



Oregon
Kate Brown, Governor

Water Resources Department
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August 5, 2015

VIA E-MAIL

CITY OF BEND
ATTN: PATRICK GRIFFITHS
62975 BOYD ACRES ROAD
BEND, OREGON 97701

SUBJECT: Water Right Transfer Application T-11090

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11090. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist
Transfer and Conservation Section

cc: T-11090
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Adam Sussman, Agent for the applicant (*via e-mail*)
Suzanne de Szoeki, GSI Water Solutions, Inc (*via e-mail*)

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

| | | |
|-------------------------------------|---|------------------------------|
| In the Matter of Instream Transfer |) | PRELIMINARY DETERMINATION |
| Application T-11090, and Mitigation |) | PROPOSING APPROVAL OF A |
| Project MP-139, Deschutes County |) | CHANGE IN PLACE OF USE AND |
| |) | CHARACTER OF USE, PARTIAL |
| |) | CANCELLATION OF A WATER |
| |) | RIGHT, AND PRELIMINARY AWARD |
| |) | OF MITIGATION CREDITS |

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (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.

ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

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

CITY OF BEND
ATTN: PATRICK GRIFFITHS
62975 BOYD ACRES ROAD
BEND, OREGON 97701

Findings of Fact

1. On June 9, 2010, Patrick Griffiths, Water Resources Coordinator for the City of Bend filed an application to change the place of use and character of use under Certificate 83571 to instream use. The Department assigned the application number T-11090.

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| 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. |
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2. Notice of the application for transfer was published on June 15, 2010, pursuant to OAR 690-380-4000. No comments were received by the comment deadline, July 14, 2010.
3. On August 3, 2011, and November 28, 2011, the applicant's agent, Adam Sussman, submitted documents amending the application to add additional acres of irrigation to be transferred to instream use, and modifying the associated instream use to be established by this transfer application.
4. On June 18, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11090 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 18, 2015, for the applicant to respond. The applicant 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.
5. 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 Maupin, and the City of Bend Planning Division, and the Confederated Tribes of the Warm Springs. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of Transfer Application T-11090.
6. The portion of the right to be transferred is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District (confirmed by decree of the Circuit Court for Deschutes County)

Use: Irrigation of 59.85 acres

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 1/80th cubic foot per second (CFS) per acre during the period April 1 through April 30 & October 1 through October 31
 limited to 1/60th CFS per acre during the period May 1 through May 14 & September 15 through September 30
 limited to 1/32.4th 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):

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 17 S | 12 E | WM | 29 | SE NE | POD No. 11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29 |

Authorized Places of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 13 E | WM | 33 | NE SW | 5.00 |
| 13 S | 13 E | WM | 33 | NW SW | 3.20 |
| 13 S | 13 E | WM | 33 | SW SW | 0.45 |
| 14 S | 13 E | WM | 16 | NE SE | 0.04 |
| 14 S | 13 E | WM | 16 | NW SE | 1.90 |
| 15 S | 13 E | WM | 04 | NW SE | 2.80 |
| 15 S | 13 E | WM | 05 | NE SW | 9.35 |
| 15 S | 13 E | WM | 10 | SE SW | 0.35 |
| 15 S | 13 E | WM | 17 | SW SE | 5.20 |
| 15 S | 13 E | WM | 19 | NE NE | 11.31 |
| 15 S | 13 E | WM | 19 | NW NE | 9.65 |
| 15 S | 13 E | WM | 30 | NE SW | 10.60 |
| Total | | | | | 59.85 |

7. 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.

8. 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 No. 6), 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 No. 6), 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 |
|------------------|-----------|-----------|-----------|-----------|
| October 31, 1900 | 0.683 CFS | 0.932 CFS | 1.272 CFS | 564.78 AF |
| December 2, 1907 | | | 0.508 CFS | |

9. A total of 326.21 acre-feet of water, excluding transmission losses, may be beneficially used annually under the existing right.
10. There is a supplemental right, Certificate 76714, appurtenant to the same lands on which the primary right, Certificate 83571, is appurtenant to 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-11090.

11. The applicants are not the owners of the lands to which the water right described in Finding of Fact No. 6 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights 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 landowners at the time interest in the water right was conveyed through a Quit Claim, a water right conveyance agreement.

