



Added to T-10712	15	S	13	E	WM	4	NW	SE	1.70
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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 23.81 acres

**Priority Date:** October 31, 1900 and December 2, 1907

**Season of Use:** April 1 through October 31, further limited as described below

**Maximum Quantity (Rate) that can be applied to an acre:**

April 1 through April 30 & October 1 through October 31: limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre

May 1 through May 14 & September 16 through September 30: limited to 1/60<sup>th</sup> CFS per acre

May 15 through September 15: limited to 1/32.4<sup>th</sup> 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:** The Deschutes River, tributary to the Columbia River

**Authorized Points of Diversion (POD):**

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 ¼ CORNER OF SECTION 29

**Authorized Place of Use:**

Township	Range	Meridian	Sec	¼ ¼	Acres
14	S	13	E	WM	0.30
14	S	13	E	WM	0.15
14	S	13	E	WM	3.00
14	S	13	E	WM	6.15
15	S	12	E	WM	2.37
15	S	13	E	WM	1.26
15	S	13	E	WM	1.70
15	S	13	E	WM	2.00
15	S	13	E	WM	2.10
15	S	13	E	WM	1.40
15	S	13	E	WM	0.38
15	S	13	E	WM	3.00

4. The Department has information that 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.

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 #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 POD (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, if this transfer is approved.

	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.297 CFS	0.396 CFS	0.523 CFS	235.36 AF
December 2, 1907			0.210 CFS	

6. A total of 129.78 AF of water, excluding transmission losses, may be beneficially used annually for primary irrigation under the portion of Certificate 83571 proposed for transfer.
7. Supplemental right, Certificate 76714, is appurtenant to the same lands from which the primary right under Certificate 83571 is proposed to be transferred to instream use. The applicant has requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-10712.
8. The applicants are not the owners of the lands to which the water right described in Finding of Fact #3 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed to COID or to the DRC from preceding water right holders and/or the original landowner. The portion of the 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 Quit Claim, a water right conveyance agreement.

Landowner at time water right was originally conveyed	Water Right Interest Holder	T	R	Sec	¼ ¼	Tax Lot	Acres
Gwendolyn Dent	COID	14S	13E	16	SW SE	2400	0.30
Louise B. Higbee	COID	14S	13E	16	SW SW	2300	0.15
Don Johnstone and Cathy Johnstone	COID	14S	13E	21	SW NW	503	3.00
John McClean, Tammy S. Harty, John V. Johnson, and Marcella G. Johnson	COID	14S	13E	31	NE NE	102	6.15
Robert D. Evans and Sharon L. Evans	DRC	15S	12E	25	NW NW	300	2.37
Watson Family Limited Partnership	COID	15S	13E	4	SE NE	300	1.26
Jay B. Digua	COID	15S	13E	8	NE NE	1400	2.00

Landowner at time water right was originally conveyed	Water Right Interest Holder	T	R	Sec	¼ ¼	Tax Lot	Acres
Reginald Lawson and 35 <sup>th</sup> Street Partners, LLC	COID	15S	13E	8	SW SW	600	1.00
						601	0.60
						602	0.50
PCC Structurals, Inc.	COID	15S	13E	10	SW NW	600	1.40
Heather J. DeWolf	COID	15S	13E	20	SW NE	3700	0.38
Havnip Investment, LLC	COID	15S	13E	30	NW NW	902	3.00
Feed Barn Properties	COID	15S	13E	4	NW SE	100	1.70

9. Application T-10712 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation.
10. Application T-10712 proposes to change the place of use of the right to create the following instream reaches:
  - Reach #1: From COID North Canal POD #11 to Lake Billy Chinook (River Mile (RM) 120).
  - Reach #2: From Lake Billy Chinook (RM 120) to the mouth of the Deschutes River (RM 0).
11. The applicant proposes that water be protected instream during the period April 1 through October 26. Season 1 would end on October 26.
12. The applicant proposes the quantities of water to be transferred instream to be protected as follows:

Reach #1:

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	Season 1: 0.164 CFS Season 2: 0.218 CFS Season 3: 0.404 CFS	129.78 AF

Reach #2:

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	Season 1: 0.105 CFS Season 2: 0.105 CFS Season 3: 0.105 CFS	42.86 AF

13. The applicant proposes that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant also proposes that any instream water right established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to

ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with an earlier priority date.

