

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

In the Matter of Instream Transfer	)	FINAL ORDER APPROVING A
Application T-10553 and Mitigation Credit	)	CHANGE IN PLACE OF USE AND
Project MP-114, Deschutes County	)	CHARACTER OF USE, PRELIMINARY
	)	AND FINAL AWARD OF
	)	MITIGATION CREDITS AND
	)	PARTIAL CANCELLATION OF
	)	CERTIFICATE 76714

**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. 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**

DESCHUTES RIVER CONSERVANCY  
700 NW HILL STREET  
BEND, OR 97701

CENTRAL OREGON IRRIGATION DISTRICT  
1055 SW LAKE COURT  
REDMOND, OR 97756

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 March 6, 2008, Deschutes River Conservancy (DRC) and Central Oregon Irrigation District (COID) 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-10553.
2. The portion of the right to be transferred is as follows:

**Certificate:** 83571 in the name of Central Oregon Irrigation District  
**Use:** Irrigation of 36.07 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  
 May 1 through May 14 & September 16 through September 30  
 May 15 through September 15

**Maximum Quantity (Rate) that can be applied to an acre:**  
 Season 1 (limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre)  
 Season 2 (limited to 1/60<sup>th</sup> CFS per acre)  
 Season 3 (limited to 1/32.4<sup>th</sup> 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:** The Deschutes River, a tributary to the Columbia River

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

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE E ¼ CORNER OF SECTION 29

**Authorized Place of Use (POU):**

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	8	NW NE	17.37
15 S	13 E	WM	8	NW NE	18.7

- The Department has information that 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

- Certificate 83571 is a deficient water right. If the water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty (described in Finding of Fact #2), 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 #2), the portion of the right involved in this transfer would be limited as described in the table below. These rates and duty are also the quantities by which Certificate 83571 shall be reduced.

Priority Date	Season 1	Season 2	Season 3	Total Duty
October 31, 1900	0.450 CFS	0.600 CFS	0.793 CFS	356.55 AF
December 2, 1907			0.318 CFS	

- A total of 196.6 acre-feet (AF) of water, excluding transmission losses, may be beneficially used annually for primary irrigation under the portion of existing Certificate 83571 proposed for transfer.
- Supplemental right, Certificate 76714, is appurtenant to same lands from which the primary right, Certificate 83571, is proposed to be transferred to instream use. The applicant requested the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-10553.
- The applicant is not the owner of the lands to which the water right described in Finding of Fact #2 is described. However, a water right conveyance agreement has been completed and interest in the water rights has been conveyed to COID from the landowner described in the table below. The portion of this right to be transferred was appurtenant to lands owned by the identified landowner at the time interest in the water right was conveyed through a Quit Claim, a water right conveyance agreement.

Landowner	Water Right Interest Holder	T	R	Sec.	¼ ¼	Current Tax Lot
George A. Hale	COID	15 S	13 E	8	NW NE	802
George A. Hale	COID	15 S	13 E	8	NW NE	804

8. Transfer Application T-10553 proposes to change the character of use to instream use for fish and wildlife habitat enhancement, pollution abatement, and recreation and to establish mitigation credits in the Deschutes Ground Water Study Area.
9. Transfer Application T-10553 also proposes to use 29.36 acres of irrigation (described in Finding of Fact #2) for the purpose of establishing instream flows for mitigation credits in the Deschutes Ground Water Study Area, and to use the remaining 6.71 acres of irrigation to establish instream flows for restoration purposes.
10. Transfer Application T-10553 proposes to change the place of use of the portion of the primary right, described in Finding of Fact #2, to create the following instream reaches:
  - Reach #1: From COID North Canal (POD #11) to Lake Billy Chinook (~RM 120) for mitigation and restoration purposes
  - Reach #2: From Lake Billy Chinook to the mouth of the Deschutes River (RM 0) for restoration purposes only.
11. The applicant proposes that water be protected instream during the period April 1 through October 26 of each year.
12. The applicant proposes the quantities water of to be transferred instream to be protected instream as follows:

