

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING OF A
Application T-10826, AND MITIGATION	)	CHANGE IN PLACE OF USE AND
PROJECT MP-126, Deschutes County	)	CHARACTER OF USE, PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT, AND AWARD OF
	)	MITIGATION CREDITS

**Authority**

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

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

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

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

**Applicant**

Central Oregon Irrigation District (COID)  
1055 SW Lake Court  
Redmond, OR 97756

**Applicant**

Deschutes River Conservancy (DRC)  
700 NW Hill Street, Suite 1  
Bend, OR 97703

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**

1. On March 17, 2009, COID and DRC filed an application to change the place of use and character of use under Certificate 83571 to instream use. The Department assigned the application number T-10826.
2. Notice of the application for transfer was published on April 7, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. Consistent with land use requirements, the applicant provided notification of the intent to file the instream transfer application to Wasco County, Deschutes County, Jefferson County, City of Maupin, City of Bend and the Confederated Tribes of Warm Springs. Additionally, the Department provided notice of the proposed action to these local governments upon receipt of Transfer Application T-10826.
4. A deficiency letter was sent to the applicants on September 17, 2009, and an additional deficiency letter was sent on September 23, 2009. Deficiencies included requests for updated ownership reports, revised application maps, additional information in support of evidence of use, clarification of the place of use proposed for transfer, clarification of water right conveyance agreements, and other documentation necessary to complete the transfer application and review of the transfer.
5. Additional information and application materials were provided in response to the deficiency letters sent by the Department on or before January 8, 2010. Several of the issues were resolved in the response from the applicants. However, other issues were not resolved or requested information was not received.
6. On December 17, 2009 and January 8, 2010, the applicants requested that the following properties be removed from the transfer application:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>	<b>Tax Lot Number as Listed on the Transfer Application</b>
14 S	13 E	WM	21	NE SW	0.60	1703
14 S	13 E	WM	33	SW NW	0.20	3100
15 S	13 E	WM	9	SW SW	0.50	1429
<b>Total Acres</b>					<b>1.30</b>	

And requested that those properties be replaced with the following properties:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>	<b>Tax Lot Number as Listed on the Transfer Application</b>
14 S	13 E	WM	21	SE NW	0.70	701
15 S	13 E	WM	19	NE NE	0.60	703
<b>Total Acres</b>					<b>1.30</b>	

7. Follow up deficiency correspondence was sent to the applicants through e-mail on various dates between December, 2014, and May, 2016. Additional information was provided by the applicant shortly following each request.

8. On September 30, 2016, the Department issued a Draft Preliminary Determination (DPD) which informed the applicant that less acreage was available for transfer from certain properties, identified below, and additional information was needed:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot Number as Listed on the Transfer Application
14 S	13 E	WM	16	SE SE	0.52	300/302
14 S	13 E	WM	21	SE NW	0.16	701
15 S	13 E	WM	8	SW NE	0.13	803
15 S	13 E	WM	4	SE SE	0.18	200
<b>Total Acres</b>					<b>0.99</b>	

9. On February 24, 2017, after several correspondences with the Department discussing the issues identified in the DPD (described in Finding of Fact No. 8), COID requested those places of use in question be removed from the transfer application and replaced with the following property, of equal acreage:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot Number as Listed on the Transfer Application
15 S	13 E	WM	17	NW SW	0.99	12100

10. On March 31, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10826 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 1, 2017, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. On May 16, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10826 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 May 16, 2017, and in the Bend Bulletin newspaper on May 17, 24 and 31, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
12. The portion of the right to be transferred has been modified from the original transfer application and is as follows:

**Certificate:** 83571 in the name of Central Oregon Irrigation District (confirmed by decree of the Circuit Court for Deschutes County)

**Use:** Irrigation of 139.87 acres

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

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

**Maximum Quantity (Rate) that can be applied to an acre:**  
 Limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre during the period April 1 through April 30 & October 1 through October 31  
 Limited to 1/60<sup>th</sup> CFS per acre during the period May 1 through May 14 & September 15 through September 30  
 Limited to 1/32.4<sup>th</sup> CFS per acre during the period May 15 through September 14