14. There are a number of existing instream water rights for the same reach as that proposed for the new instream water right. Two of the existing instream rights were established pursuant to ORS 537.341, the state agency application process for establishing instream water rights. There is also a pending instream water right application filed pursuant to this process in the portion of the proposed reach above Lake Billy Chinook. These types of instream rights are generally junior in priority date to rights transferred to instream use. The remaining instream water rights were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process.
15. The applicant has requested to protect water instream under the October 31, 1900, priority date. Water is diverted at the point of diversion during Season 3 under both the 1900 and 1907 priority dates. The quantity of water diverted under the 1907 priority date during Season 3 makes up a balance of water allowed by the decree for transmission losses. Transmission losses account for 45% of the water diverted at the point of diversion and are not transferable to instream use. The quantities of water proposed by the applicant to be transferred instream, as described in Finding of Fact #12, do not include the 45% transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.
16. Notice of the transfer application was provided by the applicant to Deschutes County, Jefferson County, the City of Bend, Wasco County and the City of Maupin. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-10712.
17. Notice of the application for transfer was published on September 30, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
18. On January 16, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10712 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of February 16, 2009, for the applicants to respond and provide additional information necessary to complete and clarify the application. The additional information requested by the Department, except for that discussed in Finding of Fact #19, was received on January 19, 23, and 29, 2009.
19. In researching the history of the portion of the water right appurtenant to Tax Lot 700, SE ¼ of the NW ¼ of Section 21, Township 14S, Range 13E, it was not clear who held interest in this portion of the water right. On May 7, 2009, the applicants removed this parcel from the transfer and replaced it with another parcel (see Finding of Fact #2).
20. On June 29, 2009, the Department mailed a copy of the revised draft Preliminary Determination to approve Transfer Application T-10712 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of July 28, 2009, for the applicants to respond. On June 29 and June 30, 2009, the applicants concurred with the

draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination.

21. On July 9, 2009, the Department issued a preliminary determination proposing to approve Transfer Application T-10712 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 14, 2009, and in the Bend Bulletin on July 17, 24, and 31, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice or to the newspaper notice.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

22. The following portion of the right proposed for transfer was leased instream and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

Township	Range	Meridian	Sec	¼ ¼	Acres	Lease #	Lease Year		
14	S	13	E	WM	16	SW SE	0.3	IL-807	2007
14	S	13	E	WM	16	SW SW	0.15	IL-852	2007
14	S	13	E	WM	21	SW NW	3.0	IL-760	2006
15	S	12	E	WM	25	NW NW	2.37	IL-825	2007
15	S	13	E	WM	4	SE NE	1.26	IL-758	2006
15	S	13	E	WM	8	SW SW	1.0	IL-807	2007
15	S	13	E	WM	8	SW SW	0.6	IL-807	2007
15	S	13	E	WM	8	SW SW	0.5	IL-807	2007
15	S	13	E	WM	10	SW NW	1.4	IL-532	2004 thru 2008
15	S	13	E	WM	20	SW NE	0.38	IL-765	2006
15	S	13	E	WM	30	NW NW	3.0	IL-807	2007
15	S	13	E	WM	4	NW SE	1.7	IL-633 IL-754	2005 and 2006

23. Water has been used within the last five years according to the terms and conditions of the right on the remaining portion of the right proposed for transfer, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
24. 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 Application T-10712.
25. The proposed instream use requires modification to take into account return flows. The quantities requested to be protected instream in Reach #2, as described in Finding of Fact #12, account for return flows. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are back in the river system once river flows

reach the Madras Gage. To prevent injury to downstream water right holders and enlargement of the right, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage. The original Reach #2 proposed by the applicant accounted for return on the system higher than needed.

26. The instream rate (0.105 cfs) proposed by the applicant for reach #2, as described in Finding of Fact #12, requires modification to prevent injury and enlargement. The maximum volume that may be protected instream below the point of return flows is 42.86 AF, consistent with the applicant's request. However, over a 209 day period (April 1 through October 26) this volume may be protected instream at a rate of up to 0.103 cfs.
27. Based on Findings of Fact #25 and #26, on January 16 and March 30, 2009, the applicants agreed to modify the quantities to be transferred and protected instream as follows:

Reach 1: COID North Canal POD #11 to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (ending October 26)	0.164 CFS	129.78 AF
		Season 2	0.218 CFS	
		Season 3	0.404 CFS	

Reach 2: Madras Gage to the Mouth of Deschutes River (RM 0)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	April 1 – October 26	0.103 CFS	42.86 AF

28. The proposed change, as modified, would not result in enlargement of the right.
29. The proposed change, as modified, would not result in injury to other water rights.
30. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
31. The protection of flows within the reaches identified in Finding of Fact #27 is appropriate, considering:
  - a) The instream water right begins at the recorded points of diversion;
  - b) The location of confluences with other streams downstream of the points of diversion;
  - c) There are no 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 within the proposed reach and have been accounted for in Reach #2.

