

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10291, Deschutes County, Oregon)	CHANGE IN POINT OF DIVERSION,
)	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 the order approving the transfer.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT
1055 SW LAKE COURT
REDMOND, OR 97756

Receiving Landowner

MILLSITE MANAGEMENT COMPANY
15 SW COLORADO AVENUE STE 1
BEND, OR 97702-1229

Findings of Fact

Background

1. On January 18, 2007, Central Oregon Irrigation District (COID), for Millsite Management Company, filed an application to change the use, place of use and point of diversion under Certificate 76358. The Department assigned the application number T-10291.
2. On June 28, 2007, the applicant submitted additional information clarifying the proposed place of use by ¼ ¼ section.
3. On September 26, 2007, Certificate 76358 was cancelled and superseded by Certificate 83571.

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.

4. The portion of the primary right to be transferred is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District (COID)

Use: IRRIGATION of 20.315 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:

Township		Range		Meridian	Sec	¼	¼	Location
18	S	11	E	WM	13	SW	NE	POD #1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
15	S	15	E	WM	17	SW	SE	107	0.5
17	S	12	E	WM	26	NE	NW	402	2.0
17	S	12	E	WM	26	NW	SE	3300	3.5
17	S	12	E	WM	28	SW	NE	500	1.5
17	S	12	E	WM	34	SW	SE	1500	1.81
17	S	12	E	WM	35	SW	SW	1100	1.5
17	S	12	E	WM	35	SE	SW	401	0.13
17	S	12	E	WM	35	NW	SE	900	1.5

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
17	S	12	E	WM	35	NE	SW	3600	0.7
17	S	12	E	WM	35	NE	SW	3700	0.3
18	S	12	E	WM	3	NE	NW	502	0.125
18	S	12	E	WM	3	SE	NE	200	1.0
18	S	12	E	WM	3	NE	NE	1500	1.5
18	S	12	E	WM	4	SE	SW	200	1.3
18	S	12	E	WM	4	SE	SW	300	0.2
18	S	12	E	WM	8	NW	NW	711	2.0
18	S	12	E	WM	8	NW	NW	704	0.5
18	S	12	E	WM	10	SE	SW	400	0.25

5. 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 #4), 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 #4), 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	0.253 cfs	0.337 cfs	0.446 cfs	200.44 AF
December 2, 1907			0.179 cfs	

6. Transfer Application T-10291 proposes to move the authorized point of diversion approximately 2 miles downstream to:

Proposed Point of Diversion:

Township		Range		Meridian	Sec	¼	¼	Location
18	S	12	E	WM	5	SE	NW	SOUTH 65 DEGREES, 46 MINUTES, 27 SECONDS, WEST 3621.45 FEET FROM THE NE CORNER OF SECTION 5

7. Transfer Application T-10291 also proposes to change the place of use of the right to:

Proposed Place of Use:

QUASI-MUNICIPAL USE									
Township		Range		Meridian	Sec	¼	¼		
17	S	12	E	WM	32	SE	SW		
17	S	12	E	WM	32	SW	SW		

QUASI-MUNICIPAL USE							
Township		Range		Meridian	Sec	¼	¼
18	S	12	E	WM	5	--	NW
18	S	12	E	WM	5	--	NE
18	S	12	E	WM	5	NE	SW
18	S	12	E	WM	5	NW	SW
18	S	12	E	WM	5	SE	SW
18	S	12	E	WM	5	NW	SE
18	S	12	E	WM	6	NE	NE
18	S	12	E	WM	6	NE	SE
18	S	12	E	WM	6	NW	SE
18	S	12	E	WM	6	SW	SE

8. Transfer Application T-10291 proposes to change the character of use to QUASI-MUNICIPAL.
9. Notice of the application for transfer was published on March 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
11. On July 12, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10291 to the applicants. On July 18, 2007 the Department recognized that the *draft* had omitted a condition to avoid enlargement, and emailed a *revised draft* to the applicants. The draft Preliminary Determination set forth a deadline of August 15, 2007, for the applicants to respond. The applicants acknowledged agreement with the *revised draft* and requested that the Department proceed with issuance of a Preliminary Determination.
12. On August, 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10291 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 August 21, 2007, and in the Bulletin newspaper on August 28, September 4 and 11, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. The applicants are not the owners of the lands to which the water right described in Finding of Fact #4 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed from each landowner

described in the table below. The portion of this right to be transferred was appurtenant to lands owned by the identified landowners at the time interest in the water right was conveyed through a water right conveyance agreement.