**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.

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	POD No. 11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29

**Authorized Places of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	16	SW SW	0.20
14 S	13 E	WM	16	NE SE	0.20
14 S	13 E	WM	16	NW SE	0.10
14 S	13 E	WM	16	SW SE	4.48
14 S	13 E	WM	16	SE SE	1.40
14 S	13 E	WM	21	SE NW	0.54
15 S	12 E	WM	24	SE SW	1.50
15 S	12 E	WM	24	SW SE	0.40
15 S	12 E	WM	25	NE NE	0.30
15 S	12 E	WM	25	SW NE	0.75
15 S	12 E	WM	35	SE SE	0.45
15 S	13 E	WM	3	NW SW	2.00
15 S	13 E	WM	4	SE NE	8.50
15 S	13 E	WM	4	SW SW	6.31
15 S	13 E	WM	4	NE SE	2.50
15 S	13 E	WM	4	SW SE	1.00
15 S	13 E	WM	4	SE SE	5.57
15 S	13 E	WM	8	SW NE	37.87
15 S	13 E	WM	8	NE SW	0.60
15 S	13 E	WM	8	NW SW	5.60
15 S	13 E	WM	8	SE SW	1.53
15 S	13 E	WM	9	NW NW	0.57
15 S	13 E	WM	9	SW NW	0.80
15 S	13 E	WM	17	NE NW	3.15
15 S	13 E	WM	17	SW NW	4.74
15 S	13 E	WM	17	SE NW	5.20
15 S	13 E	WM	17	NW SW	0.99
15 S	13 E	WM	18	SE SE	5.85
15 S	13 E	WM	19	NE NE	0.60
15 S	13 E	WM	19	SW NE	1.75
15 S	13 E	WM	19	NE SW	5.60
15 S	13 E	WM	20	NE SW	0.70
15 S	13 E	WM	29	NW NE	0.55
15 S	13 E	WM	29	NE NE	0.37
15 S	13 E	WM	30	NW NW	3.20
15 S	13 E	WM	30	NE SE	2.20
15 S	13 E	WM	30	NW SE	9.30

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	10	SE SW	1.00
16 S	12 E	WM	26	SW NE	0.10
16 S	12 E	WM	26	NW SE	2.40
17 S	12 E	WM	14	SW NE	2.50
17 S	12 E	WM	14	SE NW	6.50
<b>Total Acres</b>					<b>139.87</b>

13. 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 to November 1, further limited as follows:

- April 1 to May 1 and October 1 to November 1 described herein as Season 1
- May 1 to May 15 and September 15 to October 1 described herein as Season 2
- May 15 to September 15 described herein as Season 3

14. 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. 10), 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. 10), the portion of the right involved in this transfer would be limited as described in the tables below. These rates and duties are also the quantities by which Certificate 83571 shall be reduced, if this transfer is approved.

POD No. 11

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	1.596 CFS	2.178 CFS	2.970 CFS	1319.87 AF
December 2, 1907			1.189 CFS	

15. A total of 762.36 AF of water, excluding transmission losses, may be beneficially used annually for primary irrigation under the portion of Certificate 83571 available for transfer.

16. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right, Certificate 83571, 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-10826.

17. The applicants are not the owners of the lands to which the water right described in Finding of Fact No. 12 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed to COID from each landowner described in the table below. The portion of this right to be transferred was appurtenant to lands owned by the identified land landowners at the time interest in the water right was conveyed through a Quit Claim, a water right conveyance agreement. Or the water right is now located within a public roadway and the lands have been dedicated to the public through recorded deeds and/or plat maps. For the portion of the right located within a public roadway, additional consent to the transfer has been obtained from the appropriate public entity.