32. Within the proposed reach, the Deschutes River is a designated State Scenic Waterway. The protection of flows necessary to maintain the free flowing character of the Deschutes River for fish and wildlife habitat, and recreation is a matter of statutory policy. Within the reaches proposed by the applicant, there are several existing instream water rights, which include the use of water for fish habitat, aquatic life, recreation, aesthetics and minimizing pollution. There is a pending instream water right application, filed by the Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 537.341 to establish an instream water right from POD #11 to Lake Billy Chinook, which if approved will have a priority date of September 24, 1990. Below Lake Billy Chinook, there are two other instream water rights, Certificates 73188 and 73237, with priority dates of October 2, 1989 and January 16, 1996, respectively. These instream water rights were established pursuant to ORS 537.341, the state agency instream water right application process, and are located from the Pelton Regulation Dam on the Deschutes River to the mouth. The remaining instream water rights were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process and are senior in priority date to the other existing instream rights.
33. In addition to flows for the designated Scenic Waterway and the existing and pending instream water right application, which are at times not met during the requested period for instream protection, this segment of the Deschutes River is also on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams for temperature and pH above Lake Billy Chinook and for nutrients, sedimentation and temperature below Lake Billy Chinook at the lower end of the river.
34. By adding to other water rights transferred instream at the same location, or created through the conserved water statutes, the instream right will provide protection for additional streamflows necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement.
35. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the instream right will provide protection for streamflows previously identified as necessary for fish habitat, aquatic life, recreation, and minimizing pollution under earlier priority dates.
36. During the period April 1 through October 26 any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
37. The total monthly quantities of water to be protected under the proposed instream right, in addition to the existing instream water rights, within the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.



**Partial Cancellation of a Water Right**

38. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 83571 is proposed for transfer to instream use. The applicants have not submitted an affidavit certifying that the affected portions under Certificate 76714 have been abandoned. The applicants have requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-10712. Interest in the portion of Certificate 76714 to be cancelled has been conveyed through quit claim deeds to COID.
39. Supplemental water rights (layered water rights) must be included in a transfer application or cancelled.
40. Consistent with OAR 690-380-2250, the Department notified the applicants (as part of the draft Preliminary Determination identified in Finding of Fact #18) to the applicant of the Department's intent to cancel the portions of the supplemental water right described below unless within 30 days of the date of notification, the applicant modified the application to include the supplemental right or withdrew the application. No response was received to the notice.
41. That portion of the supplemental water right to be cancelled is as follows:  
**Certificate:** 76714 in the name of Central Oregon Irrigation District  
**Use:** Supplemental Irrigation of 23.81 acres  
**Priority Date:** February 28, 1913  
**Source:** Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

**Authorized PODs:**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
21	S	8	E	W.M.	17	NE NE	CRANE PRAIRIE RESERVOIR DAM
17	S	12	E	W.M.	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 29

**Authorized Places of Use:**

Township	Range	Meridian	Sec	¼ ¼	Acres
14	S	13	E	WM	16 SW SE 0.30
14	S	13	E	WM	16 SW SW 0.15
14	S	13	E	WM	21 SW NW 3.00
14	S	13	E	WM	31 NE NE 6.15
15	S	12	E	WM	25 NW NW 2.37
15	S	13	E	WM	4 SE NE 1.26
15	S	13	E	WM	8 NE NE 2.00
15	S	13	E	WM	8 SW SW 2.10

15	S	13	E	WM	10	SW	NW	1.40
15	S	13	E	WM	20	SW	NE	0.38
15	S	13	E	WM	30	NW	NW	3.00
15	S	13	E	WM	4	NW	SE	1.70

42. The Department has information that POD #11 (COID North Canal) described in Certificates 83571 and 76714 is the same diversion point. The location coordinates described in Certificate 76714 contain errors. The location coordinates should be:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID NORTH CANAL): 850 FEET NORTH & 630 FEET <u>WEST</u> FROM THE <u>EAST</u> ¼ CORNER OF SECTION 29

**Conclusions of Law**

The changes in character of use and place of use to instream use proposed in application T-10712 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the abandoned portion of the right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The changes in character of use and place of use to instream use proposed in application T-10712 are approved. The portion of the right that has been abandoned is cancelled.
2. Water Right Certificate 83571 is modified. The Department shall issue a new water right certificate to supersede Certificate 83571 on a determination that it is necessary to produce a certificate 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 83571 by the following:

	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.297 CFS	0.396 CFS	0.523 CFS	235.36 AF
December 2, 1907			0.210 CFS	

3. The portion of Certificate 76714 that has been abandoned is cancelled. Water right certificate 76714 is modified. The Department shall issue a new water right certificate on a determination that it is necessary to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact #41. Modification of this supplemental water right shall reduce by 23.81 acres the number of acres to which stored water may be applied for supplemental irrigation under the right.
4. The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; pollution abatement; and recreation in the Deschutes River as follows:

Reach 1: COID North Canal POD #11 to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 ( ending October 26)	0.164 CFS	129.78 AF
		Season 2	0.218 CFS	
		Season 3	0.404 CFS	

Reach 2: Madras Gage to the Mouth of Deschutes River (RM 0)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	April 1 – October 26	0.103 CFS	42.86 AF

5. Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.
6. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.
7. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
8. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to other conditions and limitations as may be germane to instream rights, that are contained in Certificate 83571 and any related decree.
9. The former place of use of the transferred water shall no longer receive water as part of these rights.

Dated at Salem, Oregon this 4<sup>th</sup> day of September, 2009.

  
 Phillip C. Ward, Director *P*

Mailing date: SEP 11 2009