# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11509, Deschutes and Crook Counties	)	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**

- 1. On November 28, 2011, COID notified landowners who had not beneficially used the District's water right on their property that they must use the water right or it would be confiscated. Central Oregon Irrigation District went on to explain in the notice that beneficial use was necessary because Oregon law provides that five consecutive years of nonuse will result in forfeiture of vested water rights under ORS 540.610. The notice also informed the landowners that they had a right to transfer the water right to another place of use including leasing the water right instream and informed the landowners about the confiscation policy of COID.
- 2. On April 23, 2012, COID notified landowners of the need to beneficially use the water right on their property during the upcoming irrigation season.
- 3. On October 17, 2012, COID notified the respective landowners and all persons holding a recorded security interest in the lands, that because they had failed to beneficially use the water right once during the last five consecutive years, the District, pursuant to the District's confiscation policy, planned to file a petition to transfer the unused water rights to other lands.
- 4. On October 24, 2012, Lead Pastor Duane Pippitt of Redmond Assembly of God (a recipient of the notices outline above) sent a letter to Steve Johnson, Central Oregon Irrigation District Manager, requesting a meeting to discuss the nonuse issue.

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. On October 31, 2012, Cary Penhollow, Operations Manager (on behalf of Steve Johnson) sent a response to Pastor Duane Pippitt, informing Pastor Pippitt of the right to request a hearing and present information regarding the nonuse issue at the November 13, 2012, District Board of Directors meeting.
- According to the minutes of the November 13, 2012, the District's Board of Directors
  meeting, confiscation hearings was held however, no COID patron had requested the
  opportunity to speak to the Board nor were any patrons in attendance at this meeting.
- 7. Landowners (other than noted above) did not notify COID or the Department that they had any evidence sufficient to rebut the presumption of forfeiture.
- 8. On December 20, 2012, COID notified the relevant patrons that the District had filed a district transfer application under ORS 540.572, to permanently change the place of use.
- 9. On December 21, 2012, the Department received an application to permanently change the place of use under both ORS 540.572 and ORS 540.580. The Department assigned the application number T-11509.
- 10. On January 8, 2013, the Department published notice of application T-11509 in its weekly bulletin pursuant to OAR 690-385-5500. No comments were filed in response to the notice.
- 11. 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 23.76 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

POD#	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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:**

		_			IRR	IGATION			
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#
14 S	13 E	WM	23	SE NW	0.63	*201	COID	T-2012-025	11
14 S	13 E	WM	26	NW SW	0.30	*1000	STONE	T-2012-024	11
14 S	13 E	WM	27	SWNW	0.40	800	HAINES	T-2012-022	11
15 S	13 E	WM	5	sw sw	2.80	1006	RDM	T-2012-022	11
							INVESTMENTS		
15 S	13 E	WM	9	SW SW	2.20	1300	REDMOND	T-2012-022	11
							ASSEMBLY OF		
							GOD		
15 S	13 E	WM	18	SW NE	0.60	1800	PARR LUMBER	T-2012-022	11
15 S	13 E	WM	29	NW SW	5.50	704	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	29	NW SW	0.40	1419	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	0.60	704	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	0.10	703	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	3.40	1419	MAYBERRY/	T-2012-022	11
							ROSUMNY		
16 S	12 E	WM	1	NE SW	0.33	*600	PENHOLLOW	T-2012-023	11
16 S	14 E	WM	3	SW NW	5.00	500	UMBARGER	T-2012-022	1
17 S	12 E	WM	23	NW SE	0.25	1500	HUYETTE/	T-2012-022	1
							STURDEVANT		
17 S	12 E	WM	19	NW NE	0.35	109	CUSTARD	T-2012-022	1
18 S	12 E	WM	1	NW NE	0.90	*301	MCDONALD	T-2012-022	1
		· · · · · ·		TOTAL:	23.76		-		

<sup>\*</sup>These properties are not involved in the transfer due to nonuse.

