

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

In the Matter of Transfer Applications)	FINAL ORDER APPROVING THREE
T-7574, T-9283, and T-9769, Deschutes)	TRANSFERS CHANGING POINT OF
County, Oregon)	DIVERSION, PLACE OF USE AND
)	CHARACTER OF USE

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

Central Oregon Irrigation District
For River Bend Limited Partnership
2598 N Highway 97
Redmond, OR 97756

Findings of Fact

1. Central Oregon Irrigation District, for River Bend Limited Partnership, filed three applications to transfer the point of diversion, place of use, and character of use under Certificates 76358 and 76714. The Department assigned the applications numbers T-7574, T-9283, and T-9769.
2. The water rights described in T-7574 are appurtenant to lands owned by Jeff and Carol Rank in 1995. The water rights were sold to River Bend Limited Partnership and temporarily leased instream for the 1995 irrigation season (LA # 0007.01, August 1995) with the intent of ultimately being transferred as described in T-7574.
3. The portion of the right to be transferred under T-7574 is as follows:
Certificate: 76358 in the name of Central Oregon Irrigation District
Use: Irrigation
Acres: 18.8
Priority Date: October 31, 1900 and December 2, 1907
Season of Use: April 1 through November 1, further limited as follows:
April 1 to May 1 & October 1 to November 1 described herein as Season 1
May 1 to May 15 & September 15 to October 1 described herein as Season 2
May 15 to September 15 described herein as Season 3

This is a final order in other than 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 either 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.

Quantity (Rate): Season 1 (limited to 1/80 cfs per acre): 0.24 cfs
 Season 2 (limited to 1/60 cfs per acre): 0.31 cfs
 Season 3 (limited to 1/32.4 cfs per acre): 0.58 cfs, being 0.41 cfs under the 1900 priority date and 0.17 cfs under the 1907 priority date

Duty: Not to exceed 9.91 acre-feet (AF) per acre: 186.31 AF

The quantities listed 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, will not be allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
15	S	13	E	W.M.	04	SW NW	18.8

Certificate: 76714 in the name of Central Oregon Irrigation District

Use: Supplemental Irrigation

Acres: 18.8

Priority Date: February 28, 1913

Season of Use: April 1 through November 1

Quantity: Not to exceed a total of 50,000 acre-feet of stored water only for the entire right, if available at the authorized point of diversion from the source, limited to the duty of water as set out in the modified supplemental decree of the circuit court dated March 24, 1933, in the matter of the determination of the relative rights to the use of the water of the Deschutes River and its tributaries. The amount of water allowed under this right, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and is further limited to the terms of the Central Oregon Irrigation District, Crook County Improvement District #1, and the Arnold Irrigation District, and subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
21	S	8	E	W.M.	17	NE NE	Crane Prairie Reservoir
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
15	S	13	E	W.M.	04	SW NW	18.8

4. The water rights described in T-9283 are appurtenant to lands owned by E.R. Max Mills and Sunset Ridge Village, LLC. The water rights have been Quit Claimed to Central Oregon Irrigation District. The primary water rights were temporarily leased instream for the 2002 irrigation season (Lease Agreement # 326, Special Order V. 56, P. 738, August 2002).

5. The portion of the right to be transferred under T-9283 is as follows:

Certificate: 76358 in the name of Central Oregon Irrigation District

Use: Irrigation

Acres: 22.07

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

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

April 1 to May 1 & October 1 to November 1 herein described as Season 1

May 1 to May 15 & September 15 to October 1 herein described as Season 2

May 15 to September 15 herein described as Season 3

Quantity (Rate): Season 1 (limited to 1/80 cfs per acre): 0.28 cfs

Season 2 (limited to 1/60 cfs per acre): 0.37 cfs

Season 3 (limited to 1/32.4 cfs per acre): 0.68 cfs, being 0.48 cfs under the 1900 priority date and 0.20 cfs under the 1907 priority date

Duty: Not to exceed 9.91 acre-feet (AF) per acre: 218.71 AF

The quantities listed 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, will not be allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
15	S	13	E	W.M.	17	NE SW	2904	1.67
15	S	13	E	W.M.	17	NE SW	2910	15.7
15	S	13	E	W.M.	17	NW SW	2910	4.7

