



Oregon
Kate Brown, Governor

Water Resources Department
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September 2, 2015

VIA E-MAIL

CENTRAL OREGON IRRIGATION DISTRICT DESCHUTES RIVER CONSERVANCY
1055 SW LAKE COURT 700 NW HILL ST
REDMOND, OR 97756 BEND, OR 97701
lesliec@coid.org gen@deschutesriver.org

SUBJECT: Instream Transfer Application T-11248/MP-157

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11248. 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.

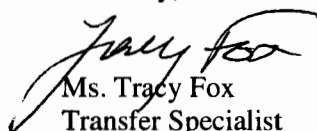
A public notice is being published in the Department's weekly publication and in the Bend Bulletin newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in 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 Tracy.L.Fox@ wrd.state.or.us or 503-986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11248
Jeremy T. Giffin, District 11 Watermaster (via e-mail)
enclosures

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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11248 and Mitigation Credit)	PROPOSING APPROVAL OF
Project MP-157, Crook, Deschutes,)	CHANGES IN CHARACTER OF USE
Jefferson Counties)	AND PLACE OF USE, PARTIAL
)	CANCELLATION OF A
)	SUPPLEMENTAL WATER RIGHT,
)	AND PRELIMINARY AWARD OF
)	MITIGATION CREDITS

Authority

Oregon Revised Statute (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 Rule (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.

Applicants

DESCHUTES RIVER CONSERVANCY
700 NW HILL STREET
BEND, OR 97701

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

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.

Findings of Fact

1. On May 16, 2011, the Central Oregon Irrigation District (COID) and the Deschutes River Conservancy (DRC) 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-11248.
2. Notice of the transfer application was provided by the applicant to Deschutes County, Jefferson County, Wasco County, the City of Bend, the City of Maupin and the Confederated Tribes of Warm Springs prior to submission of the application. Additionally, the Department provided notification of the proposed action to these local governments upon receipt of the transfer application on September 2, 2014. The Department also provided notification of the proposed action to the Bureau of Reclamation-Pacific Northwest Regional Office upon receipt of Transfer Application T-11248.
3. Notice of the application for transfer was published on May 31, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On November 12, 2014, the Department contacted the applicants via mail regarding deficiencies in the application. After multiple correspondence, mostly email, with the COID over a period of several months, the deficiencies were resolved.
5. On July 28, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11248 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 27, 2015, 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 applicants are authorized to pursue the transfer.
6. The portion of the right to be transferred is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District

Use: Irrigation of 39.37 acres

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

Season of Use: April 1 through October 31, further limited as follows:

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

1/80th cubic foot per second (CFS) per acre during the period April 1 through April 30 and October 1 through October 31

1/60th CFS per acre during the period May 1 through May 14 and September 16 through September 30

1/32.4th CFS per acre during the period May 15 through September 15

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, a tributary of the Columbia 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 WEST FROM THE EAST ¼ CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	13 E	WM	33	NE SW	5.00
14 S	13 E	WM	9	SE SW	2.00
14 S	13 E	WM	16	SE SW	4.50
15 S	12 E	WM	25	NE NE	2.50
15 S	13 E	WM	3	SW SW	16.50
15 S	13 E	WM	10	NW NE	3.65
15 S	13 E	WM	19	SE NE	2.47
15 S	13 E	WM	20	SE SE	0.75
15 S	13 E	WM	30	NE SW	2.00
Total:					39.37

7. 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 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.

POD No.11

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.449 CFS	0.613 CFS	0.836 CFS	371.51 AF
December 2, 1907	---	---	0.335 CFS	

9. A total of 214.59 AF of water, excluding transmission losses, may be beneficially used annually for primary irrigation from POD No. 11 under the portion of Certificate 83571 proposed for transfer.
10. 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-11248.
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 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.

