

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

In the Matter of Instream Transfer)
Application T-10058 and Preliminary and)
Final Award of Mitigation Credits for)
Mitigation Credit Project MP-57,)
Deschutes County, Oregon)

FINAL ORDER APPROVING A
TRANSFER TO INSTREAM USE AND
MITIGATION CREDIT PROJECT

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.

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

Central Oregon Irrigation District for various property owners
2598 N Highway 97
Redmond, Oregon 97756

FINDINGS OF FACT

Instream Transfer

1. On December 30, 2005, Central Oregon Irrigation District (COID), for various property owners (listed in Finding of Fact #4, below), filed an application to permanently transfer the place of use and the character of use for a portion of Certificate 76358 to instream use.

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.

COID has 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-10058.

2. Original notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000 on January 10, 2006. No comments were received in response to this notice.
3. On June 22, 2006, the Department issued a preliminary determination proposing to approve Transfer T-10058 (MP-57) and mailed a copy to the applicant. Notice of the preliminary determination for the transfer application was published on the Department's weekly notice on June 27, 2006, and in the Bend Bulletin newspaper on July 5, 12 and 19, 2006 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
4. The portion of certificate 66358 to be transferred has been quit claimed to COID on behalf of various property owners on various dates. The portion of this right to be transferred was appurtenant to lands owned by various landowners as outlined in the following table at the time of each Quit Claim.

Parcel #	Owner	T	R	S	¼ ¼	Current Tax Lot
1.	Clayton H. and Rochelle L. King	14S	13E	16	SW SW	2000
2.	Watson Family Limited Partnership	15S	13E	3	SW NW	1301
3.	Robert G. and Linda J. Lipe	15S	13E	5	SE SE	200
4.	Paul R. and Rayna L. Nordstrom	15S	13E	5	SE SE	700
5.	Lawrence G. and Janet K. Warren	15S	13E	5	NW SE	402
6.	Omni West Construction, Inc.	15S	13E	8	SW SW	801
7.	Mary Mordus	15S	13E	20	SW NE	1300
8.	Virginia Dooley	15S	13E	20	SW NE	4200
9.	Anthony and Kathleen M. Kuper	15S	13E	20	NW SE	2400
10.	Marian J. Jones	15S	13E	29	NW NE	1400
11.	Volney G. and Lynn W. Sigmund	17S	12E	23	SW SW	600
12.	Volney G. and Lynn W. Sigmund	17S	12E	23	SW SW	700
13.	John E. and Dorothy J. Peterson	17S	12E	23	SW SW	1000

14.	Max E. and Joyce A. Ross, Trustees of Ross Trust	17S	12E	26	NE SW	700
15.	James S. Robinson, Jay J. Audia, and David and Lori Howland	17S	12E	34	SE SW	90000
16.	James S. Robinson, Jay J. Audia, and David and Lori Howland	17S	12E	34	SE SW	90001
17.	James S. Robinson, Jay J. Audia, and David and Lori Howland	17S	12E	34	SE SW	90002
18.	James S. Robinson, Jay J. Audia, and David and Lori Howland	17S	12E	34	SE SW	90003

5. The portion of the right to be transferred under T-10058 is as follows:

Certificate: 76358 in the name of Central Oregon Irrigation District

Use: Irrigation

Acres: 22.21 total, being 6.75 acres from POD#1 and 15.46 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 cfs per acre): 0.27 cfs (1900 priority date), being 0.08 cfs from POD#1 and 0.19 cfs from POD #11
Season 2 (limited to 1/60 cfs per acre): 0.37 cfs (1900 priority date), being 0.11 cfs from POD #1 and 0.26 cfs from POD #11
Season 3 (limited to 1/32.4 cfs per acre): 0.69 cfs, being
POD #1: 0.21 CFS, being 0.15 cfs under the 1900 priority date and 0.06 cfs under the 1907 priority date and
POD #11: 0.48 CFS, being 0.34 cfs under the 1900 priority date and 0.14 cfs under the 1907 priority date

