

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

In the Matter of Instream Transfer) FINAL ORDER & FINAL AWARD OF
Application T-9603 (Mitigation Project) MITIGATION CREDITS
MP-11), Deschutes County, Oregon)

AUTHORITY

ORS 540.505 to 540.580 and ORS 537.348 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.

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

Central Oregon Irrigation District for Mt. Bachelor Village Homeowners Association
2598 N Hwy 97
Redmond, OR 97756

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

FINDINGS OF FACT

Instream Transfer

1. Central Oregon Irrigation District (COID) for Mt. Bachelor Village Homeowners Association filed an application to transfer the place of use and the character of use under Certificates 76358 and 76714 to instream use. Tammy Sailors, Deschutes Resources Conservancy, is the authorized agent acting on the behalf of the applicant. The Department assigned the application number T-9603.
2. The water rights are appurtenant to lands owned by E.R. Max Mills, Sunset Ridge Village, LLC, and Forest Avenue Baptist Church. The water rights have been Quit Claimed to Central Oregon Irrigation District.
3. The right to be transferred is as follows:

Certificate: 76358 in the name of COID
Use: Irrigation
Acres: 18.3 acres
Priority Date: October 31, 1900 & December 2, 1907
Season of Use: April 1 through October 31, further limited as follows:
 April 1 to May 1 and October 1 to November 1 described herein as Season 1
 May 1 to May 15 and September 15 to October 1 described herein as Season 2
 May 15 to September 15 described herein as Season 3
Quantity: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre): 0.229 CFS
 Season 2 (limited to 1/60th CFS per acre): 0.305 CFS
 Season 3 (limited to 1/32.4th CFS per acre): 0.565 CFS, being 0.403 CFS under the 1900 priority date and 0.162 CFS under the 1907 priority date
 Duty (limited to 9.91 Acre-Feet per acre): 181.353 AF (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.
Source: 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 feet North and 630 feet West from the E 1/4 Corner, Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
15	S	13	E	W.M.	17	NW SW	2914	4.0
15	S	13	E	W.M.	17	NW SW	2910	14.3

4. There is a supplemental right, certificate 76714, appurtenant to the same lands covered by the primary right, certificate 76358, to be transferred to instream use. On May 19, 2004, the Deschutes Water Exchange, agent for the applicant, submitted a request to amend the transfer application to not include the transfer of the supplemental right to instream use. A confirming request was received from the applicant on May 25, 2004.
5. There is an existing instream water right, Certificate 80400, established pursuant to ORS 537.348, within the same reach as that proposed for the new instream water right. This right protects 0.35 CFS instream April 1 to November 1 of each year and has a priority date of October 10, 1903. There presently are no instream water rights in this reach of the Deschutes River established pursuant to ORS 537.341 or 537.346.
6. Application T-9603 proposes to change the character of use to Instream Use. A new instream water right created as a result of this transfer will help protect aquatic and fish species in the Deschutes River.
7. Application T-9603 proposes to change the place of use of the right described in Finding 3 above to create an instream reach from:

The authorized POD #11 (COID North Canal) to Lake Billy Chinook.

8. The applicant proposed to transfer water for instream flow protection as follows:

Certificate	Priority Date	Rate Instream	Volume Instream
76358	October 31, 1900 & December 2, 1907	Season 1: 0.13 CFS Season 2: 0.17 CFS Season 3: 0.30 CFS	99.74 AF

9. Based upon continued evaluation, the Department finds that water may be transferred instream as follows:

Certificate	Priority Date	Rate Instream	Volume Instream
76358	October 31, 1900 & December 2, 1907	Season 1: 0.13 CFS under the 1900 priority date Season 2: 0.17 CFS under the 1900 priority date Season 3: 0.30 CFS, being 0.22 CFS under the 1900 priority date and 0.08 CFS under the 1907 priority date	99.74 AF

10. To prevent injury and enlargement, the 45% transmission loss, which is identified in certificate 76358, is not included in the amount of water that may be transferred and protected instream. ORS 540.530, OAR 690-380-4010 & OAR 690-077-0075
11. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. Comments were filed in response to the notices from the Oregon Department of Fish and Wildlife (ODFW). ODFW comments addressed the use of the project for mitigation credit purposes and are considered in the Preliminary Award of Mitigation Credits section below.
12. Notice of the Preliminary Determination for the transfer application was published pursuant OAR 690-380-4020. No protests were filed in response to the notice.
13. Water has been used within the last five years according to the terms and conditions of the right and no evidence has been submitted which claims that the right is subject to forfeiture under ORS 540.610.
14. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing right for the lands identified for transfer are present. The remaining right certificate issued as a result of this transfer, and other activities associated with certificate 76358, will be reduced by the amount of water transferred to instream use. The reduction will be from the lesser of the maximum quantity listed on the water right or the capacity of the diversion and delivery system.
15. The proposed change, as modified to protect flows instream, will not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. 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.
18. The protection of flows in the proposed reach is appropriate, considering;

- a. The instream water right begins at the recorded point of diversion for diversion of flows from the Deschutes River;
 - 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.
19. There is an existing instream water right, Certificate 80400, established pursuant to ORS 537.348, within the same reach as that proposed for the new instream water right. There presently are no instream water rights in this reach of the Deschutes River established pursuant to ORS 537.341 or 537.346. A new instream water right created as a result of this transfer will be additive with certificate 80400 and will provide needed protection for aquatic and fish species in the stream.