Landowner	Water Right Interest Holder	T	R	S	Q-Q	Current Tax Lot
Darryle A. Mendes & Margaret Mendes	COID	15S	15E	17	SW SE	107
East Slope Investments, LLC	COID	17S	12E	26	NE NW	402
Howard W. Heimbuch and Velma L. Heimbuch	COID	17S	12E	26	NW SE	3300
Joe Thalhofer and Ruth E. Thalhofer	COID	17S	12E	28	SW NE	500
Alvin L. Clarke and Myrna J. Clarke	COID	17S	12E	34	SW SE	1500
Wight Development, LLC	COID	17S	12E	35	SE SW	401
Lester D. Alford, Trustee of the Alford/Smith Trust U/T/A	COID	17S	12E	35	NW SE	900
Gibran Investments, LLC	COID	17S	12E	35	SW SW	1100
Reserve at Pilot Butte, LLC	COID	17S	12E	35	NE SW	3600 & 3700
W. Dale Michael and Joellen Michael	COID	18S	12E	3	SE NE	00200
Matthew C. and Cheryl L. Lewis	COID	18S	12E	3	NE NW	502
Marilyn K. Shields and Jerald C. Shields	COID	18S	12E	3	NE NE	1500
Sheryl L. Selee, as Trustee of the William R. Looney Revocable Trust U/T/A and Trustee of the Nancy A. Looney Revocable Trust U/T/A	COID	18S	12E	4	SE SW	200 & 300
Mark E. Vander Ark and Laurie A. Vander Ark	COID	18S	12E	8	NW NW	704
Lahoma E. Figgins and Arthur Figgins	COID	18S	12E	8	NW NW	711
Nian and Elizabeth Fiedler	COID	18S	12E	10	SE SW	400

14. Millsite Management Company is the receiving landowner and is responsible for completion and perfection of the changes after the final order is issued.

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

15. Evidence was submitted with the application indicating that a portion of the water has been used within the last five years according to the terms and conditions of the right and portions of the right were leased instream within the last five years. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of time during which a portion of the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
16. 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-10291.
17. Considering current knowledge about water rights and their impact on the hydrology of the Deschutes Basin, the Department is unable to conclude that the change from irrigation of crops on 20.315 acres to quasi-municipal use on the much larger proposed place of use would not result in enlargement of the right or injury to instream water rights. An increase in consumptive water use could decrease the amount of return flows entering downstream, which support instream water rights in the Deschutes River. However, if quasi-municipal use on the proposed place of use were conditioned so that the quantity of water removed from the hydrologic system through consumptive use would approximate the consumptive use of crops on 20.315 acres under irrigation; the proposed use would not injure other water rights.
18. The total consumptive use of irrigation water for crops in the Deschutes Basin is estimated by the Department to be 1.8 acre-feet per acre irrigated. Presumably, the rest of the water diverted up to the allowed duty is not taken up by crops, but returns to the surface and groundwater system. Water withdrawn by crops on 20.315 acres yields 36.57 AF (1.8 AF/acre x 20.315 acres) of consumptive use.
19. Research by the Department indicates that approximately 47.14% of the total volume of water diverted for municipal use in the Deschutes River Basin during the months of the irrigation season is consumptive. Therefore, the volume of water, in acre-feet, that could be diverted for quasi-municipal purposes, (including both consumptive and non-consumptive uses) without resulting in an increase in consumptive use can be estimated by dividing the total AF (36.57) by the consumptive percent of quasi-municipal use (47.14). This results in a volume of 77.58 acre-feet.
20. Limiting the maximum annual volume of water allowed to be diverted from the river for quasi-municipal use on the proposed place of use to 77.58 acre-feet would be sufficient to ensure that other water rights are not injured.
21. The rate and duty allowed under Certificate 83571 (under the terms of the decree) for each acre irrigated by the Central Oregon Irrigation District main canal systems reflect a 45% transmission loss. 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.