Grantor (landowner at time of conveyance)	Water Right Interest Holder	Twp	Rng	Mer	Sec	Q-Q	Tax Lot at time of Conveyance
Denver and Kimmie Duncan	COID	14 S	13 E	WM	16	SW SW	2304
Rob Jackson and Tim Brown	COID	14 S	13 E	WM	16	SW SE	200
Jackson Brown, LLC*	COID	14 S	13 E	WM	16	SW SE	100, 106, 105, 107
Jackson Brown, LLC*	COID	14 S	13 E	WM	16	SE SE	107, 300, 302
Jose and Sherrene Mendoza	COID	14 S	13 E	WM	16	NE SE	300
Jose and Sherrene Mendoza	COID	14 S	13 E	WM	16	NW SE	300
Albert and Amy Rollins	COID	14 S	13 E	WM	21	SE NW	701
James Brock	COID	15 S	12 E	WM	24	SE SW	900
James Brock	COID	15 S	12 E	WM	24	SW SE	900
Harry Family Revocable Living Trust dated July 31, 2003	COID	15 S	12 E	WM	25	NE NE	100
Harold Flaherty	COID	15 S	12 E	WM	25	SW NE	605
Gary and Jill Johnson	COID	15 S	12 E	WM	35	SE SE	100
Fieldstone Construction, LLC*, a Washington Limited Liability Company	COID	15 S	13 E	WM	3	NW SW	1400
Watson Family Limited Partnership & Watson Family Limited Partnership	COID	15 S	13 E	WM	4	SE NE	400
Tri-County Investors II, LLC*	COID	15 S	13 E	WM	4	SW SW	704
Watson Family Limited Partnership & Watson Family Limited Partnership	COID	15 S	13 E	WM	4	NE SE	1000
Redmond Canal Lot 200, LLC*	COID	15 S	13 E	WM	4	NE SE	400
Redmond Canal Lot 200, LLC*	COID	15 S	13 E	WM	4	NE SE	500
Havnip Investment, LLC*	COID	15 S	13 E	WM	4	SW SE	200
Redmond Canal Lot 200, LLC*	COID	15 S	13 E	WM	4	SE SE	200
Michael and Dana Ivancovich	COID	15 S	13 E	WM	4	SE SE	800
Michael and Dana Ivancovich	COID	15 S	13 E	WM	4	SE SE	900
Suntrust Land Company, LLC*	COID	15 S	13 E	WM	8	SW NE	800
Suntrust Land Company, LLC*	COID	15 S	13 E	WM	8	SW NE	801
Suntrust Land Company, LLC*	COID	15 S	13 E	WM	8	SW NE	803
Whispering Winds Enterprises, LLC*	COID (part located in City of Redmond roadway)	15 S	13 E	WM	8	NE SW	701
Redmond Free Methodist Church and High Desert Praise Center	COID	15 S	13 E	WM	8	NW SW	501
Douglas and Christine Gray	COID	15 S	13 E	WM	8	SE SW	1200
Monticello Homes, Inc.	COID	15 S	13 E	WM	8	SE SW	700
Monticello Homes, Inc.	COID	15 S	13 E	WM	8	SE SW	800
Bryant Burgess	COID	15 S	13 E	WM	8	SE SW	900
Frank and Gloria Phillips	COID	15 S	13 E	WM	9	NW NW	300
Kingwood Crossing, LLC*	COID	15 S	13 E	WM	9	SW NW	501
Lauren Stutz	COID	15 S	13 E	WM	17	NE NW	101
DeHMc, LLC	COID	15 S	13 E	WM	17	NE NW	1100
Eldon Stutz	COID	15 S	13 E	WM	17	SW NW	3400
Eldon Stutz	COID	15 S	13 E	WM	17	SE NW	3300