**Reach 1: POD #11 to Lake Billy Chinook (RM 120)**

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	Season 1: 0.248 CFS Season 2: 0.331 CFS Season 3: 0.612 CFS	196.60 AF

**Reach 2: Lake Billy Chinook (RM 120) to Mouth (RM 0)**

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	April 1 to October 26: 0.030 CFS	12.08 AF

13. There are existing instream water rights for the same reach as that proposed for the new instream water right. 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 POD #11 to Lake Billy Chinook, which if approved will have a priority date of September 24, 1990. Below Lake Billy Chinook, there are two other instream water rights, Certificates 73188 and 73237, with priority dates of October 2, 1989 and January 16, 1996, respectively. These instream water rights were established pursuant to ORS 537.341, the state agency instream water right application process, and are located from the Pelton Regulation Dam on the Deschutes River to the mouth. The remaining instream water rights were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process.

14. The applicant proposes 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 also proposes that any instream water right 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 an earlier priority date.
15. The applicant has 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 45% 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 #10, do not include the 45% transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.
16. The applicant has provided notification of the proposed action to the Cities of Bend and Maupin, Deschutes, Jefferson, and Wasco Counties, and the Confederated Tribes of the Warm Springs Reservation. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-10553.
17. Notice of the application for transfer was published on March 11, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
18. On July 31, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10553 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of August 29, 2008, for the applicants to respond and provide additional information necessary to complete and clarify the application. The additional information requested by the Department was received on August 5 and October 7, 2008. On November 3, 2008, the applicants concurred with the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
19. On December 3, 2008, the Department issued a preliminary determination proposing to approve Transfer Application T-10553 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on December 9, 2008, and in the Bend Bulletin on December 7, December 14, and December 21, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.

**Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)**

20. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
21. 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 Application T-10553.
22. The proposed instream use requires modification to take into account return flows. 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 back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders or enlargement of the right, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.
23. The applicants have also requested to protect water instream for mitigation purposes only down to Lake Billy Chinook and restoration flows down to the mouth of the Deschutes River. The reaches proposed by the applicants requires further modification to take into account where water is to be protected and the location of return flows described in Finding of Fact #22.
24. Based on Findings of Fact #22 and #23, on November 3, 2008, the applicants agreed to modify the quantities to be transferred and protected instream as follows:

Reach 1 (Mitigation and Restoration flows): COID North Canal POD #11 (as described in Finding of Fact #2) to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.248 CFS	196.60 AF
		Season 2	0.331 CFS	
		Season 3	0.612 CFS	

Reach 2 (Restoration flows only): Lake Billy Chinook (RM 120) to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.046 CFS	36.57 AF
		Season 2	0.062 CFS	
		Season 3	0.114 CFS	

**Reach 3 (Restoration flows only with return flows accounted for): Madras Gage to mouth of Deschutes River (RM 0)**

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	April 1 – October 26	0.03 CFS	12.08 AF

25. The proposed change, as modified, would not result in enlargement of the right.
26. The proposed change, as modified, would not result in injury to other water rights.
27. The amount of the proposed instream flow and the timing of the proposed instream flow is allowable within the limits and use of the original water right.
28. 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 known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d) Any return flows resulting from the exercise of the existing water right would re-enter the river within the proposed reach of the instream water right and have been accounted for beginning in Reach #2.
29. Within the reach proposed by the applicant, 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 reach proposed by the applicant, there are several existing instream water rights, which include the use of water for fish habitat, aquatic life, recreation, aesthetics, and pollution abatement. There are two instream water rights established through the state agency application process below Lake Billy Chinook, with 1989 and 1991 priority dates respectively, and one pending state agency instream water right application above Lake Billy Chinook, which will have a priority date of September 24, 1990, if approved. In addition to flows for the designated Scenic Waterway and the existing and pending instream water right applications, which are at times not met during the requested periods for instream protection, portions of this segment of the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams for temperature, dissolved oxygen and pH above Lake Billy Chinook and for nutrients, sedimentation and temperature below Lake Billy Chinook at the lower end of the river.
30. By adding to existing instream water rights between POD #11 and Lake Billy Chinook the instream right will provide protection for additional streamflows necessary for fish and wildlife habitat enhancement, pollution abatement and recreation.

