

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-10845 and Mitigation Credit	)	PROPOSING APPROVAL OF A
Project MP-129, Crook and Deschutes	)	CHANGE IN PLACE OF USE AND
Counties	)	CHARACTER OF USE, PARTIAL
	)	CANCELLATION OF A
	)	SUPPLEMENTAL WATER RIGHT,
	)	AND PRELIMINARY AWARD OF
	)	MITIGATION CREDITS

**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. 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**

DESCHUTES RIVER CONSERVANCY	CENTRAL OREGON IRRIGATION DISTRICT
P.O. BOX 1560	1055 SW LAKE COURT
BEND OR 97709	REDMOND, OR 97756

**Findings of Fact**

**Background**

1. On April 8, 2009, Central Oregon Irrigation District (COID) and the Deschutes River Conservancy (DRC) filed an application to change the place of use and character of 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 preliminary determination.

under Certificate 83571 to instream use. The Department assigned the application number T-10845.

2. Additional application materials, not originally submitted with the application, were received on April 8, 2009, April 16, 2009, and on May 5, 2009.
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 95.73 acres and 0.95 acre equivalent of Pond Maintenance  
**Priority Date:** October 31, 1900 and December 2, 1907  
**Season of Use:** April 1 to October 31, further limited as follows:  
**Maximum Quantity (Rate) that can be applied to an acre:**  
 limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre during the period  
 April 1 through April 30 & October 1 through October 31  
 limited to 1/60<sup>th</sup> CFS per acre during the period May 1 through May 14 &  
 September 15 through September 30  
 limited to 1/32.4<sup>th</sup> CFS per acre during the period May 15 through  
 September 14

**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.

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

Township	Range	Meridian	Sec	¼ ¼	Measured Distances	
17	S	12 E	W.M.	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET EAST FROM THE EAST ¼ CORNER OF SECTION 29

**Authorized Places of Use:**

Township	Range	Meridian	Sec	¼ ¼	Acres
Irrigation of 95.73 acres					
14	S	13 E	W.M.	14 NE SE	0.5
15	S	13 E	W.M.	3 NW NW	7.0
15	S	13 E	W.M.	3 SW NW	5.4
15	S	13 E	W.M.	3 SW SW	1.0
15	S	13 E	W.M.	4 SE NE	14.6
15	S	13 E	W.M.	4 SW SW	13.0
15	S	13 E	W.M.	4 SE SE	15.5
15	S	13 E	W.M.	5 SW SE	18.0
15	S	13 E	W.M.	5 SE SE	1.5
15	S	13 E	W.M.	9 NW NE	2.2
15	S	13 E	W.M.	9 SW NE	1.8
15	S	13 E	W.M.	9 SE NW	0.2
15	S	13 E	W.M.	10 SW NW	3.4
16	S	12 E	W.M.	14 SW SE	11.63

Township		Range		Meridian	Sec	¼ ¼		Acres
0.95 acre equivalent of Pond Maintenance								
15	S	13	E	W.M.	8	NW	NE	0.8
15	S	13	E	W.M.	9	SW	NE	0.15

4. 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 to October 31, further limited as follows:  
 April 1 through April 30 and October 1 through October 31, described herein as Season 1.  
 May 1 through May 14 and 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.

Priority Date	Season 1	Season 2	Season 3	Duty
Irrigation Use				
October 31, 1900	1.194 CFS	1.592 CFS	2.104 CFS	946.28 AF
December 2, 1907			0.843 CFS	
Pond Maintenance Use				
October 31, 1900	0.012 CFS	0.016 CFS	0.021 CFS	9.39 AF
December 2, 1907			0.008 CFS	
<b>Totals</b>				
October 31, 1900	1.206 CFS	1.608 CFS	2.125 CFS	955.67 AF
December 2, 1907			0.851 CFS	

6. A total of 526.95 AF of water, excluding transmission losses, may be beneficially used annually for primary irrigation and pond maintenance under the portion of existing Certificate 83571 proposed for transfer.
7. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right, Certificate 83571, is appurtenant and 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-10845.
8. The applicants, with the exception of COID, are not the owners of the lands to which the water right described in Finding of Fact #3 is appurtenant. COID appears to be the owner of the 11.63 acre parcel located in the SW ¼ SE ¼ of Section 14, T 16 S, R 12 E, W.M. Water right conveyance agreements have been completed and interest in the remaining balance of