Grantor (landowner at time of conveyance)	Water Right Interest Holder	Twp	Rng	Mer	Sec	Q-Q	Tax Lot at time of Conveyance
Highland Baptist Church	COID	15 S	13 E	WM	17	NW SW	12100
McLean Development Inc.	COID	15 S	13 E	WM	18	SE SE	2918
Whistler Development, LLC*	COID (part located in City of Redmond roadway)	15 S	13 E	WM	19	NE NE	703 & Obsidian Rd.
Kimberly Mountain Development & George Grabenhorst	COID	15 S	13 E	WM	19	SW NE	600
John Pewther	COID	15 S	13 E	WM	19	NE SW	1003
Burgess Meadows, LLC*	COID	15 S	13 E	WM	19	NE SW	1001
Burgess Meadows, LLC*	COID	15 S	13 E	WM	19	NE SW	1004
Burgess Meadows, LLC*	COID	15 S	13 E	WM	19	NE SW	1006
Gerry and Marcy Stearns	COID	15 S	13 E	WM	20	NE SW	6400
Darrell and Gloria Brill	COID	15 S	13 E	WM	29	NW NE	1100
Nanaline McLaren	COID	15 S	13 E	WM	29	NE NE	3400
Canyon Park Inc.	COID	15 S	13 E	WM	30	NW NW	906
City of Redmond	City of Redmond	15 S	13 E	WM	30	NW NW	SW Zero Ave
City of Redmond	City of Redmond	15 S	13 E	WM	30	NW NW	Yew Avenue
Gregory and Laurie Madesh	COID	15 S	13 E	WM	30	NW NW	907
Badger Investment, LLC*	COID	15 S	13 E	WM	30	NE SE	1405
Badger Investment, LLC*	COID	15 S	13 E	WM	30	NW SE	700
Badger Investment, LLC*	COID	15 S	13 E	WM	30	NW SE	702
Badger Investment, LLC*	COID	15 S	13 E	WM	30	NW SE	704
Badger Investment, LLC*	COID	15 S	13 E	WM	30	NW SE	1405
Robert Owens & Heather Satran	COID	16 S	12 E	WM	10	SE SW	901
Jack and Adelheid Ulrike Holt	COID	16 S	12 E	WM	26	SW NE	300
Jack and Adelheid Ulrike Holt	COID	16 S	12 E	WM	26	NW SE	300
View Lane, LLC*	COID	17 S	12 E	WM	14	SW NE	800
View Lane, LLC*	COID	17 S	12 E	WM	14	SE NW	800
View Lane, LLC*	COID	17 S	12 E	WM	14	SE NW	801
Gasper Construction, LLC*	COID	17 S	12 E	WM	14	SE NW	800

\* = an Oregon Limited Liability Company

18. Transfer Application T-10826 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.
19. Transfer application T-10826 also proposes that a portion Certificate 83571 proposed for transfer to instream use (134.92 acres of irrigation) be used to establish mitigation credits in the Deschutes Ground Water Study Area. Based upon evaluation, the Department has determined that the portion of Certificate 83571 available for transfer that may be used to establish mitigation credits is as follows:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	16	SW SW	0.20
14 S	13 E	WM	16	SW SE	2.48
14 S	13 E	WM	16	SE SE	0.40

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	21	SE NW	0.54
15 S	12 E	WM	24	SE SW	1.50
15 S	12 E	WM	24	SW SE	0.40
15 S	12 E	WM	25	NE NE	0.30
15 S	12 E	WM	25	SW NE	0.75
15 S	12 E	WM	35	SE SE	0.45
15 S	13 E	WM	3	NW SW	2.00
15 S	13 E	WM	4	SE NE	8.50
15 S	13 E	WM	4	SW SW	6.31
15 S	13 E	WM	4	NE SE	2.50
15 S	13 E	WM	4	SE SE	4.92
15 S	13 E	WM	8	SW NE	37.87
15 S	13 E	WM	8	NE SW	0.60
15 S	13 E	WM	8	NW SW	5.60
15 S	13 E	WM	8	SE SW	1.53
15 S	13 E	WM	9	NW NW	0.57
15 S	13 E	WM	9	SW NW	0.80
15 S	13 E	WM	17	NE NW	3.15
15 S	13 E	WM	17	SW NW	4.74
15 S	13 E	WM	17	SE NW	5.20
15 S	13 E	WM	17	NW SW	0.99
15 S	13 E	WM	18	SE SE	5.85
15 S	13 E	WM	19	NE NE	0.60
15 S	13 E	WM	19	SW NE	1.75
15 S	13 E	WM	19	NE SW	5.60
15 S	13 E	WM	20	NE SW	0.70
15 S	13 E	WM	29	NW NE	0.55
15 S	13 E	WM	29	NE NE	0.37
15 S	13 E	WM	30	NW NW	3.20
15 S	13 E	WM	30	NE SE	2.20
15 S	13 E	WM	30	NW SE	9.30
16 S	12 E	WM	10	SE SW	1.00
16 S	12 E	WM	26	SW NE	0.10
16 S	12 E	WM	26	NW SE	2.40
17 S	12 E	WM	14	SW NE	2.50
17 S	12 E	WM	14	SE NW	6.50
<b>Total Mitigation Acreage</b>					<b>134.92</b>