| Landowner | Water Right Interest Holder | Twp | Rng | Sec | Q-Q | Tax Lot at time of Conveyance | Acres |
|--|-----------------------------|------|------|-----|-------|-------------------------------|-------|
| Sondra D. Braden, Trustee of the Survivor's Trust under the Braden Family Trust U/T/A, and Sondra D. Braden, Trustee of the Family Trust under the Braden Family Trust U/T/A | COID | 13 S | 13 E | 33 | NE SW | 500 | 5.00 |
| Sondra D. Braden, Trustee of the Survivor's Trust under the Braden Family Trust U/T/A, and Sondra D. Braden, Trustee of the Family Trust under the Braden Family Trust U/T/A | COID | 13 S | 13 E | 33 | NW SW | 500 | 3.20 |
| Sondra D. Braden, Trustee of the Survivor's Trust under the Braden Family Trust U/T/A, and Sondra D. Braden, Trustee of the Family Trust under the Braden Family Trust U/T/A | COID | 13 S | 13 E | 33 | SW SW | 500 | 0.45 |
| Ernie C. Dawson and Sally R. Dawson | COID | 14 S | 13 E | 16 | NE SE | 103 | 0.04 |
| Ernie C. Dawson and Sally R. Dawson | COID | 14 S | 13 E | 16 | NW SE | 103 | 1.90 |
| Feed Barn Properties | COID | 15 S | 13 E | 04 | NW SE | 100 | 2.80 |
| Jayne I. Heyne, J. Pat Horton and Carolyn L. Horton, High Ranch Development Co. LLC | COID | 15 S | 13 E | 05 | NE SW | 902 | 9.35 |
| Pat C. Dean, Trustee, or her Successor in trust of the Pat C. Dean Revocable Living Trust, dated march 15, 2005 | COID | 15 S | 13 E | 10 | SE SW | 500 | 0.10 |
| Pat C. Dean, Trustee, or her Successor in trust of the Pat C. Dean Revocable Living Trust, dated march 15, 2005 | COID | 15 S | 13 E | 10 | SE SW | 800 | 0.25 |
| Green Pastures Senior Cooperative, an Oregon nonprofit cooperative | COID | 15 S | 13 E | 17 | SW SE | 9100 | 5.20 |
| Whistler Dev. LLC | COID | 15 S | 13 E | 19 | NE NE | 703 | 11.31 |
| James and Deborah Marshall | COID | 15 S | 13 E | 19 | NW NE | 100 | 9.65 |
| Ronald R. Davis and Elizabeth E. Davis | COID | 15 S | 13 E | 30 | NE SW | 1411 | 10.60 |

12. Instream Transfer Application T-11090 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; recreation; and pollution abatement. The application also proposes to establish mitigation credits in the Deschutes Ground Water Study Area.
13. Instream Transfer Application T-11090 proposes to change the place of use of the right to create an instream reach from the COID North Canal POD No. 11 (described in Finding of Fact No. 6) to Lake Billy Chinook (~River Mile 120).
14. The applicant proposes the quantities of water to be transferred instream be protected as follows:

| Certificate | Priority Dates | Instream Period | Instream Rate | Instream Volume |
|-------------|------------------|---|---------------|-----------------|
| 83571 | October 31, 1900 | Season 1 (requested to end on October 26) | 0.411 CFS | 326.21 AF |
| | | Season 2 | 0.549 CFS | |
| | | Season 3 | 1.016 CFS | |

15. The applicant has requested 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 has also requested that any instream water rights 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 a more senior priority date.
16. 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 No. 14, do not include the 45 percent transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.

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

17. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. 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-11090.

19. Based upon review of the instream transfer, the Department has determined that water may be protected instream as follows:

Reach: COID North Canal POD No. 11 (as described in Finding of Fact No. 6) to Lake Billy Chinook

| Certificate | Priority Date | Instream Period | Instream Rate | Instream Volume |
|-------------|------------------|--|---------------|-----------------|
| 83571 | October 31, 1900 | Season 1 (modified to end on October 26) | 0.411 CFS | 326.21 AF |
| | | Season 2 | 0.549 CFS | |
| | | Season 3 | 1.016 CFS | |

20. The proposed change, as modified, would not result in enlargement of the right.
21. The proposed change, as modified, would not result in injury to other water rights.
22. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water right.
23. The protection of flows within the proposed reach is appropriate, considering:
- The instream water right begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion;
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
24. 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) within the same reach as that proposed for the new instream water right located between the COID North Canal and Lake Billy Chinook, which include the use of water for fish habitat, aquatic life, recreation, aesthetics and pollution abatement. There presently are no instream water rights within the proposed reach 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.
25. In addition, 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 proposed reach, flows for the designated Scenic Waterway are at times not met during the requested periods for instream protection.

26. This segment of the Deschutes River is also on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams and a TMDL (Total Maximum Daily Load) study is currently on hold.
27. The proposed instream water right, to be established under ORS 537.341 (state agency application process), within the proposed reach on Deschutes River is sufficient to protect the monthly quantities of water necessary for various fish life stages, supporting aquatic life, and minimizing pollution, but are not always met and will have a priority date of October 31, 1990. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows 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.
28. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows 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.
29. 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 ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
30. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

31. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 83571 is proposed for transfer for instream use. The applicant has not submitted an affidavit certifying that affected portions under Certificate 76714 have been abandoned. The applicant has requested that affected portions of the supplemental water rights under Certificate 76714 be cancelled upon issuance of the Final Order approving T-11090.
32. Interest in the portion of Certificate 76714 to be cancelled has been conveyed to COID. Supplemental water rights (layered water rights) must be included in a transfer application or cancelled.
33. Consistent with OAR 690-380-2250, the Department provided notice in the draft Preliminary Determination to the applicant of its intent to cancel the portion of Certificate 76714 as described below unless within 30 days of the date of the notification, the applicant modifies the application to include the supplemental right or withdraws the application.