Certificate 83571 to be transferred has been conveyed to COID from each landowner described in the table below. The portion of this right to be transferred was appurtenant to lands owned by the identified land's 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
Irrigation Use							
Vicki Court, as the Successor Trustee of the Barbara June Hinzman Trust	COID	14S	13E	14	NE SE	100	0.5
Falcon Fund, LLC, a Delaware Limited Liability Company	COID	15S	13E	3	NW NW	1100	7.0
Watson Family Limited Partnership	COID	15S	13E	3	SW NW	1300	5.4
David Shelofsky & Craig J. Glazier, as tenants in common	COID	15S	13E	3	SW SW	400	1.0
		15S	13E	4	SE SE	300	6.5
						400	9.0
State of Oregon	COID	15S	13E	4	SE NE	200	14.6
Saint Thomas Catholic Church of Redmond, Inc.	COID	15S	13E	4	SW SW	Maple Ave	0.9
						800	12.1
Robert W. and Brenda Childers, co-trustees of the Robert W. and Brenda Childers Trust dated May 19, 2002	COID	15S	13E	5	SW SE	1100	18.0
					SE SE	1100	1.5
Robert D. and Medora Whittier	COID	15S	13E	9	NW NE	600	2.2
Molly H. Stack and Sean M. Stack, Co-trustees of the Roger D. Stack Trust, dated December 22, 2004	COID	15S	13E	9	SW NE	200	1.8
Roger D. Stack (quit claim signed by trustees)	COID	15S	13E	9	SE NW	502	0.2
Pat C. Dean, Trustee, or successor in trust, under The Pat C. Dean Revocable Living Trust, dated the 15 <sup>th</sup> day of March, 2005	COID	15S	13E	10	SW NW	500	3.4
Pond Maintenance Use							
George A. Hale	COID	15S	13E	8	NW NE	804	0.8
Molly H. Stack and Sean M. Stack, Co-trustees of the Roger D. Stack Trust, dated December 22, 2004	COID	15S	13E	9	SW NE	200	0.15

9. Application T-10845 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 any other ecological values; recreation; and pollution abatement. The application also proposes to establish mitigation credits in the Deschutes Ground Water Study Area.
10. Transfer Application T-10845 also proposes to use 79.18 acres (79.03 of Irrigation and 0.15 acres equivalent of Pond Maintenance described in Finding of Fact #3) for the purpose of establishing instream flows for mitigation credits in the Deschutes Ground Water Study Area, and to use the remaining 17.5 acres (16.7 acres of Irrigation and 0.8 acre equivalent of Pond Maintenance) to establish instream flows for restoration purposes.

11. Application T-10845 proposes to change the place of use of the right (described in Finding of Fact #3) to create the following instream reaches:

Reach #1: From COID North Canal (POD #11) to Lake Billy Chinook (~RM 120) for mitigation and restoration purposes.

Reach #2: From Lake Billy Chinook to the Madras Gage for restoration purposes only.

Reach #3: From the Madras Gage to the mouth of the Deschutes River (RM 0) for restoration purposes only and accounting for return flows.

12. The applicant proposes the quantities water to be transferred instream to be protected follows:

**Reach 1: POD #11 to Lake Billy Chinook (RM 120)**

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	Season 1: 0.665 CFS Season 2: 0.886 CFS Season 3: 1.641 CFS	526.95 AF

**Reach 2: Lake Billy Chinook (RM 120) to the Madras Gage**

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	Season 1: 0.120 CFS Season 2: 0.160 CFS Season 3: 0.297 CFS	95.38 AF

**Reach 3: The Madras Gage to the mouth of the Deschutes River (RM 0)**

Certificate	Priority Date	Rate Instream	Volume Instream
83571	October 31, 1900	April 1 to October 26: 0.077 CFS	31.56 AF

13. There are several existing instream water rights located within the same instream reaches proposed by the applicant. There are two existing instream water rights established through the state agency application process below Lake Billy Chinook and one pending application within the same reach above Lake Billy Chinook. The state agency established instream water rights are junior in priority date to the water right proposed for transfer. The remaining instream water rights were established through the instream transfer and allocation of conserved water process.
14. The applicant proposes that any instream water right established as a result of this instream transfer to 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 application process), with an earlier priority date.