Certificate: 76714 in the name of Central Oregon Irrigation District
Use: Supplemental Irrigation
Acres: 22.07
Priority Date: February 28, 1913
Season of Use: April 1 through November 1
Quantity: Not to exceed a total of 50,000 acre-feet of stored water only for the entire right, if available at the authorized point of diversion from the source, limited to the duty of water as set out in the modified supplemental decree of the circuit court dated March 24, 1933, in the matter of the determination of the relative rights to the use of the water of the Deschutes River and its tributaries. The amount of water allowed under this right, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and is further limited to the terms of the Central Oregon Irrigation District, Crook County Improvement District #1, and the Arnold Irrigation District, and subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir
17	S	12	E	W.M.	29	SE	NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Tax Lot	Acres
15	S	13	E	W.M.	17	NE	SW	2904	1.67
15	S	13	E	W.M.	17	NE	SW	2910	15.7
15	S	13	E	W.M.	17	NW	SW	2910	4.7

6. The water rights described in T-9769 are appurtenant to lands owned by Fifteen SW Colorado and the certificated use is irrigation.

7. The portion of the right to be transferred under T-9769 is as follows:

Certificate: 76358 in the name of Central Oregon Irrigation District

Use: Irrigation

Acres: 3.5

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

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

April 1 to May 1 & October 1 to November 1 herein described as Season 1

May 1 to May 15 & September 15 to October 1 herein described as Season 2

May 15 to September 15 herein described as Season 3

Quantity (Rate): Season 1 (limited to 1/80 cfs per acre): 0.02 cfs

Season 2 (limited to 1/60 cfs per acre): 0.03 cfs

Season 3 (limited to 1/32.4 cfs per acre): 0.06 cfs, being 0.04 cfs under the 1900 priority date and 0.02 cfs under the 1907 priority date

Duty: Not to exceed 9.91 acre-feet (AF) per acre: 19.08 AF

The quantities listed do not 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: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
18	S	12	E	W.M.	5	NW NW	Diversion #2 – Smith Properties, Inc.: Lot 4: 440' S & 970' E of the NW corner of Section 5

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Tax Lot	Acres
17	S	12	E	W.M.	32	SW SW 19000 0.50
17	S	12	E	W.M.	32	SE SW 19000 0.10
18	S	12	E	W.M.	5	NW NW 109 2.90

Certificate: 76714 in the name of Central Oregon Irrigation District

Use: Supplemental Irrigation

Acres: 3.5

Priority Date: February 28, 1913

Season of Use: April 1 through November 1

Quantity: Not to exceed a total of 50,000 acre-feet of stored water only for the entire right, if available at the authorized point of diversion from the source, limited to the duty of water as set out in the modified supplemental decree of the circuit court dated March 24, 1933, in the matter of the determination of the relative rights to the use of the water of the Deschutes River and its tributaries. The amount of water allowed under this right, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and is further limited to the terms of the Central Oregon Irrigation District, Crook County Improvement District #1, and the Arnold Irrigation District, and subject to such reasonable rotation system as may be ordered by the proper state officer.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
21	S	8	E	W.M.	17	NE NE	Crane Prairie Reservoir
18	S	12	E	W.M.	5	NW NW	COID (Central Oregon 2 - Lot 4): 440' S & 970' E of the NW corner of Section 5

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
17	S	12	E	W.M.	32	SW SW	19000	0.50
17	S	12	E	W.M.	32	SE SW	19000	0.10
18	S	12	E	W.M.	5	NW NW	109	2.90

8. Applications T-7574, T-9283 and T-9769 propose transfer of a total of 44.37 acres of irrigation water rights. The following limits on the rate of diversion were calculated by adding the quantity (rate) of certificated use for the three water rights subject to transfer as stated in #3, #5, and #7 above:

Time of Year	Rate per acre	Total Area	Rate (T-7574 & T-9283; with 45% transmission loss)	Rate (T-9769; without 45% transmission loss)	Total Rate
	(cfs/acre)	(acres)	(cfs)	(cfs)	(cfs)
April 1 to May 1	1/80	44.37	0.52	0.02	0.54
May 1 to May 15	1/60	44.37	0.68	0.03	0.71
May 15 to Sep 15	1/32.4	44.37	1.26 ¹	0.06 ²	1.32 ³
Sep 15 to Oct 1	1/60	44.37	0.68	0.03	0.71
Oct 1 to Nov 1	1/80	44.37	0.52	0.02	0.54

¹ 0.89 cfs under the October 31, 1900 priority date and 0.37 cfs under the December 2, 1907 priority date

² 0.04 cfs under the October 31, 1900 priority date and 0.02 cfs under the December 2, 1907 priority date

³ 0.93 cfs under the October 31, 1900 priority date and 0.39 cfs under the December 2, 1907 priority date

9. The water right subject to transfer under Certificate 76714 allows the use of 43.0 AF for supplemental irrigation, as stated in #3, #5 and #7 above.