22. Transfer Application T-10291 proposes to change the point of diversion and delivery system for this portion of the right from the COID canal system to a direct pumping point on the Deschutes River. Therefore the rate including provision for transmission losses can not be allowed and the transfer will be limited to the rates listed below:

Time of Year	Rate	Total Area	Total Rate for T-10291 without 45% transmission loss
	(cfs/acre)	(equivalent acres)	(cfs) For Quasi-Municipal Use
April 1 through April 30 (Season 1)	1/80	20.315	0.140
May 1 through May 14 (Season 2)	1/60	20.315	0.186
May 15 through Sep 15 (Season 3)	1/32.4	20.315	0.345
Sep 16 through Sep 30 (Season 2)	1/60	20.315	0.186
Oct 1 through Oct 31 (Season 1)	1/80	20.315	0.140

23. The proposed changes, as conditioned below, would not result in enlargement of the right.
24. The proposed changes, as conditioned below, would not result in injury to other water rights.

Partial Cancellation of a Water Right

25. There is a supplemental right under Certificate 76714 appurtenant to the lands from which the primary water right is proposed to be transferred; however, the application indicates that this portion of Certificate 76714 is not proposed for transfer.
26. The applicant has not submitted an affidavit certifying that the affected portion of the supplemental water right under certificate 76714 has been abandoned. Consistent with ORS 540.510(1) and OAR 690-380-2250, the Department notified the applicant in the draft Preliminary Determination of the Department's intent to cancel the portion of the supplemental water right as described below. The applicant has requested that the affected portion of Certificate 76714 be cancelled. Therefore, the portion of the supplemental right under Certificate 76714 listed below will be cancelled upon issuance of this final order approving T-10291.
27. The portion of certificate 76714 to be cancelled is appurtenant to lands for which COID holds quitclaim deeds to the water right as follows:
- Certificate:** 76714 in the name of COID
Use: Supplemental Irrigation
Priority Date: February 28, 1913
Season of Use: April 1 through October 31
Acres: 20.315
Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Point(s) of Diversion:

Township		Range		Meridian	Sec	¼	¼	Location	
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir Dam	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
15	S	15	E	WM	17	SW	SE	107	0.5
17	S	12	E	WM	26	NE	NW	402	2.0
17	S	12	E	WM	26	NW	SE	3300	3.5
17	S	12	E	WM	28	SW	NE	500	1.5
17	S	12	E	WM	34	SW	SE	1500	1.81
17	S	12	E	WM	35	SW	SW	1100	1.5
17	S	12	E	WM	35	SE	SW	401	0.13
17	S	12	E	WM	35	NW	SE	900	1.5
17	S	12	E	WM	35	NE	SW	3600	0.7
17	S	12	E	WM	35	NE	SW	3700	0.3
18	S	12	E	WM	3	NE	NW	502	0.125
18	S	12	E	WM	3	SE	NE	200	1.0
18	S	12	E	WM	3	NE	NE	1500	1.5
18	S	12	E	WM	4	SE	SW	200	1.3
18	S	12	E	WM	4	SE	SW	300	0.2
18	S	12	E	WM	8	NW	NW	711	2.0
18	S	12	E	WM	8	NW	NW	704	0.5
18	S	12	E	WM	10	SE	SW	400	0.25

28. Certificate 76714 does not provide for a full per-acre seasonal duty of water. Therefore, the quantity of water allocated under the right may be used on other lands to which the right is appurtenant without exceeding the established duty for irrigation in the area.

Conclusions of Law

The changes in use, place of use and point of diversion proposed in application T-10291 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 use, place of use and point of diversion proposed in Transfer Application T-10291 are approved. The portion of the right evidenced by Certificate 76714 listed in Finding of Fact #27 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 20.315 acres.
3. Certificate 76714 shall be modified to reduce by 20.315 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 Certificate 83571 and any related decree.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
7. The maximum rates of diversion from the Deschutes River under the portion of the right evidenced by Certificate 83571 at the diversion point on the receiving landowner's property, shall continue to be based on 20.315 acres of irrigation right transferred, excluding 45% transmission loss, being:
 - 0.140 cfs from April 1 through April 30 and October 1 through October 31(Season 1);
 - 0.186 cfs from May 1 through May 14 and September 16 through October 31 (Season 2);
 - 0.345 cfs from May 15 through September 15 (Season 3)
8. The annual quantity of water diverted from the Deschutes River for quasi-municipal purposes shall not exceed 77.58 acre feet.
9. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

10. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
11. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
12. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2013. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted, by the receiving landowner, 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 

Mailing date: DEC 27 2007