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 percent 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 percent transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.
16. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to Deschutes County, Jefferson County, Wasco County, City of Bend, City of Maupin, and the Confederated Tribes of Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-10845.
17. Notice of the application for transfer was published on April 28, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
18. On October 5, 2009, the Department mailed the applicants a deficiency letter, which included a request for some revised application maps, updated ownership information for certain properties, some additional beneficial use information, and information regarding the portion of the right proposed for transfer involving pond maintenance. All deficiencies were resolved with submission of additional information provided by the applicants between October, 2009 and April, 2010.
20. On November 1, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10845 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 30, 2011, for the applicants to respond. The applicants 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.

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

21. The following portion of the right 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
15	S	13	E	WM	4	SW	SW	13.0	IL-603	2005 - 2008

22. 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.

23. 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-10845. Individual delivery systems were removed from some of the lands on which the portion of Certificate 83571 is proposed for transfer shortly after interest in the water right was conveyed to COID.
24. 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. The quantities proposed to be protected instream in Reach #3 (as described in Finding of Fact #12) are intended to account for these return flows and prevent any injury to downstream users and enlargement of the right.
25. The quantity of water that may be protected instream below the Madras Gage requires a small modification to prevent injury and enlargement. In Reach #3 (as described in Finding of Fact #12), the applicant has proposed to protect 0.077 CFS and up to 31.56 AF instream. The quantity that may be protected instream below the Madras Gage, to account for return flows and prevent injury and enlargement, is 31.5 AF. With a proposed instream period of 209 days, April 1 through October 26, 31.5 AF can be protected instream at a rate of 0.076 CFS.
26. Based on Finding of Fact #25, on November 8 and 9, 2011, the applicants agreed to modify the quantities to be transferred and protected instream as follows:

Reach 1 (Mitigation and Restoration flows): COID North Canal POD #11 (as described in Finding of Fact #3) to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.665 CFS	526.95 AF
		Season 2	0.886 CFS	
		Season 3	1.641 CFS	

Reach 2 (Restoration flows only): Lake Billy Chinook (RM 120) to the Madras Gage

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	Season 1 (modified to end October 26)	0.120 CFS	95.38 AF
		Season 2	0.160 CFS	
		Season 3	0.297 CFS	

Reach 3 (Restoration flows only with return flows accounted for): Madras Gage to mouth of Deschutes River (RM 0)

Certificate	Priority Date	Instream Period	Instream Rate	Instream volume
83571	October 31, 1900	April 1 – October 26	0.076 CFS	31.5 AF

27. The proposed change, as modified, would not result in enlargement of the right.

28. The proposed change, as modified, would not result in injury to other water rights.
29. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
30. The protection of flows within the proposed reach is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) The location of confluences with other streams downstream of the point 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 of the instream water right and have been accounted for beginning in Reach #3.
31. Within the proposed reach, there are existing instream water rights established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located between the North Canal Dam and the mouth of the Deschutes River, which include the use of water for fish habitat, aquatic life, recreation, aesthetics and pollution abatement. There are two instream water rights (Certificates 73188 and 73237) established through the state agency application process (ORS 537.341) below Lake Billy Chinook for the purpose of fish habitat and various fish life stages, recreation and aesthetics, with 1989 and 1991 priority dates respectively. There presently are no instream water rights within the portion of the proposed reach between North Canal Dam and Lake Billy Chinook created as a result of ORS 537.346 or ORS 537.341. However, 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 COID North Canal to Lake Billy Chinook for anadromous and resident fish rearing, which if approved will have a priority date of September 19, 1990.
32. In addition, 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 proposed reach, flows for the designated Scenic Waterway are at times not met during the requested periods for instream protection.
33. Portions of the proposed reach on the Deschutes River are also on the Department of Environmental Quality's 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is underway.
34. The existing instream water rights, established under ORS 537.341 (state agency application process), within the proposed reach on the Deschutes River are sufficient to protect the monthly quantities of water necessary for various fishlife stages, supporting aquatic life, and minimizing pollution, but are not always met and have priority dates junior in comparison to



