

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-9836, Deschutes County)	PROPOSING APPROVAL OF
)	CHANGES IN POINT OF DIVERSION,
)	PLACE OF USE AND
)	RE-DESCRIPTION OF PLACES OF
)	USE UNDER CERTIFICATES 83571
)	AND 76714

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.

Applicants

River's Edge Investments, LLC
3075 N Business 97
Bend, OR 97701

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

Findings of Fact

Background

1. On December 8, 2004, River's Edge Investments, LLC and Central Oregon Irrigation District (COID) filed an application to change the points of diversion and place of use under Certificates 76358, 76714 and 75760. The Department assigned the application number T-9836.
2. On September 26, 2007, Certificate 76358 was superseded by Certificate 83571.
3. On September 16, 2009, the applicants removed Certificate 75760 from the transfer application.
4. On September 13, 2010, the Department received the final amendments and clarifications to the Transfer Application T-9836 which identified 13.0 acres of irrigation and 4.0 acres of quasi-municipal affected.
5. During the initial review the Department determined that the description of the authorized place of use, as listed on the certificate, was inconsistent with the actual location of the water use.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this transfer application and preliminary determination.

6. Following analyses of all available information including adjudication maps, maps utilized during the Department's review for the process described in ORS 541.329 (commonly referred to as the 3111 process), aerial photos, personal accounts and other evidence, the Department determined that the land to which the right has always been appurtenant should be re-described.
7. The following table lists the place of use as described in the existing Certificate 83571 and 76714 and a proposed re-description:

Twp	Rng	Mer	Sec	Q-Q	Acres based on original place of use and listed on certificates	Acres based on 2010 investigation
17 S	12 E	WM	20	NE SW	3.069	2.30
17 S	12 E	WM	20	NW SW	3.545	3.68
17 S	12 E	WM	20	SW SW	4.055	4.57
17 S	12 E	WM	20	SE SW	15.678	15.47
17 S	12 E	WM	20	SW SE	11.000	11.19
17 S	12 E	WM	29	NE NE	0.800	0.27
17 S	12 E	WM	29	NW NE	9.300	9.39
17 S	12 E	WM	29	SW NE	4.500	6.09
17 S	12 E	WM	29	SE NE	1.400	1.78
17 S	12 E	WM	29	NE NW	12.046	11.23
17 S	12 E	WM	29	NW NW	4.637	3.85
17 S	12 E	WM	29	SW NW	2.799	3.01
17 S	12 E	WM	29	SE NW	11.171	11.17
Total acres:					84.000	84.00

8. Both the original place of use and the re-described place of use depict the same irrigated land. The actual location of the place of use, as found on the ground, remains unchanged.
9. The differences between the two descriptions resulted from using aerial photographs that were not ortho-rectified. Utilization of aerial maps, appropriate for the 3111 process, was not sufficient (in this particular case) to reflect an accurate depiction of the water rights. The previous survey information had only approximate, "projected" sectional information. As a result of improved technologies, these approximate projections have been refined, providing a more accurate description of the place of use. Based on evidence obtained using current technology, the Department determined the subject land would be more accurately described as noted in Finding of Fact #7 above.
10. The portion of the first right proposed to be transferred under T-9836 is as follows:

Certificate: 83571 in the name of CENTRAL OREGON IRRIGATION DISTRICT (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County. Volume 12 Page 282 and Volume 16 Page 1)

Use: IRRIGATION of 13.00 ACRES and QUASI-MUNICIPAL USE of 4.00 ACRES-EQUIVALENT

Priority Date: OCTOBER 31, 1900

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/Duty) that can be applied to an acre (Canal Diversions ONLY):

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 an allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933 for lands served by the district canal systems.

