

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

In the Matter of Instream Transfer)	FINAL ORDER APPROVING A
Application T-10778 and Mitigation Credit)	CHANGE IN PLACE OF USE AND
Project MP-125, Deschutes County)	CHARACTER OF USE, PRELIMINARY
)	AWARD OF MITIGATION CREDITS,
)	CANCELLATION OF PERMIT
)	G-12329, 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 690-505-0500 to 690-505-0630 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of providing mitigation for a ground water permit application in the Deschutes Ground Water Study Area.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT (COID)	CITY OF REDMOND
1055 SW LAKE COURT	PO BOX 726
REDMOND OR 97756	REDMOND, OR 97756

Findings of Fact

Background

1. On January 30, 2009, the Central Oregon Irrigation District (COID) and City of Redmond 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-10778.

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.

2. The portion of the first right to be transferred is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District
Use: Irrigation of 87.9 acres and 6.3 acres equivalent of Pond Maintenance
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 1/80th cubic foot per second (CFS) per acre)
 Season 2 (limited to 1/60th CFS per acre)
 Season 3 (limited to 1/32.4th 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	Use	Acres
15 S	13 E	WM	3	SE NW	IR	20.8
15 S	13 E	WM	15	SE NW	IR	0.5
15 S	13 E	WM	15	NE SW	PM	2.4
15 S	13 E	WM	15	NE SW	IR	16.3
15 S	13 E	WM	15	NW SW	IR	1.3
15 S	13 E	WM	15	SW SW	PM	3.9
15 S	13 E	WM	15	SW SW	IR	23.4
15 S	13 E	WM	15	SE SW	IR	18.1
15 S	13 E	WM	15	NW SE	IR	0.8
15 S	13 E	WM	15	SW SE	IR	0.3
15 S	13 E	WM	22	NW NW	IR	6.4

- 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
Irrigation Use				
October 31, 1900	1.096 CFS	1.461 CFS	1.932 CFS	868.88 AF
December 2, 1907			0.774 CFS	
Pond Maintenance				
October 31, 1900	0.079 CFS	0.105 CFS	0.138 CFS	62.27 AF
December 2, 1907			0.056 CFS	
Totals				
October 31, 1900	1.175 CFS	1.566 CFS	2.070 CFS	
December 2, 1907			0.830 CFS	931.16 AF

- A total of 513.44 acre-feet (AF) of water, excluding transmission losses, may be beneficially used annually for primary irrigation and pond maintenance under the portion of existing Certificate 83571 proposed for transfer.
- Supplemental rights, Certificate 76714 and Permit G-12329, are appurtenant to the same lands from which the primary right, Certificate 83571, is proposed to be transferred to instream use. The applicants requested the affected portion of Certificate 76714 and all of Permit G-12329 be cancelled upon issuance of the Final Order approving T-10778.
- The applicants are not the owners of a portion of the lands to which the water right described in Finding of Fact #2 is appurtenant. However, a water right conveyance agreement has been completed and interest in the water right 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	Tax Lot at Time of Water Right Conveyance Agreement
S&H/EVERT REDMOND 40, LLC	COID	15 S	13 E	3	SE NW	600

8. Application T-10778 proposes to change the character of use to instream use for fish and wildlife habitat enhancement, pollution abatement, and recreation. The applicant has also requested that this transfer be used to establish mitigation water for Ground Water Permit Application G-16749, filed by City of Redmond.
9. Application T-10778 proposes to change the place of use of the right to create an instream reach from the COID North Canal POD #11 (described in Finding of Fact #2) to River Mile 120.
10. The applicants propose that water be protected instream during the period April 1 through October 26. Season 3 would end on October 26.
11. The applicants propose the quantities water to be transferred instream to be protected as follows:

Certificate	Priority Date	Instream Rate	Instream Volume
83571	October 31, 1900	Season 1: 0.648 cfs Season 2: 0.864 cfs Season 3: 1.599 cfs	513.44 AF

12. There are existing instream water rights for the same reach as that proposed for the new instream water right. All of the existing instream water rights were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process. 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.
13. The applicants propose 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.
14. 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 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 #11, do not include the 45% transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.