The remaining portion of Certificate 83571 available for transfer to instream use (4.95 acres) is intended to establish instream flows for restoration purposes only.

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

**Reach No. 1 (Restoration and Mitigation Instream Flows):** From the North Canal Dam POD (as described in Finding of Fact No. 12) to Lake Billy Chinook

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.962	762.36
		Season 2	1.282	
		Season 3	2.374	



**Reach No. 2 (Restoration Instream Flows only):** Lake Billy Chinook to the mouth of the Deschutes River

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	April 1 through October 26	0.021	8.91

21. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
22. The applicants have 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 up to 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. 18, 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)***

23. The following portion of Certificate 83571 available for transfer was leased instream within the five years prior to Transfer Application T-10826 being received and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

Twp	Rng	Mer	Sec	Q-Q	Acres	Lease #	Lease Year
14 S	13 S	WM	16	NE SE	0.20	IL-923	2008
14 S	13 S	WM	16	NW SE	0.10	IL-923	2008
15 S	12 E	WM	24	SE SW	1.50	IL-923	2008
15 S	12 E	WM	24	SW SE	0.40	IL-923	2008
15 S	12 E	WM	25	NE NE	0.30	IL-923	2008
15 S	12 E	WM	25	SW NE	0.75	IL-923	2008
15 S	13 E	WM	3	NW SW	2.00	IL-527	2004 - 2006
15 S	13 E	WM	4	SW SW	6.31	IL-807	2007
15 S	13 E	WM	4	NE SE	2.00	IL-763	2006
15 S	13 E	WM	4	SW SE	1.00	IL-923	2008
15 S	13 E	WM	4	SE SE	1.25	IL-807	2007
15 S	13 E	WM	4	SE SE	4.32	IL-763	2006
15 S	13 E	WM	8	NW SW	5.60	IL-923	2008
15 S	13 E	WM	8	SE SW	0.93	IL-923	2008
15 S	13 E	WM	9	NW NW	0.57	IL-675	2005
15 S	13 E	WM	9	SW NW	0.80	IL-807	2007

Twp	Rng	Mer	Sec	Q-Q	Acres	Lease #	Lease Year
15 S	13 E	WM	17	NE NW	2.50	IL-852	2007
15 S	13 E	WM	17	SW NW	4.74	IL-633 IL-732	2005 2006 - 2008
15 S	13 E	WM	17	SE NW	5.20	IL-633 IL-732	2005 2006 - 2008
15 S	13 E	WM	18	SE SE	5.85	IL-520 IL-760	2004 2006
15 S	13 E	WM	19	NE SW	5.60	IL-852	2007
15 S	13 E	WM	19	SW NE	1.75	IL-923	2008
15 S	13 E	WM	20	NE SW	0.70	IL-765	2006
15 S	13 E	WM	29	NW NE	0.55	IL-923	2008
15 S	13 E	WM	29	NE NE	0.37	IL-923	2008
15 S	13 E	WM	30	NW NW	1.50	IL-853	2007
15 S	13 E	WM	30	NW NW	1.70	IL-923	2008
15 S	13 E	WM	30	NE SE	2.20	IL-852	2007
15 S	13 E	WM	30	NW SE	9.30	IL-852	2007
16 S	12 E	WM	10	SE SW	1.00	IL-760	2006
17 S	12 E	WM	14	SW NE	2.50	IL-923	2008
17 S	12 E	WM	14	SE NW	6.50	IL-923	2008
<b>Total Acres</b>					<b>79.99</b>		