# 12. Transfer Application T-11509 proposes to change the places of use to:

# **Proposed Places of Use:**

				_	IRRI	GATION			
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#
14 S	13 E	WM	14	SE SE	0.60	404	ARMSON	T-2012-022	11
14 S	13 E	WM	22	SE NE	0.70	700	LECKIE	T-2012-022	11
14 S	13 E	WM	25	NW NE	5.40	600	SANDERS	T-2012-022	11
14 S	13 E	WM	26	SWNW	1.40	1000	STONE	T-2012-022	11
14 S	13 E	WM	26	NW SW	2.30	1000	STONE	T-2012-022	11
14 S	13 E	WM	26	NW SW	0.30	1000	STONE	T-2012-024	11
14 S	13 E	WM	31	SE SE	0.45	3401	WILLIAMS	T-2012-022	11
14 S	13 E	WM	31	SW SE	0.20	3401	WILLIAMS	T-2012-022	11
14 S	14 E	WM	17	SW SW	0.63	200	BROOKS/	T-2012-025	11
							JULIAN		
14 S	14 E	WM	17	SW SW	0.46	200	BROOKS/	T-2012-022	11
							JULIAN		
14 S	14 E	WM	18	SE SE	2.15	500	BROOKS/	T-2012-022	11
							JULIAN		

	IRRIGATION												
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#				
16 S	12 E	WM	1	NW SW	0.70	901	PENHOLLOW	T-2012-022	11				
16 S	12 E	WM	1	SW SW	0.85	1000	PENHOLLOW	T-2012-022	11				
16 S	12 E	WM	1	NE SW	0.33	600	PENHOLLOW	T-2012-023	11				
16 S	12 E	WM	1	NE SW	0.79	600	PENHOLLOW	T-2012-022	11				
16 S	14 E	WM	17	NE NE	6.50	100	SCHINKEL	T-2012-022	1				
							FAMILY						
							FARMS LLC						
				TOTAL:	23.76			·					

13. 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.

14. The portion of the supplemental right to be transferred is as follows:

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: SUPPLEMENTAL IRRIGATION of 5.95 acres.

**Priority Date:** February 28, 1913

**Limit/Duty:** limited to 50,000 acre-feet of stored water only

Source: Crane Prairie Reservoir, constructed under Permit R-1687, a tributary of the

Deschutes River

The water right evidenced by Certificate 76714 allows the use of up to 50,000 acre-feet of water stored in Crane Prairie Reservoir, a tributary of the Deschutes River, for supplemental irrigation. The diversion rate is not specified and use is limited to the total volume of stored water to make up any deficiency in supply of the live flow water right appurtenant to specified lands.

## **Authorized Points of Diversion:**

POD#	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	18 S	11 E	WM	13	SW NE	CENTRAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
11	17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

#### Authorized Places of Use:

	IRRIGATION												
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#				
14 S	13 E	WM	23	SE NW	0.63	*201	COID	T-2012-025	11				
14 S	13 E	WM	26	NW SW	0.30	*1000	STONE	T-2012-024	11				
14 S	13 E	WM	27	SW NW	0.40	800	HAINES	T-2012-022	11				
15 S	13 E	WM	5	SW SW	2.80	1006	RDM	T-2012-022	11				
							INVESTMENTS						