34. The portion of the supplemental water right to be cancelled is as follows:

Certificate: 76714 in the name of Central Oregon Irrigation District (perfected under Permit S-23256)
Use: Supplemental Irrigation of 59.85 acres
Priority Date: February 28, 1913
Source: Crane Prairie Reservoir, constructed under Permit R-1687, tributary to the Deschutes River

Authorized Point of Diversion (POD):

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 12 E | WM | 29 | SE NE | POD No. 11 (COID NORTH CANAL) 850 FEET NORTH AND 630 FEET EAST FROM THE N1/4 CORNER OF SECTION 29 |
| 21 S | 8 E | WM | 17 | NE NE | CRANE PRAIRIE RESERVOIR |

Authorized Places of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 13 S | 13 E | WM | 33 | NE SW | 5.00 |
| 13 S | 13 E | WM | 33 | NW SW | 3.20 |
| 13 S | 13 E | WM | 33 | SW SW | 0.45 |
| 14 S | 13 E | WM | 16 | NE SE | 0.04 |
| 14 S | 13 E | WM | 16 | NW SE | 1.90 |
| 15 S | 13 E | WM | 04 | NW SE | 2.80 |
| 15 S | 13 E | WM | 05 | NE SW | 9.35 |
| 15 S | 13 E | WM | 10 | SE SW | 0.35 |
| 15 S | 13 E | WM | 17 | SW SE | 5.20 |
| 15 S | 13 E | WM | 19 | NE NE | 11.31 |
| 15 S | 13 E | WM | 19 | NW NE | 9.65 |
| 15 S | 13 E | WM | 30 | NE SW | 10.60 |
| Total | | | | | 59.85 |

35. The Department has information that POD No. 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 No. 11 (COID NORTH CANAL) 850 FEET NORTH AND 630 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 29 |

Preliminary Award of Deschutes Basin Mitigation Credits

36. The City of Bend has requested that 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 City of Bend.

37. The Department assigned this mitigation credit project number MP-139.

38. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on June 15, 2010. No comments were received in response to this notice.
39. The Department consulted with representatives from ODFW, Oregon Department of Environmental Quality, 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 June 15, 2010. Comments were received from the Oregon Parks and Recreation Department stating they were in support of the instream transfer.
40. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
41. As part of the public notice of the mitigation project, the Department identified that the project may result in 62.4 mitigation credits based upon the transfer of 34.69 acres of irrigation to instream use. The application was amended following the public notice to add an additional 25.16 acres of irrigation. The proposed transfer of 59.85 acres to instream use will provide 107.7 acre-feet of mitigation water. Therefore, 107.7 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to the City of Bend. 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 Zone of Impact.
42. A total of 326.21 AF is proposed to be transferred to instream use and 107.7 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.
43. 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 for the proposed instream water right shall result in completion of the project and verification that the project is complete.
44. 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-11090 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 right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned 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 Transfer Application T-11090 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-11090 are approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 83571 is modified and a new certificate confirming the instream water right 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. Approval of this transfer shall reduce the amount of water lawfully available under the remaining portion of Certificate 83571 by the following:

| Priority Date | Season 1 | Season 2 | Season 3 | Duty |
|------------------|-----------|-----------|-----------|-----------|
| October 31, 1900 | 0.683 CFS | 0.932 CFS | 1.272 CFS | 564.78 AF |
| December 2, 1907 | | | 0.508 CFS | |

3. Certificate 76714 is modified. The Department shall issue a new water 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 No. 34. Modification of this supplemental water right will be decreased by 59.85 acres equivalent of municipal use 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 from COID North Canal POD No. 11 (described in Finding of Fact No. 6) to Lake Billy Chinook (~River Mile 120).
5. The quantities of water to be protected under the instream water right are:

| Certificate | Priority Date | Instream Period | Instream Rate | Instream Volume |
|-------------|------------------|--|---------------|-----------------|
| 83571 | October 31, 1900 | Season 1 (modified to end on October 26) | 0.411 CFS | 326.21 AF |
| | | Season 2 | 0.549 CFS | |
| | | Season 3 | 1.016 CFS | |

6. 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.
7. 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.
8. 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.
9. 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.

10. *The former place of use of the transferred water shall no longer receive water as part of this right.*
11. ***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 107.7 credits, as described herein, may be awarded to this mitigation project and assigned to the City of Bend. 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 Zone of Impact. Mitigation credits generated by this project will be available for use as mitigation beginning the first calendar year that water will be protected instream under a new instream water right.***
12. *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.*
13. *The instream certificate created as a result of the approval of this transfer shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. 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 5 day of August, 2015.



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director,
Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us.

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