24. Water has been used within the last five years according to the terms and conditions of the right on the remaining portion of the right available for transfer, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
25. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10826. Individual delivery systems were removed from some of the lands on which the portion of Certificate 83571 is proposed for transfer shortly after interest in the water right was conveyed to COID.
26. The Applicants have requested to protect the portion designated as restoration flows, established by this transfer, from the North Canal Dam POD 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 are generally back in 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 as restoration flows requires modification to account for return flows at the Madras Gage.

27. Based on Findings of Fact No. 23 and 24, the Department has determined that the quantities to be transferred and protected instream may be as follows:

**Reach No. 1 (Restoration and Mitigation Instream Flows):** From the North Canal Dam POD (as described in Finding of Fact No. 12) to Lake Billy Chinook (River Mile 125)

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
<b>Instream Flows for Restoration Purposes Only</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.034	26.98
		Season 2	0.045	
		Season 3	0.084	
<b>Instream Flows for Mitigation Purposes</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.928	735.38
		Season 2	1.237	
		Season 3	2.290	
<b>Total Instream Flows</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.962	762.36
		Season 2	1.282	
		Season 3	2.374	

**Reach No. 2 (Restoration Instream Flows only):** From Lake Billy Chinook (River Mile 125) to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.034	26.98
		Season 2	0.045	
		Season 3	0.084	

**Reach No. 3 (Restoration Instream Flows only):** From the Madras Gage to the Mouth of the Deschutes River

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	April 1 through October 26	0.021	8.91

28. The proposed change, as modified, would not result in enlargement of the right.
29. The proposed change, as modified, would not result in injury to other water rights.
30. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
31. 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) Return flows resulting from the exercise of the portion of the existing water right proposed for transfer for mitigation purposes would re-enter the river downstream of the reach of the instream water right. Return flows resulting from the exercise of the portion of the existing water right proposed for transfer for restoration purposes would re-enter the river within the reach of the instream water right and have been accounted for at the Madras Gage.
32. 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 downstream from the North Canal Dam and to the mouth of the Deschutes River, which include 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 purpose of fish habitat and various fish life stages, recreation and aesthetics, with priority dates of October 2, 1989 and January 16, 1996, respectively. There are presently no instream water rights within the portion of the proposed reach between North Canal Dam and Lake Billy Chinook created as a result of ORS 537.346 or 536.341. However, there is a pending instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341 to establish an instream water right from 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.
33. Within the proposed reach, 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 Waterway are at times not met during the requested period for instream protection.
34. Portions of the proposed reach on the Deschutes River are also on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams and are part of a DEQ Total Maximum Daily Load (TMDL) study.
35. The existing instream water rights, established under ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River are sufficient to protect the monthly quantities of water necessary for fish habitat, various fish life stages, and recreation, but are not always met and have priority dates 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, the proposed instream right will provide protection for streamflows previously

identified as necessary for fish habitat, various fish life stages, and recreation under an earlier priority date.

36. 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.
37. During the period April 1 through 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 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.
38. 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 and do not exceed the estimated average natural flow.

