

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

In the Matter of Instream Transfer            )  
Application T-10299, Deschutes County        )     **PRELIMINARY DETERMINATION**  
  )     **PROPOSING APPROVAL OF A**  
  )     **CHANGE IN PLACE OF USE AND**  
  )     **CHARACTER OF USE and PARTIAL**  
  )     **CANCELLATION OF CERTIFICATE**  
  )     **76714**

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 establishes the process for the owner of land to which a water right certificate is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

CENTRAL OREGON IRRIGATION DISTRICT	DESCHUTES RIVER CONSERVANCY
1055 SW LAKE COURT	700 NW HILL STREET
REDMOND OR 97756	BEND, OREGON 97701

**Findings of Fact**

**Background**

1. On January 29, 2007, Central Oregon Irrigation District (COID) and Deschutes River Conservancy (DRC) filed an application to change the place of use and character of use under Certificate 76358 to instream use. COID and the DRC also requested to cancel the corresponding portion of Certificate 76714 for supplemental irrigation upon issuance of the final order approving the transfer. The Department assigned the application number T-10299.
2. This instream transfer application originally proposed to change the character of use to instream use for fish and wildlife habitat enhancement; pollution abatement; navigation;

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.

and recreation. On June 11, 2007, the applicant amended the application to exclude navigation as an instream beneficial use.

3. The portion of the right to be transferred is as follows:

**Certificate:** 76358 in the name of Central Oregon Irrigation District

**Use:** Irrigation

**Acres:** 40.08 total, being 6.0 acres from POD#1 and 34.08 acres from POD #11

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

**Season of Use:** April 1 to November 1, further limited as follows:

April 1 to May 1 & October 1 to November 1 described herein as Season 1

May 1 to May 15 & September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

**Quantity (Rate):**

Season 1 (limited to 1/80 cubic foot per second (CFS) per acre): 0.501 CFS (1900 priority date),

being 0.075 CFS from POD#1 and 0.426 CFS from POD #11

Season 2 (limited to 1/60 CFS per acre): 0.668 CFS (1900 priority date),

being 0.100 CFS from POD #1 and 0.568 CFS from POD #11

Season 3 (limited to 1/32.4 CFS per acre): 1.237 CFS, being

POD #1: 0.185 CFS, being 0.132 CFS under the 1900 priority date and 0.053 CFS under the 1907 priority date and

POD #11: 1.052 CFS, being 0.750 CFS under the 1900 priority date and 0.302 CFS under the 1907 priority date

**Duty:** Not to exceed 9.91 acre-feet (AF) per acre per year: 397.19 AF, being 59.46 AF from POD #1 and 337.73 AF from POD #11

The quantities listed 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, tributary to the Columbia River

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	Q-Q	Location
18	S	11	E	W.M.	13	SW NE	POD#1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17	S	12	E	W.M.	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	Q-Q		Tax Lot	POD	Acres
15	S	13	E	WM	17	SE	NE	1600	#11	0.38
15	S	13	E	WM	10	SE	NW	700	#11	33.7
17	S	14	E	WM	34	NE	NE	8800	#1	2.0
18	S	12	E	WM	3	NE	NE	1401	#1	2.0
18	S	12	E	WM	3	NE	NE	1700	#1	2.0

4. A total of 218.46 acre-feet (AF) of water, excluding transmission losses, may be beneficially used annually for primary irrigation under the portion of existing Certificate 76358 proposed for transfer.
5. Supplemental right, Certificate 76714, is appurtenant to the same lands from which the primary right under Certificate 76358 is proposed to be transferred to instream use. The applicant requested that the affected portion of Certificate 76714 be cancelled upon issuance of the Final Order approving T-10299.
6. The applicants are not the owners of the lands to which the water right described in Finding of Fact #2 is appurtenant. However, water right conveyance agreements have been completed and interest in the water rights has been conveyed 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	T	R	S	Q-Q	Current Tax Lot
Hospice of Redmond	DRC	15S	13E	17	SE NE	1600
Triad Homes Inc.	DRC	18S	12E	3	NE NE	1401 and 1700
Pioneer Business Park, LLC	DRC	15S	13E	10	SE NW	700
Barbara Grabell	DRC	17S	14E	34	NE NE	8800