10. Applications T-7574 and T-9283 propose to move the authorized point of diversion approximately two miles upstream in the source, and application T-9769 proposes to move the authorized point of diversion approximately 1,500 feet upstream in the source to:

Township		Range		Meridian	Sec	¼ ¼	Location
18	S	12	E	W.M.	5	SE NW	S 65°46'27"W, 3621.45 feet from the NE corner of Section 5

11. Applications T-7574, T-9283, and T-9769 propose to change the place of use of the right to within the service boundary of the Quasi-Municipal Water District for River Bend Limited Partnership, which encompasses 326 acres, more or less:

Township		Range		Meridian	Sec	¼ ¼
17	S	12	E	W.M.	32	SE SW
17	S	12	E	W.M.	32	SW SW
18	S	12	E	W.M.	5	NE NE
18	S	12	E	W.M.	5	NW NE
18	S	12	E	W.M.	5	SW NE
18	S	12	E	W.M.	5	SE NE
18	S	12	E	W.M.	5	NE NW

Township		Range		Meridian	Sec	¼ ¼
18	S	12	E	W.M.	5	NW NW
18	S	12	E	W.M.	5	SW NW
18	S	12	E	W.M.	5	SE NW
18	S	12	E	W.M.	5	NE SW
18	S	12	E	W.M.	5	NW SW
18	S	12	E	W.M.	5	SE SW
18	S	12	E	W.M.	5	NW SE
18	S	12	E	W.M.	6	NE NE
18	S	12	E	W.M.	6	NE SE
18	S	12	E	W.M.	6	NW SE
18	S	12	E	W.M.	6	SW SE

12. Applications T-7574, T-9283, and T-9769 propose to change the character of use to quasi-municipal.
13. Notice of each application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. For Applications T-9283 and T-9769, water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. For Application T-9283, water was temporarily leased instream for the 2002 irrigation season and the transfer application was filed in 2003.
16. For Application T-7574, water was temporarily leased instream for the 1995 irrigation season and the transfer application was filed in 1996. No evidence is available that would demonstrate the right on these lands is subject to forfeiture under ORS 540.610.
17. A diversion structure, pump, and piping sufficient to use the full amount of water allowed under the existing right for T-9769 were present within the last five years.
18. Considering current knowledge about water rights and their impact on the hydrology of the Deschutes Basin, the Department is unable to conclude that the change from irrigation of crops on 44.37 acres to quasi-municipal use on approximately 326 acres would not result in injury to instream water rights. An increase in consumptive water use could decrease the amount of return flows which support instream water rights in the Deschutes River. However, if quasi-municipal use on the proposed place of use were conditioned so that the quantity of water removed from the surface and groundwater system through consumptive use would approximate the consumptive use of crops on 44.37 acres, the proposed use would not injure other water rights.
19. The total consumptive use of irrigation water for crops in the Deschutes Basin is estimated by the Department at 1.8 acre-feet per acre irrigated. Presumably the rest of the water

diverted up to the allowed duty returns to the surface and groundwater system. Water withdrawn in consumptive use of crops on 44.37 acres would be approximately 1.8 AF/ac x 44.37 ac = 79.9 AF.

20. Research conducted by the Department¹ has shown that approximately 47% of the total volume of water diverted for municipal use in the Deschutes River Basin during the months of the irrigation season is consumptive. Therefore, volume of water that could be diverted during the irrigation season for quasi-municipal purposes, in acre-feet (including both consumptive and non-consumptive uses) that would not lead to an increase in consumptive use (V) can be estimated by dividing 79.9 AF by 0.47:

$$V = \frac{79.9AF}{0.47} = 170AF \text{ where,}$$

79.9= consumptive use for irrigation of crops on 44.37 ac in the Deschutes Basin during the irrigation season (i.e., 1.8 ac-ft/ac*44.37 ac)
 0.47 = factor used for adjusting the quantity of water, to add in water for non-consumptive uses (based on the proportion of quasi-municipal use that is consumptive during the months of April through October)

21. Limiting the maximum annual volume of water allowed for quasi-municipal use on the proposed place of use to 170 acre-feet, measured at the point of diversion from the Deschutes River would be sufficient to ensure that other water rights are not injured.
22. The rate and duty allowed under Certificate 76358 (under the terms of the decree) for each acre irrigated by the Central Oregon Irrigation District main canal systems reflect a 45% transmission loss. 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.
23. T-7574 and T-9283 propose to change the point of diversion and delivery system for this portion of the right from the COID canal system to a direct pumping point on the Deschutes River. Therefore the rate including provision for transmission losses can not be allowed and the transfer will be limited to the rates listed below:

