

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

In the Matter of Transfer Application)
T-10267, Deschutes County)
)
)
)
)

FINAL ORDER APPROVING A
CHANGE IN PLACE OF USE,
CHARACTER OF USE, AND PARTIAL
CANCELLATION OF A WATER
RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled. OAR Chapter 690, Division 380-2250 provides that whenever a layered supplemental right is not included in a transfer of the place of use or character of use of the primary right, the supplemental water right will be canceled before the Department issues an order approving the transfer.

Applicants

Central Oregon Irrigation District
1055 SW Lake Court
Redmond, OR 97756

Martha Jackson, LLC
10400 NE Canyons Ranch Dr.
Terrebonne, OR 97760

The Canyons Land & Cattle Co.
1336 NE Eby Ave.
Terrebonne, OR 97760

Findings of Fact

Background

1. On November 17, 2006, Central Oregon Irrigation District (COID) co-applicant with The Canyons Land and Cattle Co. and Martha Jackson, LLC, filed a transfer application to change the character of use and the place of use under Certificates 76358. The applicants have also requested to cancel the corresponding portion of Certificate 76714 for supplemental irrigation upon issuance of the Final Order approving the transfer. The Department assigned the application number T-10267.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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 either 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. On September 26, 2007, Certificate 76358 was cancelled and superseded by Certificate 83571.
3. The portion of the right to be transferred is as follows:

Certificate: 83571 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: IRRIGATION of 15.5 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 COLUMBIA RIVER

Authorized Point of Diversion:

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 E1/4 CORNER OF SECTION 29.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	3	SW SW	2.0
14 S	13 E	WM	3	NE SE	0.4
14 S	13 E	WM	3	NE SE	0.25
14 S	13 E	WM	3	NW SE	0.8
14 S	13 E	WM	3	NW SE	1.2
14 S	13 E	WM	3	SE SE	0.2
14 S	13 E	WM	4	SW SE	1.0
14 S	13 E	WM	10	NE NE	1.2
14 S	13 E	WM	10	NE NE	2.6
14 S	13 E	WM	10	NE NW	0.3
14 S	13 E	WM	10	NW NW	0.35
14 S	13 E	WM	10	NW NW	2.1
14 S	13 E	WM	10	SW NW	1.0

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	10	SE NW	0.1
14 S	13 E	WM	10	SE NW	0.1
14 S	13 E	WM	10	NE SW	0.9
14 S	13 E	WM	10	NE SW	0.6
14 S	13 E	WM	10	NE SW	0.4
Total					15.50

4. 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 (described in Finding of Fact #3), 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 PODs (described in Finding of Fact #3), the portion of the right involved in this transfer would be limited as described in the tables below. These rates and duty are also the quantities by which Certificate 83571 shall be reduced.

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.193 cfs	0.258 cfs	0.341 cfs	153.22 AF
December 2, 1907			0.136 cfs	

5. Transfer Application T-10267 proposes to change the place of use of the right to:

POND MAINTENANCE					
Twp	Rng	Mer	Sec	Q-Q	Equivalent Acres
14 S	13 E	WM	3	SW SW	2.50
14 S	13 E	WM	10	NE NW	2.75
14 S	13 E	WM	10	NW NW	0.25
14 S	13 E	WM	10	NW NW	4.75
14 S	13 E	WM	10	SW NW	2.50
14 S	13 E	WM	10	SE NW	2.50
14 S	13 E	WM	10	SE NW	0.25
Total					15.50

6. Transfer Application T-10267 proposes to change the character of use to pond maintenance.
7. Notice of the application for transfer was published on November 28, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On April 12, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10267 to the applicants. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of 30 days in which the applicant could respond. The applicants did not provide any comments by the deadline, to request any changes from the draft. However, the Department discovered that reference to an annual duty for the new use had been left off the original draft. On July 20, 2007 a revised *draft* was emailed to the applicant for review. On July 26, 2007 the applicant responded by email that the revised *draft* with an annual acre-foot limitation on the use was acceptable.

9. On July 27, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10267 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 July 31, 2007, and in the Bulletin newspaper on August 28, September 4 and September 11, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. On November 29, 2007, the Department emailed a *draft* Final Order to the applicants. This revision included the addition or revision of Findings of Fact #3 and #4.
11. On November 30, 2007, a representative of COID responded requesting continued processing of Transfer Application T-10267.

