

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11168, Deschutes County) DISTRICT PERMANENT TRANSFER
) FOR NON-USE and APPROVING A
) DISTRICT PERMANENT TRANSFER

Authority

ORS 540.570 through 540.580 establish 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

Background

1. On December 15, 2009, COID notified landowners who had not beneficially used the District’s water right on their property that they must use the water right or it would be confiscated. Central Oregon Irrigation District went on to explain in the notice that beneficial use was necessary because Oregon law provides that five consecutive years of nonuse will result in forfeiture of vested water rights under ORS 540.610. The notice also informed the landowners that they had a right to transfer the water right to another place of use including leasing the water right instream and informed the landowners about the confiscation policy of COID.
2. On September 30, 2010, COID notified the respective landowners and all persons holding a recorded security interest in the lands, that pursuant to the District’s confiscation policy, COID planned to file a petition to transfer the unused water rights to other lands.
3. On October 4, 2011, Jerry L. Inman sent a letter to Steven C. Johnson, Secretary-Manager of COID, stating he have been working with COID staff to irrigate some of the acreage identified on the notice.
4. As a result of the information provided in Mr. Inman letter and attachments as well as subsequent field inspections, COID amended the original acreage associated with the Inman property from 4.65 acres to 2.63 acres (further delineated in Findings of Fact #10 and #11).

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.

5. Other landowners (limited to those properties identified by the District Internal Notice Number – DINN) involved in the process of transfer for nonuse did not notify COID or the Department, they objected to the District’s actions. Additionally, the landowners did not notify COID or the Department that they had any evidence sufficient to rebut the presumption of forfeiture.
6. On December 17, 2010, Central Oregon Irrigation District (COID) notified the relevant patrons that the District had filed a district transfer application under ORS 540.572, to permanently change the place of use.
7. On December 20, 2010, the Department received an application to permanently change the place of use under both ORS 540.572 and ORS 540.580. The Department assigned the application number T-11168.
8. On December 28, 2010, the Department published notice of application T-11168 in its weekly bulletin pursuant to OAR 690-385-5500. No comments were filed in response to the notice.
9. Based on the evidence contained in the letters and notices listed above, water was not put to beneficial use on the relevant authorized lands during the 2006, 2007, 2008, 2009, or 2010 irrigation seasons.
10. 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 5.95 acres

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 Points of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	18 S	11 E	WM	13	SW NE	CENTRAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
11	17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
						630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Places of Use:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	DINN	POD #
14S	13E	WM	8	NW SE	2.60	1002	Browning	2010-023	11
14S	13E	WM	20	SW NE	0.15	201	Bricker Living Trust	2010-023	11
15S	13E	WM	30	NW SW	0.60	1100	Soltys	2010-025	11
16S	14E	WM	9	NW NE	0.13	202	Szymanski	2010-023	1
16S	14E	WM	9	NW NE	0.34	200	Shirtcliff	2010-023	1
16S	14E	WM	9	SW NE	1.10	201	Shirtcliff	2010-023	1
17S	12E	WM	14	SE SE	1.03	806	COID	2010-024	1
Total:					5.95				

*Only properties on DINN 2010-023 are involved in the transfer due to nonuse.

11. Transfer Application T-11168 proposes to change the places of use to:

Proposed Places of Use:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	DINN	POD #
15S	13E	WM	30	NW SW	0.65	1100	Soltys	2010-023	11
15S	13E	WM	30	NW SW	0.60	1100	Soltys	2010-025	11
16S	12E	WM	1	NW SW	1.44	1000	Penhollow	2010-023	11
16S	12E	WM	1	NE SW	0.66	901	Penhollow	2010-023	11
16S	14E	WM	9	NW NE	0.60	200	Shirtcliff	2010-023	1
17S	13E	WM	31	SW SW	0.97	1800	Gitthens	2010-023	1
17S	13E	WM	31	SW SW	1.03	1800	Gitthens	2010-024	1
Total:					5.95				

*Only properties identified on DINN 2010-023 are involved in the transfer due to nonuse.

12. 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 5.95 acres.

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 Points of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	18 S	11 E	WM	13	SW NE	CENTRAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
11	17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
						630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Places of Use:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	DINN	POD #
14S	13E	WM	8	NW SE	2.60	1002	Browning	2010-023	11
14S	13E	WM	20	SW NE	0.15	201	Bricker Living Trust	2010-023	11
15S	13E	WM	30	NW SW	0.60	1100	Soltys	2010-025	11
16S	14E	WM	9	NW NE	0.13	202	Szymanski	2010-023	1
16S	14E	WM	9	NW NE	0.34	200	Shirtcliff	2010-023	1
16S	14E	WM	9	SW NE	1.10	201	Shirtcliff	2010-023	1
17S	12E	WM	14	SE SE	1.03	806	COID	2010-024	1
Total:					5.95				

*Only properties identified on DINN 2010-023 are involved in the transfer due to nonuse.

13. Transfer Application T-11168 proposes to change the places of use to:

Proposed Places of Use:

IRRIGATION									
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	DINN	POD #
15S	13E	WM	30	NW SW	0.65	1100	Soltys	2010-023	11
15S	13E	WM	30	NW SW	0.60	1100	Soltys	2010-025	11
16S	12E	WM	1	NW SW	1.44	1000	Penhollow	2010-023	11
16S	12E	WM	1	NE SW	0.66	901	Penhollow	2010-023	11
16S	14E	WM	9	NW NE	0.60	200	Shirtcliff	2010-023	1
17S	13E	WM	31	SW SW	0.97	1800	Gitthens	2010-023	1
17S	13E	WM	31	SW SW	1.03	1800	Gitthens	2010-024	1
Total:					5.95				

*Only properties identified on DINN 2010-023 are involved in the transfer due to nonuse.

14. 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.

15. 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 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 #3), the portion of the right involved in this transfer would be limited as described in the following tables:

POD # 1				
Priority Date	Season 1	Season 2	Season 3	Duty (AF)
October 31, 1900 (cfs)	0.030	0.041	0.056	24.77
December 2, 1907 (cfs)			0.022	
POD # 11				
Priority Date	Season 1	Season 2	Season 3	Duty (AF)
October 31, 1900 (cfs)	0.042	0.056	0.074	33.11
December 2, 1907 (cfs)			0.029	

Transfer Review Criteria

16. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
17. The proposed change in places of use will not result in enlargement of the rights.
18. The proposed change in places of use will not result in injury to other water rights.
19. For those portions of this transfer NOT involved in the nonuse process, water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. For those portions of this transfer NOT involved in the nonuse process, 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-11168.
21. All other applicable requirements for district permanent transfers of water right for nonuse (ORS 540.572) have been met.

Conclusions of Law

The proposed change in place of use in Transfer Application T-11168 satisfies the requirements of ORS 540.572 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 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 83571 and 76714 and any related decree.

3. The former place of use shall no longer be irrigated as part of these water rights.
4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
5. The proposed change, as authorized by this final order, shall be completed within one full year from the approval date plus any additional time before or until October 1, 2013.
6. A Claim of Beneficial Use shall be submitted by COID to the Department by October 1, 2014.
7. Water right certificates 83571 and 76714 are modified. The Department shall issue water right certificates on a determination that it is necessary to produce certificates describing the water rights.

Dated at Salem, Oregon this 22 day of March, 2012.


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

Mailing Date: **MAR 30 2012**