Maximum Quantity (Rate/Duty) that can be applied to an acre (Direct Diversions ONLY):

Season 1: Limited to 1/145.45 cubic foot per second (cfs) per acre

Season 2: Limited to 1/109.09 cfs per acre

Season 3: Limited to 1/58.91 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 DO NOT reflect an allowance for transmission loss. 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. a tributary of the COLUMBIA RIVER

Authorized Points of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	18S	11E	WM	13	SW NE	CENTRAL OREGON CANAL - 1520 FEET SOUTH AND 1535 FEET WEST OF THE NE CORNER OF SECTION 13.
11	17S	12E	WM	29	SE NE	C.O.I.D. NORTH CANAL - 850 FEET NORTH AND 630 FEET WEST FROM THE E¼ CORNER OF SECTION 29.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	16	SW SW	0.46*
15 S	12 E	WM	25	NE NW	0.45*
15 S	13 E	WM	18	NW NE	2.00*
15 S	13 E	WM	18	NE SW	1.14*

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	20	NE SW	0.19
17 S	12 E	WM	20	NW SW	0.17
17 S	12 E	WM	20	SW SW	0.17
17 S	12 E	WM	20	SE SW	0.77
17 S	12 E	WM	20	SW SE	2.88
17 S	12 E	WM	29	NE NE	0.27
17 S	12 E	WM	29	NW NE	1.92
17 S	12 E	WM	29	SW NE	0.86
17 S	12 E	WM	29	SE NE	0.24
17 S	12 E	WM	29	NE NW	0.74
17 S	12 E	WM	29	NW NW	0.15
17 S	12 E	WM	29	SW NW	0.05
17 S	12 E	WM	29	SE NW	0.54
Total:					13.00

*Denotes place of use requested also have a change in point of diversion from canal system to direct diversion.

TOTAL of 4.0 acre-equivalent QUASI-MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
16 S	14 E	WM	15	NE SW
16 S	14 E	WM	15	NW SW
16 S	14 E	WM	15	SW SW
16 S	14 E	WM	15	SE SW
16 S	14 E	WM	15	NE SE
16 S	14 E	WM	15	NW SE
16 S	14 E	WM	15	SW SE
16 S	14 E	WM	15	SE SE
16 S	14 E	WM	22	NE NE
16 S	14 E	WM	22	NW NE
16 S	14 E	WM	22	SW NE
16 S	14 E	WM	22	SE NE
16 S	14 E	WM	23	NW NW
16 S	14 E	WM	23	SW NW

11. The description of season of use as described in Certificate 83571 contains scrivener's errors. Consistent with the Decree for the Deschutes River (Volume 12 Page 282) the irrigation season should be as follows:

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

12. 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 above), 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 authorized points of diversion, the portion of the right involved in this transfer would be limited as described in the tables below.

POINT OF DIVERSION #1				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.047	0.063	0.086	38.10
December 2, 1907			0.034	
POINT OF DIVERSION #11				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.051	0.067	0.089	40.03
December 2, 1907			0.036	

13. Transfer Application T-9836 proposes to move the authorized point of diversion for 4.05 acres of irrigation and 4.0 acre-equivalent of quasi-municipal use (as describe above) from canal diversions (POD #1 and POD #11) to a direct diversion, upstream approximately 500 feet, further described as follows:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10	17 S	12 E	WM	29	SW NE	1980 FEET SOUTH AND 1160 FEET EAST FROM THE N1/4 CORNER OF SECTION 29

14. Transfer Application T-9836 also proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	20	NE SW	0.53
17 S	12 E	WM	20	NW SW	0.22
17 S	12 E	WM	20	SW SW	0.17
17 S	12 E	WM	20	SE SW	0.77
17 S	12 E	WM	20	SW SE	0.89
17 S	12 E	WM	29	NE NE	2.34
17 S	12 E	WM	29	NW NE	2.01
17 S	12 E	WM	29	SW NE	0.11
17 S	12 E	WM	29	SE NE	0.09
17 S	12 E	WM	29	NE NW	4.20
17 S	12 E	WM	29	NW NW	0.05
17 S	12 E	WM	29	SW NW	0.33
17 S	12 E	WM	29	SE NW	1.29
Total acres:					13.00

QUASI-MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
17 S	12 E	WM	20	NE SW
17 S	12 E	WM	20	NW SW
17 S	12 E	WM	20	SW SW
17 S	12 E	WM	20	SE SW
17 S	12 E	WM	20	SW SE
17 S	12 E	WM	29	NE NE