7. Application T-10299 proposes to change the character of use to instream use for fish and wildlife habitat enhancement; pollution abatement; and recreation.
8. Application T-10299 proposes to change the place of use of the right to create the following instream reaches:
  - Reach #1: From Point of Diversion 1 to Lake Billy Chinook (Approximately River mile 165 to 120), and
  - Reach #2: From Lake Billy Chinook to the mouth of the Deschutes River (Approximately River mile 120 to 0)

9. The applicant proposes the quantities of water to be transferred and protected instream as follows:

Certificate	Priority Date	Instream Reach	Instream Rate	Instream Volume
76358	October 31, 1900	Reach #1	Season 1: 0.277 CFS Season 2: 0.366 CFS Season 3: 0.681 CFS	218.45 AF
		Reach #2	Seasons 1, 2 and 3: 0.170 CFS	72.14 AF

10. There are existing instream water rights, for the same reach as that proposed for the new instream water right. There is one existing instream water right, Certificate 59778 with a priority date of November 3, 1983, established under ORS 537.346, the conversion of a minimum perennial streamflow to instream use. This instream water right is located from the confluence of the Spring River with the Deschutes River to the North Canal Dam (POD #11). There is also 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 POD #11 to Lake Billy Chinook, which if approved will have a priority date of September 19, 1990. Below Lake Billy Chinook, there are two other instream water rights, Certificates 73188 and 73237, with priority dates of October 2, 1989 and January 16, 1996, respectively. These instream water rights were established pursuant to ORS 537.341, the state agency instream water right application process, and are located from the Pelton Regulation Dam on the Deschutes River to the mouth. The remaining instream water rights were established under ORS 537.348, the instream transfer process, and ORS 537.470, the allocation of conserved water process.
11. The applicant proposes that any instream water right established as a result of this instream transfer be additive to the 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 the 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.
12. The applicant has requested to protect water instream under the October 31, 1900 priority date. Water is diverted at the points 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% of the water diverted at the point of diversion and are not transferable to instream use. The quantities of water proposed to be transferred instream, as described in Finding of Fact #9, do not include the 45% 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)***

13. Notice of the application for transfer was published on February 6, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
14. 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.
15. 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-10299.
16. Instream reach #2, as proposed by the applicant, may be modified. The quantities requested to be protected instream in Reach #2, as described in Finding of Fact #9, account for return flows. However, existing information suggests that return flows from irrigation of lands proposed for transfer would enter the Deschutes River below Lake Billy Chinook at the confluence area of the Deschutes River, the Crooked River, and the Metolius River, near the Round Butte Dam, approximately River Mile 110. Thus return flows below the Round Butte Dam are available to junior users and cannot be protected instream without injury and enlargement. The original reach #2 proposed to account for return flows at River Mile 120, 10 miles higher on the system than needed.
17. A portion of the water right to be transferred allows the diversion of water from POD #11, as described in Finding of Fact #3. The instream reaches proposed by the applicant require modification to prevent injury and enlargement by accounting for the amount of water that may be protected instream from POD #1 and from POD #11.
18. The period during which water is requested to be protected instream requires modification to prevent injury and enlargement. At the full rates and duty allowed by the water right to be transferred instream, water may be protected instream for a period of 209 days. The period requested by the applicant as described in Finding of Fact #8 is 214 days.
19. Based upon Findings of Fact #16, #17 and #18, water may be protected instream (described in Finding of Fact #8) as follows:

**Reach #1: Central Oregon Canal POD #1 (as described in Finding of Fact #3) to Central Oregon North Canal Dam POD #11 (as described in Finding of Fact #3)**

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
76358	October 31, 1900	Season 1 (modified to end October 26)	0.041 CFS	32.7 AF
		Season 2	0.055 CFS	
		Season 3	0.102 CFS	

**Reach #2: Central Oregon North Canal Dam POD #11 (as described in Finding of Fact #3) to Round Butte Dam (approximately River Mile 110)**