15. The applicants have provided notification of the proposed action to the City of Bend, and Deschutes and Jefferson Counties. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-10778.
16. Notice of the application for transfer was published on February 17, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
17. On May 14, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10778 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of June 12, 2009, for the applicants to respond and provide additional information necessary to complete the application. The additional information requested by the Department was received on May 18, 2009. On May 20, 2009, the applicants concurred with the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.
18. On May 27, 2009, the Department issued a preliminary determination proposing to approve Transfer Application T-10778 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 June 2, 2009, and in the Bend Bulletin on June 1, 8, and 15, 2009, 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.
19. Following issuance of the Preliminary Determination, the Department identified that Certificate 83571 contains a scrivener error in the description of the place of use for a portion of the right to be transferred to instream use. Certificate 83571 identifies the place of use for Irrigation of 0.5 acre as follows:

Twp	Rng	Mer	Sec	Q-Q	Use	Acres
15 S	13 E	WM	15	SE NE	IR	0.5

In the preceding certificate, Certificate 76358, and on COID's original HB 3111 petition map, this 0.5 acre of irrigation was identified as being located in the SE NW of Section 15. However, when the superseding certificate, Certificate 83571, was issued this 0.5 acre of irrigation was incorrectly identified as being located in the SE NE of Section 15. Based upon Department and Irrigation District records, this 0.5 acre of irrigation proposed for transfer is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Use	Acres
15 S	13 E	WM	15	SE NW	IR	0.5

The authorized place of use description in Finding of Fact #2 is consistent with the above correct place of use description for the 0.5 acre of irrigation. No change has been made to Finding of Fact #2 from the Preliminary Determination.

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

20. The portion of the right proposed for transfer was leased instream within the five-year period prior to submission of Transfer T-10778 under IL-530 and IL-760. 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-10778 for a portion of the right proposed for transfer. A delivery system does not appear to have been in place within the five-year period prior to submission of the transfer application for other portions of the water right proposed for transfer. However, those portions appear to have been leased instream within the last five years under IL-530 during the period 2004 through 2008.
22. The proposed change would not result in enlargement of the right.
23. The proposed change would not result in injury to other water rights.
24. The amount and timing of the proposed instream flow, as described in Finding of Fact #11, is allowable within the limits and use of the original water right.
25. The protection of flows at the authorized point of diversion 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 downstream of the reach of the instream water right.
26. 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. In addition to flows for the designated Scenic Waterway and pending instream water right application, which are at times not met during the requested period 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 and a TMDL (Total Maximum Daily Load) study is underway.

27. By adding to existing instream water rights transferred instream within the same reach, or created through the conserved water statutes, the instream right will provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; pollution abatement; and recreation.
28. By replacing a portion of any instream right within the same reach, created at the request of state agencies or under the minimum streamflow conversion process, the instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.
29. 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.
30. 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.

Cancellation and Partial Cancellation of a Water Right

31. There are two existing supplemental rights, Certificate 76714 and Permit G-12329, appurtenant to the portion of lands on which Certificate 83571 is proposed for transfer to instream use. The applicants have not submitted an affidavit certifying that the affected portions under Certificate 76714 or Permit G-12329 have been abandoned. The applicants have requested that affected portions of the supplemental water rights under Certificate 76714 and all of Permit G-12329 be cancelled upon issuance of the Final Order approving T-10778.
32. A portion of Certificate 76714 and all of Permit G-12329 are appurtenant to lands owned by the City of Redmond. The remaining portion of Certificate 76714 requested to be cancelled is appurtenant to lands from which the interest in a portion of Certificate 83571 has been conveyed to COID through a quit claim deed (described in Finding of Fact #7). However, the interest in Certificate 76714 was not conveyed to COID as part of the quit claim deed. All persons who are owners of the property from which the primary irrigation rights under Certificate 83571 were quit claimed to COID have not been notified of the intent to cancel Certificate 76714.
33. Supplemental water rights (layered water rights) must be included in a transfer application or cancelled.

34. Consistent with OAR 690-380-2250, the Department provided notice (as part of the draft Preliminary Determination identified in Finding of Fact #17) to the applicants and affected landowners of the Department's intent to cancel *all* of water right Permit G-12329 and the portion of Certificate 76714 described below unless within 30 days of the date of notification, the applicant modified the application to include the supplemental right or requested that the application be withdrawn. No response was received to the notice.
35. The portion of the first right to be cancelled is:
Certificate: 76714 in the name of Central Oregon Irrigation District
Use: Supplemental Irrigation of 94.2 acres
Priority Date: February 28, 1913
Source: Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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 WEST FROM THE E ¼ CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Use	Acres
15 S	13 E	WM	3	SE NW	IR	20.8
15 S	13 E	WM	15	SE NW	IR	0.5
15 S	13 E	WM	15	NE SW	PM	2.4
15 S	13 E	WM	15	NE SW	IR	16.3
15 S	13 E	WM	15	NW SW	IR	1.3
15 S	13 E	WM	15	SW SW	PM	3.9
15 S	13 E	WM	15	SW SW	IR	23.4
15 S	13 E	WM	15	NW SE	IR	0.8
15 S	13 E	WM	15	SW SE	IR	0.3
15 S	13 E	WM	15	SE SW	IR	18.1
15 S	13 E	WM	22	NW NW	IR	6.4

