5. The first right to be transferred is as follows:

Certificate: 89817 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 59.5 ACRES
Priority Date: 1880
Rate: 0.959 CUBIC FOOT PER SECOND
Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	704	18.0
15 S	10 E	WM	10	NW SW	704	0.3
15 S	10 E	WM	10	SW SW	704	1.2
15 S	10 E	WM	10	SE SW	704	37.0
15 S	10 E	WM	10	SW SE	704	3.0

6. The second right to be transferred is as follows:

Certificate: 89818 in the name of G.W. McFARLANE (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 30.0 ACRES

Priority Date: 1880

Rate: 0.484 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FIFTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	30.0

7. Certificate 83355 does not describe the location of the point of diversion, however information is available from the transfer application, indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

8. The third right to be transferred is as follows:

Certificate: 89819 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 2.5 ACRES
Priority Date: 1880
Rate: 0.062 CUBIC FOOT PER SECOND
Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
 DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NW SE	704	2.4
15 S	10 E	WM	10	SW SE	704	0.1

9. The fourth right to be transferred is as follows:

Certificate: 89820 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 3.0 ACRES

Priority Date: 1880

Rate: 0.078 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
 DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SW	704	3.0

10. The fifth right to be transferred is as follows:

Certificate: 89821 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 18.0 ACRES

Priority Date: 1880

Rate: 0.445 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
 DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	3.0
15 S	10 E	WM	10	SE SE	704	4.2
15 S	10 E	WM	15	NE NE	200	10.8

11. The sixth right to be transferred is as follows:

Certificate: 89822 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC
(confirmed by Decree of the Circuit Court of the State of Oregon for
Deschutes County)

Use: IRRIGATION of 35.5 ACRES

Priority Date: 1881

Rate: 0.554 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NE NE	200	6.6
15 S	10 E	WM	15	NW NE	200	28.9

12. The seventh right to be transferred is as follows:

Certificate: 89823 in the name of CITY OF SISTERS and HAWK'S HAVEN
RESERVE, LLC, BRUCE & MARLEEN ROGNLIEN (confirmed by
Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 30.0 ACRES

Priority Date: 1886

Rate: 0.468 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - HAWK'S HAVEN RESERVE, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	706	9.9
15 S	10 E	WM	10	SE NW	706	12.6
15 S	10 E	WM	10	NE SW	706	0.3
15 S	10 E	WM	10	NW SW	706	0.2

IRRIGATION - CITY OF SISTERS						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NW NE	200	7.0

13. The eighth right to be transferred is as follows:

Certificate: 89824 in the name of HAWK'S HAVEN RESERVE, LLC, BRUCE and MARLEEN ROGNLIEN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 40.0 ACRES

Priority Date: 1895

Rate: 0.624 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - HAWK'S HAVEN RESERVE						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	706	3.6
15 S	10 E	WM	10	SW NW	706	18.8
15 S	10 E	WM	10	SE NW	706	16.1
15 S	10 E	WM	10	NE SW	706	1.5

14. The ninth right to be transferred is as follows:

Certificate: 89825 in the name of SHARON AMESTOY, AMESTOY RANCH, LLC; LAZY Z RANCH c/o JAY POULOS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 24.6 ACRES

Priority Date: 1900

Rate: 0.384 CUBIC FOOT PER SECOND (if available at the original point of diversion being within the NW¼ SW¼, Section 9, Township 15 South, Range 10 East, W.M.; 910 Feet South and 160 Feet East from the W¼ Corner of Section 9) or its equivalent in case of rotation, measured at the point of diversion

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION – AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	702	0.9
15 S	10 E	WM	10	SE NE	702	6.8
15 S	10 E	WM	10	NE SE	702	6.8
15 S	10 E	WM	10	NW SE	702	2.0

IRRIGATION – LAZY Z RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	700	8.1

15. The tenth right to be transferred is as follows:

Certificate: 89844 in the name of SKI POND RANCH, LLC, c/o DAVID HERMAN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 34.1 ACRES

Priority Date: 1900

Rate: 0.682 CUBIC FOOT PER SECOND (if available at the original point of diversion being within the NW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 9, Township 15 South, Range 10 East, W.M.; 910 Feet South and 160 Feet East from the W $\frac{1}{4}$ Corner of Section 9) or its equivalent in case of rotation, measured at the point of diversion