other water rights on the Deschutes River. The proposed instream use will have a priority date of October 31, 1900. By replacing a portion of instream rights created at the request of state agencies or under the minimum streamflow conversion process, the proposed instream right will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic and fish life, fish and wildlife habitat and other ecological values; recreation; and pollution abatement under an earlier priority date.

35. By adding to other water rights, established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, a new instream water right established by this transfer would 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.
36. During the period April 1 to 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 ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 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-10845.
39. A portion of Certificate 76714 is appurtenant to lands owned by COID. The remaining portion of Certificate 76714 requested to be cancelled is appurtenant to lands from which the interest in Certificates 83571 and 76714 has been conveyed through quit claim deeds (described in Finding of Fact #8) to COID.
40. Supplemental water rights (layered water rights) must be included in a transfer application or cancelled.
41. Consistent with OAR 690-380-2250, the Department provided notice in the Draft Preliminary Determination to the applicants and affected landowner (COID) of the Department's intent to cancel the portion of Certificate 76714 described below unless within 30 days of the date of notification, the applicant modified the application to include the

supplemental right or requested that the application be withdrawn. The applicant did not modify or withdraw the application.

42. The portion of the first right to be cancelled is:

**Certificate:** 76714 in the name of Central Oregon Irrigation District  
**Use:** Supplemental Use for Irrigation of 95.73 acres and 0.95 acre equivalent of Pond Maintenance  
**Priority Date:** February 28, 1913  
**Source:** Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	08 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR
17 S	12 E	WM	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
Irrigation of 95.73 acres					
14	S	13 E	W.M.	14 NE SE	0.5
15	S	13 E	W.M.	3 NW NW	7.0
15	S	13 E	W.M.	3 SW NW	5.4
15	S	13 E	W.M.	3 SW SW	1.0
15	S	13 E	W.M.	4 SE NE	14.6
15	S	13 E	W.M.	4 SW SW	13.0
15	S	13 E	W.M.	4 SE SE	15.5
15	S	13 E	W.M.	5 SW SE	18.0
15	S	13 E	W.M.	5 SE SE	1.5
15	S	13 E	W.M.	9 NW NE	2.2
15	S	13 E	W.M.	9 SW NE	1.8
15	S	13 E	W.M.	9 SE NW	0.2
15	S	13 E	W.M.	10 SW NW	3.4
16	S	12 E	W.M.	14 SW SE	11.63
0.95 acre equivalent of Pond Maintenance					
15	S	13 E	W.M.	8 NW NE	0.8
15	S	13 E	W.M.	9 SW NE	0.15

43. 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:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET <u>WEST</u> FROM THE <u>EAST</u> ¼ CORNER OF SECTION 29

***Preliminary Award of Deschutes Basin Mitigation Credits***

44. The DRC and COID (the Applicants) have 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 the DRC and COID.
45. The Department assigned this mitigation credit project number MP-129.
46. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on September 1, 2009. No comments were received in response to this notice.
47. The Department consulted with representatives from ODFW, DEQ, Oregon Parks and Recreation Department, Oregon Department 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 August 26, 2009. No comments were received in response to this notice.
48. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
49. As part of the public notice of the mitigation project, the Department identified that the project may result in 142.5 mitigation credits. Based upon continued evaluation of the project, the Department finds that the proposed transfer of 79.03 acres of Irrigation Use and 0.15 acre equivalent of Pond Maintenance to instream use will provide 142.4 acre-feet of mitigation water. The amount of mitigation credits that may be awarded to this project have been reduced. Therefore, 142.4 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to the DRC and COID. The 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 and General Zones of Impact.
50. A total of 526.95 AF is proposed to be transferred to instream use to establish mitigation and 142.4 AF of that, as identified above, may be used for mitigation purposes. The amount of water transferred instream and not used for mitigation purposes will benefit instream flow.
51. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of a certificate(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.
52. Mitigation credits awarded to this mitigation credit project will be valid beginning the first calendar year that water will be protected instream under any new instream water right created as a result of this instream transfer application.