***Partial Cancellation of a Water Right***

39. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 83571 is proposed for transfer to instream use. Supplemental rights must be included as part of the transfer application or be cancelled. The applicants have not submitted an affidavit certifying that the affected portions under Certificate 76714 have been abandoned. The applicants have requested that affected portions of the supplemental water right under Certificate 76714 be cancelled upon issuance of the Final Order approving T-10826. Interest in the portion of Certificate 76714 to be cancelled has been conveyed to COID or deeded to the City of Redmond. However, a portion of Certificate 76714, has not been quit claimed to COID or deeded to the City of Redmond. All persons who are owners of the property on which the primary irrigation rights under Certificate 83571 have been quit claimed to COID and/or City of Redmond have not been notified of the intent to cancel Certificate 76714.
40. Consistent with OAR 690-380-2250, the Department is providing notice in the draft Preliminary Determination to COID, City of Redmond, and affected landowners (those owners of lands from which interest in Certificate 76714 has not been conveyed) of its intent to cancel the portions of the supplemental water right described below unless within 30 days of the date of the notification, the applicant modifies the application to include the supplemental right or withdraws the application.

41. The portion of the supplemental water right to be cancelled is as follows:

**Certificate:** 76714 in the name of Central Oregon Irrigation District (perfected under Permit S-23256)  
**Use:** Supplemental Irrigation of 139.87 acres  
**Priority Date:** February 28, 1913  
**Source:** Crane Prairie Reservoir, constructed under Permit R-1687, tributary to the Deschutes River

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	POD No. 11 (COID NORTH CANAL) 850 FEET NORTH AND 630 FEET EAST FROM THE N1/4 CORNER OF SECTION 29
21 S	8 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR

**Authorized Places of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	16	SW SW	0.20
14 S	13 E	WM	16	NE SE	0.20
14 S	13 E	WM	16	NW SE	0.10
14 S	13 E	WM	16	SW SE	4.48
14 S	13 E	WM	16	SE SE	1.40
14 S	13 E	WM	21	SE NW	0.54
15 S	12 E	WM	24	SE SW	1.50
15 S	12 E	WM	24	SW SE	0.40
15 S	12 E	WM	25	NE NE	0.30
15 S	12 E	WM	25	SW NE	0.75
15 S	12 E	WM	35	SE SE	0.45
15 S	13 E	WM	3	NW SW	2.00
15 S	13 E	WM	4	SE NE	8.50
15 S	13 E	WM	4	SW SW	6.31
15 S	13 E	WM	4	NE SE	2.50
15 S	13 E	WM	4	SW SE	1.00
15 S	13 E	WM	4	SE SE	5.57
15 S	13 E	WM	8	SW NE	37.87
15 S	13 E	WM	8	NE SW	0.60
15 S	13 E	WM	8	NW SW	5.60
15 S	13 E	WM	8	SE SW	1.53
15 S	13 E	WM	9	NW NW	0.57
15 S	13 E	WM	9	SW NW	0.80
15 S	13 E	WM	17	NE NW	3.15
15 S	13 E	WM	17	SW NW	4.74
15 S	13 E	WM	17	SE NW	5.20
15 S	13 E	WM	17	NW SW	0.99
15 S	13 E	WM	18	SE SE	5.85
15 S	13 E	WM	19	NE NE	0.60
15 S	13 E	WM	19	SW NE	1.75
15 S	13 E	WM	19	NE SW	5.60
15 S	13 E	WM	20	NE SW	0.70
15 S	13 E	WM	29	NW NE	0.55
15 S	13 E	WM	29	NE NE	0.37
15 S	13 E	WM	30	NW NW	3.20

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	30	NE SE	2.20
15 S	13 E	WM	30	NW SE	9.30
16 S	12 E	WM	10	SE SW	1.00
16 S	12 E	WM	26	SW NE	0.10
16 S	12 E	WM	26	NW SE	2.40
17 S	12 E	WM	14	SW NE	2.50
17 S	12 E	WM	14	SE NW	6.50
<b>Total Acres</b>					<b>139.87</b>

42. The Department has information that POD No. 11 (COID North Canal) described in the Certificates 83571 and 76714 is the same diversion point. The location coordinates described in Certificate 76714 contain errors. The location coordinates should be:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	POD No. 11 (COID NORTH CANAL) 850 FEET NORTH AND 630 FEET <u>WEST</u> FROM THE <u>EAST</u> 1/4 CORNER OF SECTION 29