Transfer Review Criteria [OAR 690-380-4010(2)]

12. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. 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-10267.
14. The proposed change would not result in enlargement of the right, provided the water diverted does not exceed the rates stated in Findings of Fact #3 and #4 and is limited to a total quantity of 153.22 acre-feet during the irrigation season each year.
15. The proposed change would not result in injury to other water rights.

Partial Cancellation of Water Right Certificate 76714

16. Supplemental right, certificate 76714, is appurtenant to the same lands from which the primary right under certificate 83571 is proposed to be transferred to pond maintenance. The applicant requested that the affected acreage portion of certificate 76714 be cancelled upon issuance of the Final Order approving T-10267, but that the total volume of stored water authorized to be used under the right evidenced by Certificate 76714 not be reduced.
17. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer.
18. Consistent with OAR 690-380-2250, the Department notified the applicant on April 12, 2007, of the Department's intent to cancel the portions of the supplemental water rights described in Finding of Fact #21 unless within 30 days of the date of the notification the applicant modified the application to include the supplemental right or requested the application be withdrawn. The applicants did not amend the application or request that it be withdrawn.

19. The transfer application contained a request to modify the supplemental water right, evidenced by Certificate 76714, to reduce by 15.5 acres the number of acres to which stored water may be applied for supplemental irrigation; but NOT to reduce the total volume of stored water authorized to be used under the right evidenced by Certificate 76714.
20. Pursuant to OAR 690-380-2250(4), the Department has determined that the applicants hold the interest to portions of the water right evidenced by Certificate 76714, and is hereby notifying the applicant and landowner that the portion described in Finding of Fact #21 will be cancelled because it has not been included in the transfer application, unless the transfer application is withdrawn within 90 days.
21. The portion of the right to be cancelled is as follows:

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT
Use: SUPPLEMENTAL IRRIGATION of 15.5 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 DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL AND CROOK COUNTY IMPROVEMENT DISTRICT #1) – 850 FEET NORTH AND 630 FEET WEST FROM THE N1/4 CORNER OF SECTION 29

Authorized Place of Use:

Supplemental Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	3	SW SW	2.0
14 S	13 E	WM	3	NE SE	0.4
14 S	13 E	WM	3	NE SE	0.25
14 S	13 E	WM	3	NW SE	0.8
14 S	13 E	WM	3	NW SE	1.2
14 S	13 E	WM	3	SE SE	0.2
14 S	13 E	WM	4	SW SE	1.0
14 S	13 E	WM	10	NE NE	1.2
14 S	13 E	WM	10	NE NE	2.6
14 S	13 E	WM	10	NE NW	0.3
14 S	13 E	WM	10	NW NW	0.35
14 S	13 E	WM	10	NW NW	2.1
14 S	13 E	WM	10	SW NW	1.0
14 S	13 E	WM	10	SE NW	0.1
14 S	13 E	WM	10	SE NW	0.1
14 S	13 E	WM	10	NE SW	0.9
14 S	13 E	WM	10	NE SW	0.6
14 S	13 E	WM	10	NE SW	0.4
Total					15.50

Conclusions of Law

The changes in place of use and character of use proposed in application T-10267 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the supplemental right listed above as not transferred should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in Transfer Application T-10267 are approved. The portion of the right evidenced by Certificate 76714 listed in Finding of Fact #21 that is not being transferred is cancelled.
2. Water right certificate 83571 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping. The perfected portion of certificate 83571 is reduced by 15.5 acres.
3. Certificate 76714 shall be modified to reduce by 15.5 acres, the number of acres to which stored water may be applied for supplemental irrigation under the right; however, the maximum quantity of stored water that can be diverted for use under the right will remain unchanged.
4. 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.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The water diverted from the canal for pond maintenance shall not exceed the rates stated in Findings of Fact #3 and #4 and is limited to a total annual quantity of 153.22 acre-feet.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

Dated at Salem, Oregon this 26th day of December, 2007.



Phillip C. Ward, Director *PCW*

Mailing date: DEC 27 2007