Grantor (Landowner)	Water Right Interest Holder	Twp	Rng	Sec	Q-Q	Tax Lot at time of conveyance	Acres
School District No. 70 and Terrebonne School District	COID	14S	13E	16	SE SW	700	4.50
Glenn R. Carpenter	COID	15S	13E	3	SW SW	100	16.50
Copper Ridge LLC	COID	15S	13E	19	SE NE	201	2.47
Thomas C. and Mary K. Touchon	COID	15S	13E	30	NE SW	1408	2.00
Walter L. Gnagy	COID	15S	13E	10	NW NE	200	3.65
Ruth E. Hylton, Co-Trustee of the Hylton Trust	COID	15S	13E	20	SE SE	1100	0.75
Sondra D. Braden, Trustee of Survivor's Trust under the Braden Family Trust	COID	13S	13E	33	NE SW	500	5.00
Debbie Roe, Trustee of the Harry Family Revocable Living Trust	COID	15S	12E	25	NE NE	100	2.50
Olaf Bolken and Jannis C. Bolken	COID	14S	13E	9	SE SW	1400	2.00

12. Transfer Application T-11248 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.
13. Transfer Application T-11248 also proposes to use 25.47 acres of irrigation use (described in Finding of Fact No. 6) for the purpose of establishing instream flows for mitigation credits in the Deschutes Ground Water Study Area, and to use the remaining 13.9 acres of irrigation use to establish instream flows for restoration purposes.
14. Transfer Application T-11248 proposes to change the place of use of the right to create the following instream reaches:
 - Reach No. 1 (restoration and mitigation flows): From COID North Canal POD No. 11 to Lake Billy Chinook (River Mile (RM) 120).

Reach No. 2 (restoration flows only): From Lake Billy Chinook (RM 120) to the Madras Gauge (RM 100.1)

Reach No. 3 (restoration flows only): From the Madras Gauge (RM 100.1) to the mouth of the Deschutes River (RM 0).

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

Reach No. 1:

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
83571	October 31, 1900	Season 1 (through October 26) Season 2 Season 3	0.271 CFS 0.361 CFS 0.668 CFS	214.59 AF

Reach No. 2:

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
83571	October 31, 1900	Season 1 (through October 26) Season 2 Season 3	0.096 CFS 0.127 CFS 0.236 CFS	75.76 AF

Reach No. 3:

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
83571	October 31, 1900	April 1 through October 26	0.060 CFS	25.02 AF

16. 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 instream application process), with an earlier priority date.
17. 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 up to 45% of the water diverted at the point of diversion and are not transferable to instream use. The quantity of water proposed by the applicant to be transferred instream, as described in Finding of Fact No. 15, does not include the 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)

18. 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.

Twp	Rng	Mer	Sec	Q-Q	Acres	Lease No.	Lease Year
14 S	13 E	WM	16	SE SW	4.50	IL-776	2006
15 S	12 E	WM	25	NE NE	2.50	IL-995	2009
15 S	13 E	WM	3	SW SW	16.50	IL-702	2006
15 S	13 E	WM	19	SE NE	2.47	IL-702	2006
15 S	13 E	WM	20	SE SE	0.75	IL-1068	2010
15 S	13 E	WM	30	NE SW	2.00	IL-702	2006

19. 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.
20. 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-11248. Individual delivery systems were severed from most 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. In one case, the delivery system was severed prior to the conveyance of interest in the water right and in three cases, only a portion of the water right is proposed for transfer and the delivery system remains to serve the lands on which the water right remains.
21. A portion of the water diverted at POD No. 11 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 Gauge. To prevent injury to downstream water right holders and enlargement of the right, the applicant has adjusted the quantity of water proposed to be protected instream to account for return flows as part of Reach No. 3 as identified in Findings of Fact Nos. 14 and 15. The quantity of water proposed for in Reach No. 3 is appropriate.
22. The instream flows proposed by the applicant in Finding of Fact No. 15, considering that 25.47 acres of irrigation use are to establish instream flows for mitigation purposes with a reach to Lake Billy Chinook and that 13.9 acres of irrigation use are to establish instream flows for restoration purposes down to the mouth of the Deschutes River are appropriate.
23. The proposed changes would not result in enlargement of the right.
24. The proposed changes would not result in injury to other water rights.
25. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

26. The protection of flows within the reaches identified in Findings of Fact No. 14 and 15 are 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 and have been accounted for in Reach No. 3.
27. 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 beneath 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 priority dates of October 2, 1989 and January 16, 1996, respectively. There are presently 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 536.341. 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.
28. 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 period for instream protection.
29. Portions of the proposed reach on the Deschutes River are also on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams and are part of a DEQ Total Maximum Daily Load (TMDL) study.
30. 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 fish habitat, various fish life stages, and recreation, 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, the proposed instream right will provide protection for streamflows previously identified as necessary for fish habitat, various fish life stages, and recreation under an earlier priority date.