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
76358	October 31, 1900	Season 1 (modified to end October 26)	0.276 CFS	218.46 AF
		Season 2	0.367 CFS	
		Season 3	0.680 CFS	

**Reach #3: Round Butte Dam (approximately River Mile 110) to mouth of Deschutes River**

Certificate	Priority Date	Instream Period	Instream Rate	Instream Volume
76358	October 31, 1900	Season 1 (modified to end October 26)	0.17 CFS	72.14 AF
		Season 2	0.17 CFS	
		Season 3	0.17 CFS	

20. On June 11, 2007, the applicant agreed to modify the quantities to be transferred and protected instream as described in Finding of Fact #19.
21. There is an instream lease, L-632, presently in effect for a portion of the water right proposed for transfer to instream lease. The portion of the right presently leased instream is associated with lands owned by Barbara Grabel, as described in Finding of Fact #5. This instream lease is also Mitigation Project MP-43. However, no mitigation credits were awarded to this project. The lease was approved by the Department on July 15, 2005, as evidenced by Special order Volume 65, Page 340. This lease is scheduled to terminate on October 31, 2009, and includes a condition allowing for early termination of the lease order. The applicant has requested that Instream lease L-632 be terminated upon issuance of the final order approving T-10299. To prevent any injury and enlargement, any order issued approving this transfer would go into affect no sooner than November 1, 2007, following termination of the instream lease.
22. The proposed change, as modified in Finding of Fact #19, would not result in enlargement of the right, if Instream Lease L-632 as described in Special Order Volume 65, Page 340 is terminated prior to this transfer taking effect and the supplemental water right is cancelled.
23. The proposed change, as modified in Finding of Fact #19, would not result in injury to other water rights.
24. The amount and timing of the proposed instream flow, as modified in Finding of Fact #19, is allowable within the limits and use of the original water right.

25. The protection of flows, as modified in Finding of Fact #19, 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 stream flow 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 #3.
26. 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 reaches proposed by the applicant, there are several existing instream water rights, which include the use of water for fish habitat, aquatic life, recreation, aesthetics, and minimizing pollution. There is also a pending instream water right application filed by ODFW for anadromous and resident fish rearing. In addition to flows for the designated Scenic Waterway and the existing and pending instream water right application, which are at times not met during requested period for instream protection, this segment of the Deschutes River is also on the Oregon Department of Environmental Quality's (DEQ) 303d list of water quality limited streams for temperature and pH above Lake Billy Chinook and for nutrients, sedimentation and temperature below Lake Billy Chinook at the lower end of the river.
27. Based upon Finding of Fact #26, by replacing a portion of Certificate 59778 between POD #1 and POD #11 and Certificates 73188 and 73237 on the river below Lake Billy Chinook, the instream right will provide protection for streamflows identified as necessary for supporting aquatic life and minimizing pollution under an earlier priority date. By adding to other instream water rights located within the same reach proposed by this instream transfer application, the instream right will provide protection for additional streamflows necessary for fish and wildlife habitat enhancement, pollution abatement, and recreation.
28. Given Findings of Fact #26 and #27, the total monthly quantities of water to be protected under the proposed instream water right, in addition to other existing instream water rights established under ORS 537.348 and 537.470 (as described in Finding of Fact #10), in the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

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 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.

***Partial Cancellation of a Water Right***

30. There is an existing supplemental right, Certificate 76714, appurtenant to the portion of lands on which Certificate 76358 is proposed for transfer to instream use. The applicant has not submitted an affidavit certifying that the 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-10299. The portion of Certificate 76714 to be cancelled has been quit claimed to the DRC.

31. Consistent with OAR 690-380-2250, the Department is notifying the applicant of the Department's intent to cancel the portion of the supplemental water right described below unless within 30 days of the date of this notification, the applicant modifies the application to include the supplemental right or withdraws the application.