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

37. The second right to be cancelled is:

Permit: G-12329 in the name of City of Redmond

Use: Supplemental Irrigation of 67.1 acres

Season of Use: April 1 to November 1

Priority Date: November 10, 1992

Source: A well in the Deschutes River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	13 E	WM	16	SE SE	15 FEET SOUTH AND 35 FEET WEST FROM THE NW CORNER OF SW ¼ SW ¼, SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Use	Acres
15 S	13 E	WM	3	SE NW	IR	0.5
15 S	13 E	WM	15	NE SW	IR	16.3
15 S	13 E	WM	15	NW SW	IR	1.3
15 S	13 E	WM	15	SW SW	IR	23.4
15 S	13 E	WM	15	NW SE	IR	0.8
15 S	13 E	WM	15	SW SE	IR	0.3
15 S	13 E	WM	22	NW NW	IR	6.4

Mitigation Project Review Criteria

38. COID and the City of Redmond (the Applicants) have requested that this transfer be used to establish mitigation water for Ground Water Permit Application G-16749, filed by City of Redmond.
39. The Department assigned this mitigation project number MP-125.
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 690-505-0630 (2) on April 30, 2008. No comments were received.
41. Ground Water Permit Application G-16749 has been determined to have a mitigation obligation of 169.6 AF in the General Zone of Impact, as described in the Final Order issued approving this application on April 30, 2009.
42. The proposed transfer of 87.9 acres of irrigation use may provide 158.2 AF of mitigation water and the proposed transfer of 6.3 acres equivalent of pond maintenance (surface area of 2.06 acres) to instream use may provide an additional 5.5 AF of mitigation water. This project may generate a total of 163.7 AF of mitigation water.
43. The proposed reach would protect instream flows within both the Middle Deschutes and General Zones of Impact. Mitigation water generated from this instream transfer may be

used to satisfy the mitigation obligation of a ground water permit application within the General Zone of Impact.

44. Based upon Findings of Fact #40 through #43, it appears that that the proposed mitigation project, if completed as proposed, will satisfy a portion of the mitigation obligation for Ground Water Permit Application G-16749.
45. A total of 513.44 AF is proposed to be transferred to instream use and 163.7 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.
46. Mitigation water generated by this project may be used to satisfy a portion of the mitigation obligation for Ground Water Permit Application G-16749 upon completion of the approved project (the instream transfer) 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.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-10778 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 rights should be cancelled.

This mitigation project results in mitigation water pursuant to ORS 537.746 and OAR 690-505-0610.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-10778 are approved. The appurtenant supplemental rights are 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 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	Total Duty
Irrigation Use				
October 31, 1900	1.096 CFS	1.461 CFS	1.932 CFS	868.88 AF
December 2, 1907			0.774 CFS	
Pond Maintenance				
October 31, 1900	0.079 CFS	0.105 CFS	0.138 CFS	62.27 AF
December 2, 1907			0.056 CFS	
Totals				
October 31, 1900	1.175 CFS	1.566 CFS	2.070 CFS	
December 2, 1907			0.830 CFS	931.16 AF

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 #35. Modification of this supplemental water right shall reduce by 94.2 acres the number of acres to which stored water may be applied for supplemental irrigation under the right but does not reduce the total quantity of water available for supplemental irrigation.
4. Permit G-12329 is cancelled.
5. 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:

From COID North Canal POD #11 (as described in Finding of Fact #2) to Lake Billy Chinook (RM 120).

Priority Date	Instream Period	Instream Rate	Instream volume
October 31, 1900	April 1 through April 30 and October 1 through October 26	0.648 CFS	513.44 AF
	May 1 through May 14 and September 15 through September 30	0.864 CFS	
	May 15 through September 14	1.599 CFS	

6. 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.
7. 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.
8. 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.
9. 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.
10. The former place of use of the transferred water shall no longer receive water as part of this right.
11. **Mitigation Water:** Mitigation Water generated by this project will be used to satisfy a portion of the mitigation obligation for Ground Water Permit Application G-16749 upon completion of the project and verification by the Department that the project has been

completed as proposed. Issuance of the attached instream water right certificate, as described herein, results in completion of the project and verification by the Department that the project is complete. This project will generate **163.7 AF** of Mitigation Water in the **General Zone of Impact**.

12. The instream certificate created from this transfer shall be identified as a mitigation project/source for a ground water permit, issued as a result of approval of Ground Water Permit Application G-16749. Within the instream certificate, the volume of mitigation water, the zone of impact in which the mitigation water was 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 17th day of July, 2009.


Phillip C. Ward, Director 

Mailing Date JUL 27 2009