



Oregon

Kate Brown, Governor

Water Resources Department
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January 30, 2018

VIA E-MAIL

Applicant

CENTRAL OREGON IRRIGATION
DISTRICT 1055 SW LAKE COURT
REDMOND, OR 97756
leslie@coid.org

Applicant

BEND PARKS & RECREATION DIST.
Attn: DAVID CROWTHER
799 SW COLUMBIA STREET
BEND, OR 97702
dave@bendparksandrec.org

SUBJECT: Water Right Transfer Application T-12461

Please find enclosed the Revised Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12461. The Revised Preliminary Determination corrects an error in the completion date for this transfer. 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 Revised 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. Newspaper publication will run on February 1 and February 8, 2018.

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 541-278-5456 or Ken.D.Dowden@wr.d.state.or.us if I may be of assistance.

Sincerely,

Ken Dowden
Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-12461
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

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

In the Matter of Transfer Application)
T-12461, Deschutes County)

REVISED
PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINTS OF DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

CENTRAL OREGON IRRIGATION DISTRICT
1055 SW LAKE COURT
REDMOND, OR 97756 *(via e-mail)*

BEND PARK & RECREATION DISTRICT
Attn: DAVID CROWTHER
799 SW COLUMBIA STREET
BEND, OR 97702 *(via e-mail)*

Findings of Fact

1. On August 12, 2016, Central Oregon Irrigation District and Bend Parks and Recreation District filed an application to change the points of diversion under Certificates 83571 and 76714. The Department assigned the application number T-12461.
2. Notice of the application for transfer was published on August 23, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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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3. On December 5, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12461 to the Applicants. The draft Preliminary Determination cover letter set forth a deadline of January 5, 2018, for the Applicants to respond. On December 8, 2017, the Applicants provided additional information to clarify the season of use under Certificate 83571 and also requested additional information to the Department's procedural steps in the processing of a non-ORS 540.580 transfer for an irrigation district.
4. On December 14, 2017, the Department sent out a Revised Draft Preliminary Determination and set forth a deadline of January 14, 2018, for the applicants to respond. On January 4, 2018, the applicants requested the Department proceed with issuance of the Preliminary Determination.
5. On January 24, 2018, the Department issued a Preliminary Determination proposing approval of Transfer Application T-12461, and sent copies to the applicants. However, the Preliminary Determination contained an error in the deadline date for completion of changes.

6. The portion of the primary water right and its layered supplemental right to be transferred are as follows:

Certificate: 83571 (as modified by Sp. Ord Vol.74, P. 270, and confirmed by Sp. Ord. Vol. 100, P. 76) in the name of CENTRAL OREGON IRRIGATION DISTRICT (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County)

Use: IRRIGATION of 6.31 ACRES

Priority Date: OCTOBER 31, 1900 and DECEMBER 2, 1907

Season of Use: Season 1 - April 1 through April 30 and October 1 through October 31
 Season 2 - May 1 through May 14 and September 16 through September 30
 Season 3 - May 15 through September 15

Rate: Season 1 (limited to 1/145.45 cfs per acre) 0.04 cubic foot per second (cfs)
 Season 2 (limited to 1/109.09 cfs per acre) 0.06 cfs
 Season 3 (limited to 1/58.91 cfs per acre) 0.11 cfs, being 0.077 cfs under the 1900 priority and 0.033 cfs under the 1907 priority

Limit/Duty: Not to exceed 5.45 acre-feet (AF) per acre: 34.39 AF (for 6.31 acres)
 The quantities listed reflect those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, and will not be allowed the 45% transmission loss as determined by the decree of the Circuit Court of the State of Oregon for Deschutes County, dated March 24, 1933.

Source: DESCHUTES RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
18 S	12 E	WM	5	SE NW	POD #13 - SOUTH 65 DEGREES 46 MINUTES 27 SECONDS WEST, 3621.45 FEET FROM THE NE CORNER OF SECTION 5

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT (perfected under Permit S-23256, as modified by Sp. Ord Vol.74, P. 270, and confirmed by Sp. Ord. Vol. 100, P. 76)

Use: SUPPLEMENTAL IRRIGATION of 6.31 ACRES

Priority Date: FEBRUARY 28, 1913

Limit/Duty: The water right evidenced by certificate 76714 allows the use of up to 50,000 AF of water stored in Crane Prairie Reservoir, a tributary of the Deschutes River, for supplemental irrigation. The diversion rate is not specified and use is limited to the total volume of stored water to make up any deficiency in supply of the live flow water right appurtenant to specified lands.