QUASI-MUNICIPAL				
Twp	Rng	Mer	Sec	Q-Q
17 S	12 E	WM	29	NW NE
17 S	12 E	WM	29	SW NE
17 S	12 E	WM	29	SE NE
17 S	12 E	WM	29	NE NW
17 S	12 E	WM	29	NW NW
17 S	12 E	WM	29	SW NW
17 S	12 E	WM	29	SE NW
Equivalent to 4.00 acres				

15. The portion of the second right proposed to be transferred under T-9836 is as follows:

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT (perfected under Permit S-23256)

Use: SUPPLEMENTAL IRRIGATION of 13.00 ACRES and QUASI-MUNICIPAL USE of 4.00 ACRES-EQUIVALENT

Priority Date: FEBRUARY 28, 1913

Limit: This right is limited to 50,000 acre-feet of stored water only or its equivalent in case of rotation. This appropriation shall be limited to the duty of water as set out in the modified supplemental decree of the Circuit Court dated March 24, 1933; provided further that the amount of water allowed, together with the amount secured under any other right existing for the same lands shall not exceed the limitation and shall be further limited to the terms of the inter-district contract dated January 4, 1938 between Central Oregon Irrigation District, Crook County Improvement District #1 and the Arnold Irrigation District.

Source: CRANE PRAIRIE RESERVOIR, a tributary of the DESCHUTES RIVER.

Authorized Points of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances/Other
NA	21 S	8 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR DAM
1	18S	11E	WM	13	SW NE	CENTRAL OREGON CANAL - 1520 FEET SOUTH AND 1535 FEET WEST OF THE NE CORNER OF SECTION 13.
11	17S	12E	WM	29	SE NE	C.O.I.D. NORTH CANAL - 850 FEET NORTH AND 630 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 29.

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	16	SW SW	0.46*
15 S	12 E	WM	25	NE NW	0.45*
15 S	13 E	WM	18	NW NE	2.00*
15 S	13 E	WM	18	NE SW	1.14*
17 S	12 E	WM	20	NE SW	0.19
17 S	12 E	WM	20	NW SW	0.17
17 S	12 E	WM	20	SW SW	0.17
17 S	12 E	WM	20	SE SW	0.77

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	20	SW SE	2.88
17 S	12 E	WM	29	NE NE	0.27
17 S	12 E	WM	29	NW NE	1.92
17 S	12 E	WM	29	SW NE	0.86
17 S	12 E	WM	29	SE NE	0.24
17 S	12 E	WM	29	NE NW	0.74
17 S	12 E	WM	29	NW NW	0.15
17 S	12 E	WM	29	SW NW	0.05
17 S	12 E	WM	29	SE NW	0.54
Total:					13.00

*Denotes place of use requested also have a change in point of diversion from canal system to direct diversion.

TOTAL of 4.0 acre-equivalent QUASI-MUNICIPAL USE					
Twp	Rng	Mer	Sec	Q-Q	
16 S	14 E	WM	15	NE SW	
16 S	14 E	WM	15	NW SW	
16 S	14 E	WM	15	SW SW	
16 S	14 E	WM	15	SE SW	
16 S	14 E	WM	15	NE SE	
16 S	14 E	WM	15	NW SE	
16 S	14 E	WM	15	SW SE	
16 S	14 E	WM	15	SE SE	
16 S	14 E	WM	22	NE NE	
16 S	14 E	WM	22	NW NE	
16 S	14 E	WM	22	SW NE	
16 S	14 E	WM	22	SE NE	
16 S	14 E	WM	23	NW NW	
16 S	14 E	WM	23	SW NW	

16. Transfer Application T-9836 proposes to move the authorized point of diversion for 4.05 acres of supplemental irrigation and 4.0 acre-equivalent of quasi-municipal use (as described above) from canal diversions (POD #1 and POD #11) to a direct diversion, further described as follows:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10	17 S	12 E	WM	29	SW NE	1980 FEET SOUTH AND 1160 FEET EAST FROM THE N1/4 CORNER OF SECTION 29