32. The portion of the right to be cancelled is as follows:

**Certificate:** 76714 in the name of Central Oregon Irrigation District  
**Use:** Supplemental Irrigation  
**Acres:** 40.08 acres, being 6.0 acres from POD#1 and 34.08 acres from POD #11  
**Priority Date:** February 28, 1913  
**Source:** Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	Q-Q	Location
21	S	8	E	W.M.	17	NE NE	CRANE PRAIRIE RESERVOIR DAM
18	S	11	E	W.M.	13	SW NE	CENTRAL OREGON POD #1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17	S	12	E	W.M.	29	SE NE	CENTRAL OREGON POD # 11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE N¼ CORNER OF SECTION 29



**Authorized Place of Use:**

Township		Range		Meridian	Sec	Q-Q		Tax Lot	POD	Acres
15	S	13	E	WM	17	SE	NE	1600	#11	0.38
15	S	13	E	WM	10	SE	NW	700	#11	33.7
17	S	14	E	WM	34	NE	NE	8800	#1	2.0
18	S	12	E	WM	3	NE	NE	1401	#1	2.0
18	S	12	E	WM	3	NE	NE	1700	#1	2.0

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-10299 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 rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

*If application T-10299 is approved, the final order will include the following:*

1. *This order does not become effective until the order canceling Instream Lease L-632, is signed. If for any reason the order canceling Instream Lease L-632 does not become effective, then this order does not become effective. In no event does this order become effective prior to November 1, 2007.*
2. *The changes in character of use and place of use to instream use proposed in application T-10299 are approved.*
3. *Water Right Certificate 76358 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 76358 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 76358 by the following amounts:*

*From POD #1:*

<b>Time Period</b>	<b>Priority Date</b>	<b>Rate (cfs)</b>
<b>Season 1:</b>	<i>October 31, 1900</i>	<i>0.075</i>
<b>Season 2:</b>	<i>October 31, 1900</i>	<i>0.100</i>
<b>Season 3:</b>	<i>October 31, 1900</i>	<i>0.132</i>
	<i>December 2, 1907</i>	<i>0.053</i>
<b>Duty</b>		<b>59.46 AF</b>

From POD #11:

<b>Time Period</b>	<b>Priority Date</b>	<b>Rate (cfs)</b>
<b>Season 1:</b>	October 31, 1900	0.426
<b>Season 2:</b>	October 31, 1900	0.568
<b>Season 3:</b>	October 31, 1900	0.750
	December 2, 1907	0.302
<b>Duty</b>		<b>337.73 AF</b>

4. *Water right certificate 76714 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping. The perfected portion of Certificate 76714 is reduced by 40.08 acres, being 6.00 acres from POD#1 and 34.08 acres from POD #11, however, the maximum quantity of stored water that can be diverted for use under the right will remain unchanged.*
5. *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:*

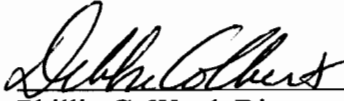
<u>Priority Date</u>	<u>Period Protected Instream</u>	<u>Instream Rate</u>	<u>Instream Volume</u>
<b>Reach #1: POD #1 (Central Oregon Canal) to POD #11 (COID North Canal)</b>			
October 31, 1900	April 1 through April 30 and October 1 through October 26	0.041 CFS	32.7 AF
	May 1 through May 14 and September 15 through September 30	0.055 CFS	
	May 15 through September 14	0.102 CFS	
<b>Reach #2: POD #11 (COID North Canal) to River Mile 125</b>			
October 31, 1900	April 1 through April 30 and October 1 through October 26	0.276 CFS	218.46 AF
	May 1 through May 14 and September 15 through September 30	0.367 CFS	
	May 15 through September 14	0.680 CFS	
<b>Reach #3: River Mile 125 to mouth of Deschutes River</b>			
October 31, 1900	April 1 through October 26	0.17 CFS	72.14 AF

6. *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.*
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 beginning of the reach. Stream*

*channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the beginning of each stream reach.*

8. *The former place of use of the transferred water shall no longer receive water as part of these rights.*

Dated at Salem, Oregon this 2nd day of July 2007.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Bob Rice at 503-986-0885 or [Robert.D.Rice@wrdd.state.or.us](mailto:Robert.D.Rice@wrdd.state.or.us).

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