31. 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.
32. 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.
33. 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

34. 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. Supplemental rights must be included as part of the transfer application or be cancelled. 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 right under Certificate 76714 be cancelled upon issuance of the Final Order approving T-11248. Interest in the portion of Certificate 76714 to be cancelled has been conveyed to COID. However, a portion of Certificate of Certificate 76714, not held by any of the applicants, has not been quit claimed to COID. All persons who are owners of the property on which the primary irrigation rights under Certificate 83571 have been quit claimed to COID have not been notified of the intent to cancel Certificate 76714.
35. Consistent with OAR 690-380-2250, the Department is providing notice in the draft Preliminary Determination to COID, DRC, and affected landowners (those owners of lands from which interest in Certificate 76714 has not been conveyed) of its intent to cancel the portions of the supplemental water right 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.
36. 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 39.37 acres
Priority Date:	February 28, 1913
Source:	Crane Prairie Reservoir, constructed under permit R-1687, a tributary of the Deschutes River

Authorized PODs:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
21 S	8 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR DAM
17 S	12 E	WM	29	SE NE	POD NO. 11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 29

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
13 S	13 E	WM	33	NE SW	500	5.00
14 S	13 E	WM	9	SE SW	1400	2.00
14 S	13 E	WM	16	SE SW	700	4.50
15 S	12 E	WM	25	NE NE	100	2.50
15 S	13 E	WM	3	SW SW	100	16.50
15 S	13 E	WM	10	NW NE	200	3.65
15 S	13 E	WM	19	SE NE	201	2.47
15 S	13 E	WM	20	SE SE	1100	0.75
15 S	13 E	WM	30	NE SW	1408	2.00
Total:						39.37

37. Certificate 76714 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the right to be cancelled have changed since Certificate 76714 was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be cancelled is described in Finding of Fact No. 36 is consistent with the water right of record in so far as possible.
38. 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 measured distances 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 <u>WEST</u> FROM THE <u>EAST</u> ¼ CORNER OF SECTION 29

Preliminary Award of Deschutes Basin Mitigation Credits

39. COID and the DRC (the applicants) have requested a portion of this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The applicants have requested that any mitigation credits generated from this project be assigned to COID and the DRC.

40. The Department assigned this mitigation credit project number MP-157.
41. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300(6) on June 7, 2011. No comments were received in response to this notice.
42. The Department consulted with representatives from the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands, Oregon Department of Agriculture, and the Department's Watermaster on June 7, 2011, pursuant to OAR 690-521-0300(7) and OAR 690-505-0630(2). No comments were received.
43. The proposed transfer of 25.47 acres of irrigation use to instream use for mitigation purposes will provide 45.8 acre-feet of mitigation water. Therefore, 45.8 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to COID and the DRC. 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/or General Zones of Impact.
44. A total of 138.8 AF is proposed to be transferred to instream use to establish mitigation and 45.8 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.
45. 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.
46. 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-11248 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 Transfer Application T-11248 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-11248 are approved. The portion of the right that has been abandoned is cancelled.
2. Water Right Certificate 83571 is modified. A new certificate confirming the instream water right shall be issued. 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:

POD No. 11

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.449 CFS	0.613 CFS	0.836 CFS	371.51 AF
December 2, 1907			0.335 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 No. 36. Modification of this supplemental water right shall reduce by 39.37 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 (Mitigation and Restoration flows): COID North Canal POD No. 11 to Lake Billy Chinook (RM 120)

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
83571	October 31, 1900	Season 1 (through October 26)	0.271 CFS	214.59 AF
		Season 2	0.361 CFS	
		Season 3	0.668 CFS	

Reach 2 (Restoration flows only): Lake Billy Chinook (RM 120) to the Madras Gauge (RM 100.1)

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
83571	October 31, 1900	Season 1 (through October 26)	0.096 CFS	75.76 AF
		Season 2	0.127 CFS	
		Season 3	0.236 CFS	

Reach 3 (Restoration flows only with return flows accounted for): Madras Gauge (RM 100.1) 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 through October 26	0.060 CFS	25.02 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 places of use of the transferred water shall no longer receive water as part of these rights.*
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 45.8 credits, as described herein, may be awarded to this mitigation project and assigned to COID and the DRC. 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. The awarded mitigation credits are valid beginning the first calendar year that water will be protected instream under the new instream water right.***
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 2 day of September, 2015.



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

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us or Laura Wilke at Laura.K.Wilke@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266