***Preliminary Award of Deschutes Basin Mitigation Credits***

43. COID and the DRC (the Applicants) have requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Applicants have requested that any mitigation credits generated from this project be assigned jointly to COID and the DRC.
44. The Department assigned this mitigation credit project number MP-126.
45. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on September 1, 2009. No comments were received in response to this notice.
46. 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 August 26, 2009. No comments were received in response to this notice.
47. Mitigation is determined based upon the consumptive use portion of the right transferred to instream use. Irrigation use generally has a consumptive use factor of 1.8 AF per acre. The Department finds that the transfer of 134.92 acres of irrigation use to instream use may result in 242.9 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) that may be awarded to this mitigation credit project and assigned to COID and the DRC. 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 Middle Deschutes and General Zones of Impact.
48. A total of 735.38 AF is proposed to be transferred to instream use for mitigation purposes and 242.9 AF of that, as identified above, may be used for mitigation credits. The amount of water transferred instream and not used for mitigation credits will benefit instream flow.

49. 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.
50. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application.

**Conclusion of Law**

The changes in character of use and place of use to instream use as identified by the Department for application T-10826 are 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 right should be cancelled.

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

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in application T-10826 are approved. The portion of the right that has been abandoned is cancelled.
2. Water Right Certificate 83571 is modified. A new certificate confirming the instream water right shall be issued. The Department shall issue a new water right certificate to supersede Certificate 83571 on a determination that it is necessary to produce a certificate to confirm that portion of the right not affected by this transfer. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 83571 by the following:

POD No. 11

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	1.596 CFS	2.178 CFS	2.970 CFS	1319.87 AF
December 2, 1907			1.189 CFS	

3. The portion of Certificate 76714 that has been abandoned is cancelled. Water Right Certificate 76714 is modified. The Department shall issue a new water right 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. 39. Modification of this supplemental water right shall be reduced by 139.87 acres, the number of acres to which stored water may be applied for supplemental irrigation under the right.



appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

7. 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.
8. 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 83571 and any related decree.
9. The former place of use of the transferred water shall no longer receive water as part of this right.
10. **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 **242.9 credits**, as described herein, may be awarded to this mitigation project and assigned to COID and the DRC. 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 **Middle Deschutes and General Zones of Impact**. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under a new instream water right.
11. 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.

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 as follows:

**Reach No. 1 (Restoration and Mitigation Instream Flows):** From the North Canal Dam POD (as described in Finding of Fact No. 12) to Lake Billy Chinook (River Mile 125)

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
<b>Instream Flows for Restoration Purposes Only</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.034	26.98
		Season 2	0.045	
		Season 3	0.084	
<b>Instream Flows for Mitigation Purposes</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.928	735.38
		Season 2	1.237	
		Season 3	2.290	
<b>Total Instream Flows</b>				
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.962	762.36
		Season 2	1.282	
		Season 3	2.374	

**Reach No. 2 (Restoration Instream Flows only):** From Lake Billy Chinook (River Mile 125) to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	Season 1 (requested to end on October 26)	0.034	26.98
		Season 2	0.045	
		Season 3	0.084	

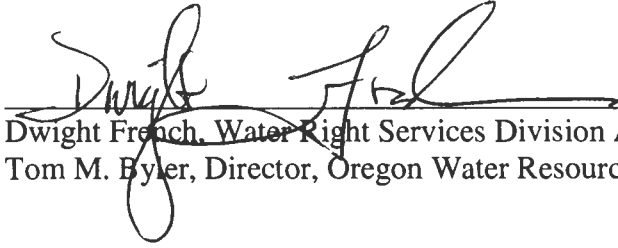
**Reach No. 3 (Restoration Instream Flows only):** From the Madras Gage to the Mouth of the Deschutes River

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
83571	October 31, 1900	April 1 through October 26	0.021	8.91

5. 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.
6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of senior

12. 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 16 day of July 2017.

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

Mailing date: JUL 11 2017