17. Transfer Application T-9836 also proposes to change the place of use to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	20	NE SW	0.53
17 S	12 E	WM	20	NW SW	0.22
17 S	12 E	WM	20	SW SW	0.17
17 S	12 E	WM	20	SE SW	0.77
17 S	12 E	WM	20	SW SE	0.89
17 S	12 E	WM	29	NE NE	2.34

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	29	NW NE	2.01
17 S	12 E	WM	29	SW NE	0.11
17 S	12 E	WM	29	SE NE	0.09
17 S	12 E	WM	29	NE NW	4.20
17 S	12 E	WM	29	NW NW	0.05
17 S	12 E	WM	29	SW NW	0.33
17 S	12 E	WM	29	SE NW	1.29
Total acres:					13.00

QUASI-MUNICIPAL					
Twp	Rng	Mer	Sec	Q-Q	
17 S	12 E	WM	20	NE SW	
17 S	12 E	WM	20	NW SW	
17 S	12 E	WM	20	SW SW	
17 S	12 E	WM	20	SE SW	
17 S	12 E	WM	20	SW SE	
17 S	12 E	WM	29	NE NE	
17 S	12 E	WM	29	NW NE	
17 S	12 E	WM	29	SW NE	
17 S	12 E	WM	29	SE NE	
17 S	12 E	WM	29	NE NW	
17 S	12 E	WM	29	NW NW	
17 S	12 E	WM	29	SW NW	
17 S	12 E	WM	29	SE NW	
Equivalent to 4.00 acres					

18. Transfer T-9836 proposes to change the point of diversion and delivery system for a portion of the rights. Specifically, the transfer application proposes to change from a point of diversion within COID's canal system to a direct pumping point on the Deschutes River.
19. The rate allowed (prior to the change) that can be diverted for the portion of the right involved is as follows:

POINT OF DIVERSION #1				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.047	0.063	0.086	38.10
POINT OF DIVERSION #11				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.051	0.067	0.089	40.03

20. Because the transfer proposes changing the point of diversion and delivery system from a canal system to a direct river diversion, including the transmission losses within the rate allocated for the transfer can not be allowed. As a result, the transfer will be limited to the rates listed below (rate/duty for specified acres less 45% transmission losses):

POINT OF DIVERSION #1				
Priority Date	Season 1	Season 2	Season 3	Duty

POINT OF DIVERSION #11				
Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.028	0.037	0.069	22.07

21. Notice of the application for transfer was published on January 11 2005, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
22. On September 15, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9836 to the applicant(s). The draft Preliminary Determination set forth a deadline of October 15, 2010, for the applicant(s) to respond. The applicant(s) requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
23. 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 currently equipped with an appropriate fish screening and/or by-pass device.
24. 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 rights are subject to forfeiture under ORS 540.610.
25. The proposed changes would not result in enlargement of the rights.
26. An instream water right, Certificate 59778, exists for the reach of the river in which the authorized point of diversion would be moved upstream, and streamflows within the reach are below the levels allocated under the instream water right. However, there is an impoundment structure (North Canal Dam) that creates a pool that extends from the authorized point of diversion beyond the new, proposed point of diversion.
27. Both the authorized and proposed points of diversion withdraw water from the pool above the dam so no stream reach will experience lowered flows because of the change. Therefore, the Department has determined the point of diversion change will not be injurious to the instream water right or other water rights.

Conclusions of Law

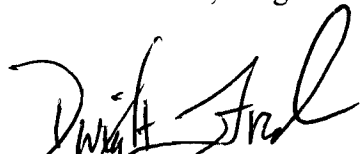
The proposed change in points of diversion and place of use proposed in Transfer Application T-9836, as conditioned, are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in Transfer Application T-9836 are approved.

2. Water right Certificates 83571 and 76714 are modified. The Department will issue superseding certificates describing the rights (and including the re-description) when it determines that is necessary for record keeping.
3. The right to 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.
4. 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.
5. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
6. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before October 1, 2012. 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 change and full beneficial use of the water.
8. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 20 day of October, 2010.



Dwight French for
PHILLIP C. WARD, DIRECTOR

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

This Preliminary Determination was prepared by a Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrд.state.or.us. Vern Church. If you have questions about the information in this document, you may reach me at 541-384-4207 or Vernon.L.Church@wrд.state.or.us.