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION – SKI POND RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	14	NE NE	1700	1.1
15 S	10 E	WM	14	NW NE	1700	6.3
15 S	10 E	WM	14	SW NE	1700	24.7
15 S	10 E	WM	14	SE NE	1700	2.0

16. The eleventh right to be transferred is as follows:

Certificate: 89826 in the name of SHARON AMESTOY, AMESTOY RANCH, WILLITTS, LLC, R & B RANCH, LLC, c/o RICK MORROW (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 48.3 ACRES

Priority Date: 1908

Rate: 0.753 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - WILLITTS, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	800	1.3
15 S	10 E	WM	10	NW SW	800	3.7

IRRIGATION - AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SE	702	17.8
15 S	10 E	WM	10	SW SE	702	0.3
15 S	10 E	WM	10	SE SE	702	8.9

IRRIGATION - R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	11	NW SW	1300	10.0
15 S	10 E	WM	11	SW SW	1300	6.3

17. The twelfth right to be transferred is as follows:

Certificate: 89827 in the name of R & B RANCH, LLC, c/o RICK MORROW
(confirmed by Decree of the Circuit Court of the State of Oregon for
Deschutes County)

Use: IRRIGATION of 23.7 ACRES

Priority Date: 1908

Rate: 0.37 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - R & B RANCH, LLC					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	10 E	WM	11	SW NE	5.6
15 S	10 E	WM	11	SE NE	5.5
15 S	10 E	WM	11	NE SE	12.4
15 S	10 E	WM	11	SE SE	0.2

18. The thirteenth right to be transferred is as follows:

Certificate: 89828 the name of SHARON AMESTOY, AMESTOY RANCH, LLC
(perfected under Permit E-176)

Use: IRRIGATION of 14.5 ACRES

Priority Date: October 7, 1912

Rate: 0.14 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SE NE	702	11.9
15 S	10 E	WM	10	NE SE	702	2.6

19. The fourteenth right to be transferred is as follows:

Certificate: 89829 the name of R & B RANCH, LLC, c/o RICK MORROW (perfected under Permit E-176)

Use: IRRIGATION of 14.9 ACRES

Priority Date: October 7, 1912

Rate: 0.148 CUBIC FOOT PER SECOND

Source: WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the
DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION - R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	11	SW NE	1300	10.8
15 S	10 E	WM	11	SE NE	1300	4.1

20. Transfer Application T-11318 proposes to change the point of diversion for the above described rights downstream approximately 1400 feet to the Three Sisters Irrigation District main diversion:

Proposed Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

21. Notice of the application for transfer was published on November 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
22. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion and that the diversion is currently equipped with an appropriate fish screen.

23. On November 27, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11318 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 28, 2012, for the applicants to respond. The applicants requested clarification on Condition #7 of the final page of the draft Preliminary Determination. OWRD confirmed that the CWRE will review the new POD for capacity and the District may request a waiver to provide self-certification maps from the District for the places of use. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
24. On January 10, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11318 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 15, 2013, and in *The Bulletin* newspaper on January 17, 24, and 31, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

Transfer Review Criteria [OAR 690-380-4010(2)]

25. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the records that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
26. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11318.
27. The proposed changes would not result in enlargement of the rights.
28. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in points of diversion proposed in Transfer Application T-11318 appear be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

Now, therefore, it is ORDERED:

1. The changes in points of diversion proposed in application T-11318 are 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 89817, 89818, 89819, 89820, 89821, 89822, 89823, 89824, 89825, 89826, 89827, 89828, 89829, 89844, and any related decree.

3. Water right Certificates 89817, 89818, 89819, 89820, 89821, 89822, 89823, 89824, 89825, 89826, 89827, 89828, 89829, and 89844 are cancelled.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The water users shall maintain and operate the existing measuring device and shall make such improvements as may be required by the Department.
6. The water users shall maintain and operate a fish screen at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water. (See clarification in Finding of Fact #23 above.)
8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 26th day of February, 2015.


Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR

Mailing date: FEB 27 2015