Final Award of Deschutes Basin Mitigation Credits

20. COID for Mt. Bachelor Village Homeowners Association has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The applicant has requested that any mitigation credits generated from this project be assigned to Mt. Bachelor Village Homeowners Association.
21. The Department assigned this mitigation credit project number MP-11.
22. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on February 3, 2004. Previous comments were received from ODFW on December 26, 2003.
23. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon State Parks and Recreation Department, Oregon Division 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 3, 2004. Comments were received from the Watermaster.
24. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
25. The Department has determined that this mitigation project will provide 32.9 AF of mitigation water. Issuance of the attached instream water right certificate results in completion of the project and verification by the Department that the project is complete. Therefore, mitigation credits, in the amount of **32.9** credits, described herein are awarded to this mitigation project and assigned to the Mt. Bachelor Village Homeowners Association.

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 Zone of Impact and/or the General Zone of Impact**.

26. 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.

Partial Cancellation of Certificate 76714

27. The applicant has not submitted an affidavit certifying that a portion of the supplemental water right has been abandoned. The Deschutes Water Exchange, agent for the applicant, has submitted a request on behalf of the applicant to exclude the supplemental water right from this transfer application. Consistent with OAR 690-380-2250, the Department notified the applicant of the Department's intent to cancel the portion of the supplemental water right as described below. The applicant did not notify the Department to include the supplemental right or withdraw the application within 30 days of the date of that notice.

28. The portion of the supplemental water right to be cancelled is as follows:

Certificate: 76714 in the name of COID
Use: Supplemental Irrigation of 18.3 acres
Priority Date: February 28, 1913
Season of Use: April 1 through October 31
Quantity: 17.751 AF. This is based upon evenly distributing each acre-foot stored in Crane Prairie Reservoir, 50,000 AF, under this certificate between the 51,536.847 acres to which water is applied. The distribution per acre is 0.97 AF per acre.
Acres: 18.3 acres
Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	21	E	W.M.	17	NE	NE	CRANE PRAIRIE RESERVOIR
17	S	12	E	W.M.	29	SE	NE	POD #11 (COID North Canal): 850 feet North and 630 feet West from the E 1/4 Corner, Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Lot	Acres
15	S	13	E	W.M.	17	NW	SW	2914	4.0
15	S	13	E	W.M.	17	NW	SW	2910	14.3

CONCLUSIONS OF LAW

The changes in place of use and character of use proposed in application T-9603 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

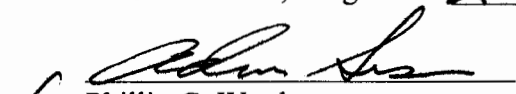
Now, therefore, it is ORDERED:

1. The proposed change shall be effective upon issuance of this Final Order.
2. Certificate 76358 is cancelled and a new instream water right is issued. A new certificate will be issued 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 76358 by 0.229 CFS in Season 1, 0.305 CFS in Season 2, and 0.565 CFS, being 0.403 CFS under the 1900 priority date and 0.162 CFS under the 1907 priority date, in Season 3.
3. A portion of certificate 76714 is canceled. A new certificate will be issued to confirm that portion of the right not involved in the cancellation. Cancellation of a portion of this supplemental right shall result in the reduction in the amount of that may be diverted from storage under this right by 17.751 AF.
4. The former place of use shall no longer be irrigated as part of these rights.
5. A new instream right created as a result of this transfer shall be additive with instream water right certificate 80400 during the period April 1 through October 31 of each year.
6. An instream flow shall be maintained in any new instream water right created as a result of this transfer as follows:

Priority Date	Rate Instream	Volume Instream
October 31, 1900 & December 2, 1907	Season 1: 0.13 CFS under the 1900 priority date Season 2: 0.17 CFS under the 1900 priority date Season 3: 0.30 CFS, being 0.22 CFS under the 1900 priority date and 0.08 CFS under the 1907 priority date	99.74 AF

7. A description of the river reach to which this right is appurtenant is as follows: from COID North Canal (SE 1/4 NE 1/4, Section 29, Township 17 South, Range 12 East, W.M.; 850 feet North and 630 feet West from the E 1/4 Corner, Section 29) to Lake Billy Chinook.
8. Regulation to satisfy the quantity of water granted under any new instream water right created as a result of this transfer will be based on flows available at the original point of diversion.
9. **Final Award of Mitigation Credits:** Final Award of Mitigation Credits may be made upon completion of the project and issuance of the attached instream water right certificate results in completion of the project and verification by the Department that the project is complete. Therefore, mitigation credits, in the amount of **32.9** credits, described herein are awarded to this mitigation project and assigned to Mt. Bachelor Village Homeowners Association. Mitigation Credits 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 Zone of Impact and the General Zone of Impact**.
10. 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.

Dated at Salem, Oregon this 20th day of July, 2004.


for Phillip C. Ward,
Acting Director

Mailing Date: JUL 22 2004