

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGES
T-9524, Deschutes County, Oregon)	IN PLACE OF USE AND CHARACTER OF
)	USE

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the 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.

Applicant

Central Oregon Irrigation District
M2 Enterprises, LLC (McKinney)
1055 SW Lake Court
Redmond, OR 97756

Receiving Landowner

Steven and Leeann Scott
Scott Family Trust
672 NE Innes Lane
Bend, OR 97701

Findings of Fact

1. On August 18, 2003, Central Oregon Irrigation District, M2 Enterprises, LLC (McKinney) for Steven and Leeann Scott, Trustees of the Scott Family Trust, filed an application to change the character of use and the place of use under Certificate 76358. The Department assigned the application number T-9524.
2. On June 28, 2002, M2 Enterprises, LLC (McKinney) quitclaimed to Central Oregon Irrigation District the water rights appurtenant to the authorized place of use as described in T-9524.
3. Notice of the application for transfer was published September 2, 2003 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
4. On May 10, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9524 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department’s weekly notice on May 16, 2006, and in the Bend Bulletin newspaper on May 22 and 29, 2006 and June 5, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. The portion of the primary right to be transferred is as follows:
Certificate: 76358 in the name of Central Oregon Irrigation District (COID)
Use: Irrigation
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 as Season 1
 May 1 to May 15 & September 15 to October 1 described as Season 2
 May 15 to September 15 described as Season 3
Acres: 2.0
Rate/Duty: Season 1 (limited to 1/80 cfs per acre): 0.025 cfs
 Season 2 (limited to 1/60 cfs per acre): 0.033cfs
 Season 3 (limited to 1/32.4 cfs per acre): 0.062 cfs, being 0.044 cfs under the 1900 priority date and 0.018cfs under the 1907 priority date
Duty: Not to exceed 9.91 acre-feet (AF) per acre: 19.82 AF
 The quantities listed reflect an allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933.
Source: Deschutes River, tributary to the Columbia River
Location:

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼	¼	Location
18	S	11	E	W.M.	13	SW	NE	Central Oregon Canal-1520 feet South & 1535 feet West from the NE Corner of Section 13

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
15	S	14	E	W.M.	24	SW	SW	501	2.0

6. Application T-9524 proposes to change the character of use to pond maintenance for aquatic life.
7. In addition, the application proposes to change the place of use to the following

Location of Proposed Use

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
17	S	13	E	W.M.	30	NW	SW	700	2.0 pond

8. Water has been used within the last five years according to the terms and conditions of the right and no evidenced is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.

9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
10. The proposed change would not result in injury to other water rights.
11. The proposed change would not result in enlargement of the right.
12. Steven and Leeann Scott are the receiving landowners responsible for completion and perfection of the changes after the final order is issued.

Partial cancellation of Certificate 76714

13. On February 13, 2006, Central Oregon Irrigation District amended application T-9524 to exclude from the transfer the appurtenant supplemental stored rights designated for irrigation on certificate 76714.
14. The applicant has not submitted an affidavit certifying that the affected portion of the supplemental water right under certificate 76714 has been abandoned. However, Central Oregon Irrigation District submitted a request to exclude Certificate 76714 from this transfer application. Consistent with ORS 540.510(1) and OAR 690-380-2250, the Department notified the applicant of the Department's intent to cancel the portion of the supplemental water right as described below. The applicant did not notify the Department to include the supplemental right or withdraw the application within 30 days of the date of that notice. The affected portion of the supplemental right under Certificate 76714 is not included in transfer application T-9524, and will be cancelled upon issuance of a final order approving T-9524.
15. **Certificate** 76714 in the name of COID
Use: Supplemental Irrigation
Priority Date: February 28, 1913
Season of Use: April 1 through October 31
Acres: 2.0
Source: Crane Prairie Reservoir, tributary to the Deschutes River
Location:

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼	¼	Location
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir Dam

Authorized Place of Use:

Township		Range		Meridian	Sec	¼	¼	Tax Lot	Acres
15	S	14	E	W.M.	24	SW	SW	501	2.0

16. Certificate 76714 does not provide for a full per-acre seasonal duty of water. Therefore, the quantity of water allocated under the right may be used on other lands to which the right is appurtenant without exceeding the established duty for irrigation in the area.

Conclusions of Law

The proposed changes in place of use and character of use in application T-9524 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

The portion of the supplemental water right described in Finding of Fact #15 has not been included in the transfer of the primary right and should be cancelled pursuant to OAR 690-380-2250(5).

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in application T-9524 are approved.
2. Certificate 76358 shall be modified. 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.
3. Certificate 76714 will be modified to reduce by 2.0 acres the number of acres to which stored water may be applied for supplemental irrigation under the right; however, the maximum quantity of stored water that can be diverted for use under the right will remain unchanged.
4. The right to use 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 76358 and any related decree.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2007. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
6. The annual quantity of water diverted from the canal for aquatic life water use shall not exceed 19.82 acre-feet.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

8. 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 the right.

Dated at Salem, Oregon this 6th day of September 2006.



Phillip C. Ward, Director *FOR*

SEP 14 2006

Mailing date: _____