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-10845 appear to be 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. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of the right will be cancelled.

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

*If application T-10845 is approved, the final order will include the following:*

1. *The changes in character of use and place of use to instream use proposed in application T-10845 are approved. The portion of the right that has been abandoned is cancelled.*
2. *Water right certificate 83571 is modified and a new instream water right certificate shall be issued. The Department shall issue a new water right certificate to supersede certificate 83571 upon a determination that it is necessary to produce a certificate to describe that portion of the right not affected by this transfer. A new certificate confirming the instream water right shall be issued. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 83571 by the following:*

<i>Priority Date</i>	<i>Season 1</i>	<i>Season 2</i>	<i>Season 3</i>	<i>Duty</i>
<i>October 31, 1900</i>	<i>1.206 CFS</i>	<i>1.608 CFS</i>	<i>2.125 CFS</i>	<i>955.67 AF</i>
<i>December 2, 1907</i>			<i>0.851 CFS</i>	

3. *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 #39. Modification of this supplemental water right will decrease, by 95.73 acres of irrigation and 0.95 acres equivalent of pond maintenance, the number of acres to which stored water may be applied for supplemental use 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 (Mitigation and Restoration flows): COID North Canal POD #11 (as described in Finding of Fact #2) to Lake Billy Chinook (RM 120)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Period</i>	<i>Instream Rate</i>	<i>Instream volume</i>
<i>83571</i>	<i>October 31, 1900</i>	<i>Season 1 (modified to end October 26)</i>	<i>0.665 CFS</i>	<i>526.95 AF</i>
		<i>Season 2</i>	<i>0.886 CFS</i>	
		<i>Season 3</i>	<i>1.641 CFS</i>	

*Reach 2 (Restoration flows only): Lake Billy Chinook (RM 120) to the Madras Gage*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Period</i>	<i>Instream Rate</i>	<i>Instream volume</i>
83571	October 31, 1900	<i>Season 1 (modified to end October 26)</i>	0.120 CFS	95.38 AF
		<i>Season 2</i>	0.160 CFS	
		<i>Season 3</i>	0.297 CFS	

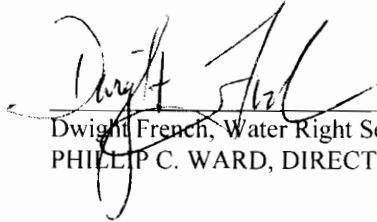
*Reach 3 (Restoration flows only with return flows accounted for): Madras Gage to mouth of Deschutes River (RM 0)*

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Period</i>	<i>Instream Rate</i>	<i>Instream volume</i>
83571	October 31, 1900	April 1 – October 26	0.076 CFS	31.5 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 all other conditions and limitations that are contained in Certificate 83571 and any related decree as may be germane to instream rights.*
9. *The former place of use of the transferred water shall no longer receive water as part of this right.*
10. ***Preliminary Award of Mitigation Credits:*** *Final Award of Mitigation Credits may be made upon completion of the project and verification by the Department that the project has been completed as proposed. Issuance of a new instream water right certificate, as described herein, will result in completion of the project and verification by the Department that the project is complete. If completed as proposed, mitigation credits, in the amount of **142.4** credits, as described herein, may be awarded to this mitigation project and assigned to the DRC and COID. Mitigation credits awarded 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 and General Zones of Impact**. Any mitigation credits awarded will begin being valid the first calendar year that water is to be protected instream under a new instream water right resulting from this mitigation project.*

11. *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.*
12. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project. Within each instream certificate, the number of mitigation credits, the zone of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.*

Dated at Salem, Oregon this 8 day of December, 2011.



Dwight French, Water Right Services Administrator, 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 Laura Wilke. If you have questions about the information in this document, you may reach me at 503-986-0884 or [Laura.K.Wilke@wrds.state.or.us](mailto:Laura.K.Wilke@wrds.state.or.us).