Source: CRANE PRAIRIE RESERVOIR, (constructed under Permit R-1687) a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
21 S	8 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR DAM
18 S	12 E	WM	5	SE NW	SOUTH 65° 46' 27" WEST, 3621.56 FEET FROM NE CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Tax Lot	Q - Q	Certificate (acres)	
						83571 (IR)	76714 (IS)
18 S	12 E	WM	5	101	NW SW	2.22	2.22
18 S	12 E	WM	6	101	NE SE	1.12	1.12
18 S	12 E	WM	6	2200	NE SE	2.48	2.48
18 S	12 E	WM	6	2200	NW SE	0.21	0.21
18 S	12 E	WM	6	2200	SW SE	0.28	0.28
TOTALS:						6.31	6.31

7. Transfer Application T-12461 proposes to change the points of diversion for the two above described water rights southwest approximately 2900 feet upstream to an existing Riverbend Park pump station located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
18 S	12 E	WM	5	NW SW	POD #17 - SOUTH 6° 24' 37" EAST, 783.10 FEET FROM THE WEST ¼ CORNER OF SECTION 5

8. 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 described as:

Seasons of Use*: Season 1: April 1 through April 30 & October 1 through October 31
 Season 2: May 1 through May 14 & September 15 through September 30
 Season 3: May 15 through September 14

Transfer Review Criteria [OAR 690-380-4010(2)]

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

10. A diversion structure, pumps and delivery system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12461.
11. The proposed changes would not result in enlargement of the rights.
12. The rate and duty allowed under the existing water right Certificate 83571 (under the terms of the decree) for each acre irrigated by the Central Oregon Irrigation District main canal systems reflect a 45% transmission loss. The lands not served by from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.
13. Transfer Application T-12461 proposes to move the points of diversion upstream within a stretch of the Deschutes River with flows protected by a junior instream water right under Certificate 59778 (priority date November 3, 1983). Historically river flows are often insufficient to meet the requirements of the instream water right (660 cfs) during the periods from April 1-15 when stored water from reservoir releases are coming down river and October 15-31 when the stored water is no longer being released.
14. The Department cannot find that the proposed change would not result in injury to the instream water right if water is diverted at the new POD during the periods from April 1-15 and October 15-31 of each year. However, in establishing the flow rate evidenced in the water right subject to transfer, Certificate 83571, the Central Oregon Irrigation District has agreed not to divert water for the allowed use whenever flows in the Deschutes River at the point of diversion drop below 660 cfs during the periods from April 1-15 and October 15-31. As conditioned in Finding of Fact #13 above, the Department finds the proposed transfer will not result injury to other rights.
15. The City of Bend Metro Parks and Recreation District is a municipality as defined in ORS Chapter 540.510(3)(b), Chapter 261 and a water supplier defined in ORS 448.115. Therefore, pursuant to OAR 690-380-3000(13)(b), the applicant is not required to provide a report of ownership information.

Determination and Proposed Action

The changes in points of diversion proposed in Transfer Application T-12461 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

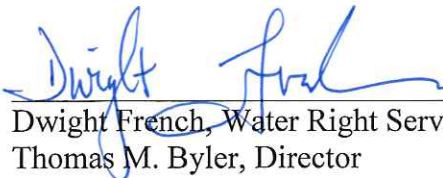
If Transfer Application T-12461 is approved, the final order will include the following:

1. *The changes in points of diversion proposed in Transfer Application T-12461 are approved.*
2. *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 Certificates 83571 and 76714 and any related decree.*

3. *Water right Certificates 83571 and 76714 are modified. The Department will issue superseding certificates describing these rights when it determines that it is necessary for record keeping.*
4. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The water user shall not divert water for the allowed use whenever flows in the Deschutes River at the new point of diversion drop below 660 cfs during the period of April 1 through October 31, outside of the operational season of Central Oregon Irrigation District, when water is not be delivered by the District.*
6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at the new point of diversion.*
 - b. *The water user shall maintain the meter or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*

Dated at Salem, Oregon this 30th day of January, 2018.



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

This draft Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@oregon.gov.

Protests should be sent to the attention of the Transfer and Conservation Section, Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>