

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10992, 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 October 15, 2008, COID notified the landowners that they must use their water right or it would be confiscated because Oregon law provides that five consecutive years of non-use will result in forfeiture of vested water rights under ORS 540.610. The notices also informed the landowners that they had a right to transfer the water right to another place of use. Further, the notices informed the landowners about the confiscation policy of COID.
2. On September 29, 2009, September 30, 2009 and October 1, 2009, 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 December 14, 2009, COID notified the landowners and all parties holding a recorded security interest in those lands that COID had filed an application to transfer the water from the authorized places of use due to five consecutive years of non-use.
4. On December 15, 2009, Central Oregon Irrigation District (COID) filed a district transfer application under ORS 540.572, to permanently change the place of use. The Department assigned the application number T-10992. No protests were filed in response to Transfer Application T-10992.

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. Based on the evidence contained in the letters and notices listed above (Findings of Fact #1 thru #3 above) water was not put to beneficial use on the relevant authorized lands during the 2005, 2006, 2007, 2008, and 2009 irrigation seasons.

6. 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 25.58 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 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Places of Use:

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
15 S	13 E	WM	9	NW NW	0.35*	208	CITY OF BEND/QUITCLAIM	2009-047
15 S	13 E	WM	20	NE SW	0.30	6401	HAYWARD	2009-047
15 S	13 E	WM	20	SE SE	0.11	602	DEGREE BUILDERS & CONTRACTORS	2009-047
15 S	13 E	WM	31	NE SE	4.00	705	STROUP	2009-047
15 S	13 E	WM	31	NW SE	0.75	705	STROUP	2009-047
17 S	13 E	WM	31	NWSE	0.27*	1101	STROBEL	2009-047

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
17 S	13 E	WM	31	NWSW	0.20*	300	SPICER	2009-047
17 S	14 E	WM	27	SW SW	14.40	1400	OKULA	2009-047
18 S	13 E	WM	10	SE NE	2.80	403	PERRY	2009-047
18 S	13 E	WM	11	NW NW	2.40	403	PERRY	2009-047
Total:					25.58			

*Those noted with an asterisk were not part of the confiscation process but were included in the same transfer application.

7. Transfer Application T-10992 proposes to change the places of use to:

Proposed Places of Use:

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
14 S	13 E	WM	14	SE SE	2.30	101	IRBY	2009-047
14 S	14 E	WM	19	NW SE	2.50	300	KASBERGER	2009-047
14 S	14 E	WM	19	SW SE	0.71	304	KASBERGER	2009-047
15 S	15 E	WM	6	NW NW	12.17	300	HULTBERG	2009-047
17 S	13 E	WM	31	NW SW	1.30	300	SPICER	2009-047
17 S	13 E	WM	31	NW SE	2.00	1101	STROBEL	2009-047
17 S	14 E	WM	25	NE NW	2.80	200	TATE	2009-047
17 S	14 E	WM	25	SE NW	1.80	200	TATE	2009-047
Total:					25.58			

8. 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 25.58

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 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Places of Use:

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
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15 S	13 E	WM	20	NE SW	0.30	6401	HAYWARD	2009-047
15 S	13 E	WM	20	SE SE	0.11	602	DEGREE	2009-047

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
							BUILDERS & CONTRACTORS	
15 S	13 E	WM	31	NE SE	4.00	705	STROUP	2009-047
15 S	13 E	WM	31	NW SE	0.75	705	STROUP	2009-047
17 S	13 E	WM	31	NW SW	0.20*	300	SPICER	2009-047
17 S	13 E	WM	31	NW SE	0.27*	1101	STROBEL	2009-047
17 S	14 E	WM	27	SW SW	14.40	1400	OKULA	2009-047
18 S	13 E	WM	10	SE NE	2.80	403	PERRY	2009-047
18 S	13 E	WM	11	NW NW	2.40	403	PERRY	2009-047
Total:					25.58			

*Those noted with an asterisk were not part of the confiscation process but were included in the same transfer application.

9. Transfer Application T-10992 proposes to change the places of use to:

Proposed Places of Use:

Twp	Rng		Sec	Q-Q	Acres	Taxlot	Owner Name	Notice
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14 S	14 E	WM	19	NW SE	2.50	300	KASBERGER	2009-047
14 S	14 E	WM	19	SW SE	0.71	304	KASBERGER	2009-047
15 S	15 E	WM	6	NW NW	12.17	300	HULTBERG	2009-047
17 S	13 E	WM	31	NW SW	1.30	300	SPICER	2009-047
17 S	13 E	WM	31	NW SE	2.00	1101	STROBEL	2009-047
17 S	14 E	WM	25	NE NW	2.80	200	TATE	2009-047
17 S	14 E	WM	25	SE NW	1.80	200	TATE	2009-047
Total:					25.58			

10. On December 19, 2009, the Department published notice of application T-10992 in its weekly bulletin pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
11. 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.

12. 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)	0.250	0.333	0.440	198.03
December 2, 1907 (cfs)			0.177	
POD # 11				
Priority Date	Season 1	Season 2	Season 3	Duty (AF)
October 31, 1900 (cfs)	0.069	0.092	0.121	54.47
December 2, 1907 (cfs)			0.049	

Transfer Review Criteria (ORS 540.572; OAR 690-385-5000)

13. On December 15, 2009, COID filed Transfer Application T-10992, which, in part, proposed to transfer water from the authorized lands due to non-use. Central Oregon Irrigation District filed application T-10992 prior to the end of the fifth year of non-use as required by OAR 690-385-5600.
14. The authorized places of use which were properly confiscated are within the legal boundaries of COID and are “no longer irrigated” within the meaning of ORS 540.572.
15. COID is managed by a full-time manager. ORS 540.574(1)(a).
16. COID is implementing a water conservation plan that was approved by the Department on December 17, 2004. ORS 540.574(1)(b).
17. COID met all notice requirements of ORS 540.572 and OAR 690-385-5100 prior to filing Transfer Application T-10992.
18. Landowners did not notify COID nor the Department, that 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 as required by ORS 540.572(4)(b)(C).
19. Transfer application T-10992 contains the information and map required under OAR 690-385-2000, 690-385-2200 and 690-385-4000.
20. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
21. The proposed change in place of use will not result in enlargement of the rights.
22. The proposed change in place of use will not result in injury to other water rights.

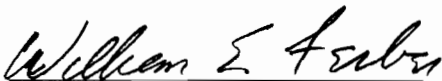
Conclusions of Law

The proposed change in place of use in Transfer Application T-10992 satisfies the requirements of ORS 540.572, 540.574(3), 540.580 and OAR 693-385-5000.

Now, therefore, it is ORDERED:

1. The proposed change in place of use to the water rights evidenced by Certificates 83571 and 76714 is 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 this water right.
4. 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, 2011.
5. A Claim of Beneficial Use shall be submitted by the applicant to the Department by October 1, 2012.
6. 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 31st day of March, 2010.


for Phillip C. Ward, Director

Mailing Date: APR 02 2010