Time of Year	Rate per acre for original use including transmission loss	Rate per acre excluding transmission loss	Total Area under T-7574, T-9283 & T-9769	Total Rate for quasi-municipal use without 45% transmission loss
	(cfs/acre)	(cfs/acre)	(acres)	(cfs)
April 1 to May 1	1/80 (0.01250)	0.00688	44.37	0.31
May 1 to May 15	1/60 (0.01667)	0.00917	44.37	0.41
May 15 to Sep 15	1/32.4 (0.03086)	0.01698	44.37	0.75 (0.54 cfs under the 1900 priority and 0.21 cfs under 1907 priority)
Sep 15 to Oct 1	1/60 (0.01667)	0.00917	44.37	0.41
Oct 1 to Nov 1	1/80 (0.01250)	0.00688	44.37	0.31

¹ Cooper, RM. 2002. Determining Surface Water Availability in Oregon. Open File Report SW 02 – 002. Oregon Water Resources Department, Salem, OR. 57 p.

24. The transfers propose to move the points of diversion upstream within a stretch of the Deschutes River with flows protected by a junior instream water right under Certificate 59778 (priority date November 3, 1983). Historically river flows are often insufficient to meet the requirements of the instream water right (660 cfs) during the periods from April 1-15 when water from reservoir releases is first coming down river and October 15-31 when water is no longer being released.
25. The proposed change would not result in enlargement of the rights.
26. The Department cannot find that the proposed change would not result in injury to the instream water right if water is diverted at the new POD at times during the periods from April 1-November 1 of each year when the Central Oregon Irrigation District is not delivering water. However, applicant agreement to not divert water for the allowed use whenever flows in the Deschutes River at the point of diversion drop below 660 cfs during the period from April 1-November 1 outside of the operational season of Central Oregon Irrigation District, when water is not being delivered by the District, would be sufficient to ensure that the change would not result in injury to the instream water right.
27. The applicant has agreed in writing (email dated February 22, 2005) to accept the proposed conditions as in Finding #21 and Finding #26 above.

Conclusions of Law

The Department cannot find that the proposed changes in point of diversion, place of use, and character of use in applications T-7574, T-9283, and T-9769 would not result in injury to other rights unless conditioned to limit the annual total volume (as described in Findings 18 through 21 above) and period of diversion (as described in Finding 26 above). However, the proposed changes, as conditioned as in Findings #21 and #26, are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

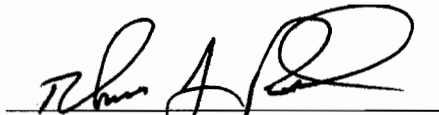
Now, therefore, it is ORDERED:

1. The changes in point of diversion, place of use and character of use proposed in applications T7574, T-9283 and T-9769, as conditioned above, are approved.
2. Water right certificates 76358 and 76714 shall be modified.
3. 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 76358 and 76714 and any related decree, with the exception that the total annual quantity from direct flow and stored water for quasi-municipal use shall be limited to an amount that will prevent an increase in consumptive use beyond the consumptive use for the original authorized use, being 170 acre-feet per year as measured at the point of diversion from the Deschutes River.
4. To prevent injury to the instream water right, water shall not be diverted for the allowed use whenever flows in the Deschutes River at the point of diversion drop below 660 cfs during

the period from April 1-November 1 outside of the operational season of Central Oregon Irrigation District, when water is not being delivered by the District.

5. The maximum rates of diversion from the Deschutes River under the portion of the right evidenced by Certificate 76358 for delivery to the applicant's property shall continue to be based on 44.37 acres of irrigation right transferred, excluding a 45% transmission loss, being:
 - 0.31 cfs from April 1 to May 1 and October 1 to November 1;
 - 0.41 cfs from May 1 to May 15 and September 15 to October 1;
 - 0.75 cfs from May 15 to September 15; being 0.54 cfs under the 1900 priority date and 0.21 cfs under the 1907 priority date.
6. The proposed change shall be completed on or before October 1, 2006.
7. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
8. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted from the river into a closed distribution system at the place of use and shall submit annual water use reports to the Department. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife. The water user may participate in the Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
10. When satisfactory proof of the completed changes is received, the Department shall issue water right certificates describing the changes due to these transfers, on a determination that it is necessary to produce new certificates describing the water rights.

Dated at Salem, Oregon this 3rd day of MAY, 2005.


Phillip C. Ward
Director

Mailing date: MAY 13 2005