		_			IRR	IGATION			
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#
15 S	13 E	WM	9	SW SW	2.20	1300	REDMOND	T-2012-022	11
							ASSEMBLY OF		
							GOD		
15 S	13 E	WM	18	SW NE	0.60	1800	PARR LUMBER	T-2012-022	11
15 S	13 E	WM	29	NW SW	5.50	704	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	29	NW SW	0.40	1419	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	0.60	704	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	0.10	703	MAYBERRY/	T-2012-022	11
							ROSUMNY		
15 S	13 E	WM	30	NE SE	3.40	1419	MAYBERRY/	T-2012-022	11
							ROSUMNY		
16 S	12 E	WM	1	NE SW	0.33	*600	PENHOLLOW	T-2012-023	11
16 S	14 E	WM	3	SWNW	5.00	500	UMBARGER	T-2012-022	1
17 S	12 E	WM	23	NW SE	0.25	1500	HUYETTE/	T-2012-022	1
							STURDEVANT		
17 S	12 E	WM	19	NW NE	0.35	109	CUSTARD	T-2012-022	1
18 S	12 E	WM	1	NW NE	0.90	*301	MCDONALD	T-2012-022	1
				TOTAL:	23.76				

<sup>\*</sup>These properties are not involved in the transfer due to nonuse.

# 15. Transfer Application T-11509 proposes to change the places of use to:

# **Proposed Places of Use:**

					IRRI	GATION			
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	User Name	Notice	POD#
14 S	13 E	WM	14	SE SE	0.60	404	ARMSON	T-2012-022	11
14 S	13 E	WM	22	SE NE	0.70	700	LECKIE	T-2012-022	11
14 S	13 E	WM	25	NW NE	5.40	600	SANDERS	T-2012-022	11
14 S	13 E	WM	26	SWNW	1.40	1000	STONE	T-2012-022	11
14 S	13 E	WM	26	NWSW	2.30	1000	STONE	T-2012-022	11
14 S	13 E	WM	26	NW SW	0.30	1000	STONE	T-2012-024	11
14 S	13 E	WM	31	SE SE	0.45	3401	WILLIAMS	T-2012-022	11
14 S	13 E	WM	31	SW SE	0.20	3401	WILLIAMS	T-2012-022	11
14 S	14 E	WM	17	SWSW	0.63	200	BROOKS/	T-2012-025	11
							JULIAN		
14 S	14 E	WM	17	SW SW	0.46	200	BROOKS/	T-2012-022	11
							JULIAN		
14 S	14 E	WM	18	SE SE	2.15	500	BROOKS/	T-2012-022	11
							JULIAN		
16 S	12 E	WM	1	NW SW	0.70	901	PENHOLLOW	T-2012-022	11
16 S	12 E	WM	1	SW SW	0.85	1000	PENHOLLOW	T-2012-022	11
16 S	12 E	WM	1	NE SW	0.33	600	PENHOLLOW	T-2012-023	11_
16 S	12 E	WM	1	NE SW	0.79	600	PENHOLLOW	T-2012-022	11
16 S	14 E	WM	17	NE NE	6.50	100	SCHINKEL	T-2012-022	1
							FAMILY		
							FARMS LLC		
		•		TOTAL:	23.76		<u>.                                      </u>		

#### Transfer Review Criteria

- 16. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
- 17. The proposed change in places of use will not result in enlargement of the rights.
- 18. The proposed change in places of use will not result in injury to other water rights.
- 19. For those portions of this transfer NOT involved in the nonuse process, water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 20. For those portions of this transfer NOT involved in the nonuse process, a diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11509.
- 21. All applicable requirements for district permanent transfers of water right for nonuse (ORS 540.572) have been met.

#### Conclusions of Law

The proposed change in place of use in Transfer Application T-11509 satisfies the requirements of ORS 540.572 and 540.580.

## Now, therefore, it is ORDERED:

- 1. The proposed change in place of use to the water rights evidenced by Certificates 83571 and 76714 are approved.
- 2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 83571 and 76714 and any related decree.
- 3. The former place of use shall no longer be irrigated as part of these water rights.
- 4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
- 5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. A Claim of Beneficial Use shall be submitted by COID to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
- 6. Water right certificates 83571 and 76714 are modified. The Department shall issue water right certificates on a determination that it is necessary to produce certificates describing the water rights.

Dated at Salem, Oregon this 21 day of February, 2013.

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

Mailing Date: PER 28 2013