31. By replacing a portion of Certificates 73188 and 73237 from Lake Billy Chinook to the mouth of the Deschutes River, this instream use will provide protection for streamflows previously identified as necessary for supporting aquatic life and recreation under an earlier priority date.
32. 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.
33. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

***Partial Cancellation of Certificate 76714***

34. 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. The applicant has not submitted an affidavit certifying that the affected portions under Certificate 76714 have been abandoned. The applicant has requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-10553.
35. Consistent with OAR 690-380-2250, the Department provided notice (as part of the draft Preliminary Determination identified in Finding of Fact #18) to the applicant of the Department's intent to cancel the portions of the supplemental water right described below unless within 30 days of the date of notification, the applicant modified the application to include the supplemental right or withdrew the application. No response was received to the notice.
36. The portion of the following right proposed to be cancelled is:  
**Certificate:** 76714 in the name of Central Oregon Irrigation District  
**Use:** Supplemental Irrigation of 36.07 acres  
**Priority Date:** February 28, 1913  
**Source:** Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

**Authorized Point of Diversion:**

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Survey Coordinates</b>
21 S	08 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET EAST FROM THE N ¼ CORNER OF SECTION 29



**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Tax lot
15 S	13 E	WM	08	NW NE	17.37	802
15 S	13 E	WM	08	NW NE	18.7	804

36. The Department has information that POD #11 (COID North Canal) described in 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	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET <u>WEST</u> FROM THE <u>EAST</u> ¼ CORNER OF SECTION 29

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

37. The DRC and COID (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 to the DRC and COID.
38. The Department assigned this mitigation credit project number MP-114.
39. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on March 11, 2008. No comments were received in response to this notice.
40. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department (OPRD), 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 March 11, 2008. Comments were received from OPRD. OPRD stated that the proposed instream transfer, along with other transfers, would improve streamflows for recreation opportunities over time. OPRD was also supportive of protecting proposed instream flows during the period April 1 through October 26.
41. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
42. The proposed transfer of 29.36 acres of irrigation use to instream use for mitigation purposes will provide 52.8 acre-feet of mitigation water. Therefore, 52.8 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to the DRC and COID. 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/or General Zones of Impact.

43. A total of 160.03 AF is proposed to be transferred to instream use to establish mitigation and 52.8 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
44. 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(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.
45. 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.

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in transfer application T-10553 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 portion of the right shall be cancelled.

This mitigation project results 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-10553 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 83571 is modified and a new instream water right certificate 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 involved in this transfer. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 83571 by the following:

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.450 CFS	0.600 CFS	0.793 CFS	356.57 AF
December 2, 1907			0.318 CFS	

3. 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 #36. Modification of this supplemental water right will decrease, by 36.07 acres, the number of acres to which stored water may be applied for supplemental irrigation under the right.

- 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 1 (Mitigation and Restoration flows): COID North Canal POD #11 (as described in Finding of Fact #2) to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.248 CFS	196.60 AF
		Season 2	0.331 CFS	
		Season 3	0.612 CFS	

Reach 2 (Restoration flows only): Lake Billy Chinook (RM 120) to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.084 CFS	36.57 AF
		Season 2	0.112 CFS	
		Season 3	0.148 CFS	

Reach 3 (Restoration flows only with return flows accounted for): Madras Gage to mouth of Deschutes River (RM 0)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	April 1 – October 26	0.03 CFS	12.08 AF

- 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.
- 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 water by senior 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.
- 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.
- 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 that are contained in Certificate 83571 and any related decree as may be germane to instream rights.

9. The former place of use of the transferred water shall no longer receive water as part of this right.
10. **Final 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 **52.8** credits, as described herein, may be awarded to this mitigation project and assigned to the DRC and COID. 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/or General Zones of Impact**. Any mitigation credits awarded will begin being valid the first calendar year that water is to be protected instream under a new instream water right resulting from this mitigation project.
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.
12. The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project. 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 25<sup>th</sup> day of February, 2009.

*Phillip C. Ward*  
Phillip C. Ward, Director

Mailing Date MAR 02 2009