Duty: Not to exceed 9.91 acre-feet (AF) per acre per year: 220.10 AF, being 66.89 AF from POD #1 and 153.21 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 Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
18	S	11	E	W.M.	13	SW NE	POD #1 (Central Oregon Canal): 1520 feet South & 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 & 630 feet West from the E¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	POD	Acres
14	S	13	E	W.M.	16	SW SW	2000	11	0.29
15	S	13	E	W.M.	3	SW NW	1301	11	2.40
15	S	13	E	W.M.	5	SE SE	200	11	0.60
15	S	13	E	W.M.	5	SE SE	700	11	5.00
15	S	13	E	W.M.	5	NW SE	402	11	4.69
15	S	13	E	W.M.	8	SW SW	801	11	0.43
15	S	13	E	W.M.	20	SW NE	1300	11	0.35
15	S	13	E	W.M.	20	SW NE	4200	11	0.30
15	S	13	E	W.M.	20	NW SE	2400	11	0.70
15	S	13	E	W.M.	29	NW NE	1400	11	0.70
17	S	12	E	W.M.	23	SW SW	600	1	1.00
17	S	12	E	W.M.	23	SW SW	700	1	1.50
17	S	12	E	W.M.	23	SW SW	1000	1	0.50
17	S	12	E	W.M.	26	NE SW	700	1	0.75
17	S	12	E	W.M.	34	SE SW	90000	1	0.85
17	S	12	E	W.M.	34	SE SW	90001	1	1.93
17	S	12	E	W.M.	34	SE SW	90002	1	0.12
17	S	12	E	W.M.	34	SE SW	90003	1	0.10

6. 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-10058.

7. A total of 220.10 acre-feet (AF) of water may be beneficially used annually for primary irrigation under the portion of existing Certificate 76358 proposed for transfer.

8. Application T-10058 proposes to change the character of use to instream use for fish and wildlife habitat enhancement; pollution abatement; recreation; and to establish mitigation credits in the Deschutes Ground Water Study Area.
9. Application T-10058 proposes to change the place of use of the portion of the primary right, described in Finding of Fact #5, to create an instream reach from POD #1 (Central Oregon Canal) to Lake Billy Chinook (herein described as Reach #1) and from POD # 11 (North Canal Dam) to Lake Billy Chinook (herein described as Reach #2).
10. The applicant proposes the quantities of water to be transferred and protected instream as follows:

Certificate	Priority Date	Rate Instream	Volume Instream
76358	October 31, 1900	Season 1, modified to end on October 26: 0.15 CFS Season 2: 0.20 CFS Season 3: 0.38 CFS	121.06 AF

11. 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 #10, do not include the 45% transmission loss. The Department finds that water may be protected instream solely under the 1900 priority date.
12. The Department finds that the applicant's request requires modification to describe the amount of water that may be protected instream in each of the proposed reaches, Reach #1 and Reach #2, as follows:

Certificate	Priority Date	Rate Instream
Reach #1		
76358	October 31, 1900	Season 1, modified to end on October 26: 0.05 CFS Season 2: 0.06 CFS Season 3: 0.12 CFS

Certificate	Priority Date	Rate Instream
Reach #2		
76358	October 31, 1900	Season 1, modified to end on October 26: 0.10 CFS Season 2: 0.14 CFS Season 3: 0.26 CFS

13. Reaches #1 and #2 overlap from the North Canal Dam to Lake Billy Chinook. The maximum quantities of water to be protected instream under the proposed transfer from the North Canal Dam to Lake Billy Chinook are:

Certificate	Priority Date	Rate Instream
76358	October 31, 1900	Season 1, modified to end on October 26: 0.15 CFS Season 2: 0.20 CFS Season 3: 0.38 CFS

14. There are several existing instream water rights located within the same instream reaches proposed by the applicant. 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 with the Department on September 19, 1990, to establish an instream water right from POD #11 to Lake Billy Chinook. 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.
15. Given the existing instream water rights described in Finding of Fact #14, 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 right established pursuant to ORS 537.346 (minimum streamflow conversion), with an earlier priority date. The Department finds that 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.

16. Water has been used within the last five years according to the terms and conditions of the right and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A diversion structure sufficient to divert the full amount of water allowed under the existing right is present. A delivery system sufficient to use the full amount of water allowed under the existing right is present on some parcels. The delivery system on the remaining parcels was removed in 2003, however the water right on those parcels has been fully exercised through instream leases in 2003 and 2004.
18. The proposed change, as modified to protect flows instream and including the cancellation of the supplemental right, would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. The amount and timing of the proposed instream flow, as modified in Finding of Fact #12, are allowable within the limits and use of the original water right.
21. The protection of flows within the proposed reaches is appropriate, considering:
 - a) The instream water right begins at the recorded points 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 points of diversion; and
 - d) There are no known return flows resulting from the exercise of the existing water right within the reach of the proposed instream water right. Any return flows would likely re-enter the river downstream of the reach of the instream water right.
22. 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, there is also an instream water right, Certificate 59778, with a priority date of November 3, 1983 for aquatic life and minimizing pollution, and a pending instream water right application filed by ODFW for anadromous and resident fish rearing, which if approved will have a priority date of September 24, 1990. 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.
23. Based upon Finding of Fact #22, by replacing a portion of Certificate 59778 between POD #1 and POD #11, 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.

24. Given Findings of Fact #22 and #23, 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 #15), in the proposed reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Preliminary Award of Deschutes Basin Mitigation Credits

25. COID (the Applicant) has requested 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 COID.
26. The Department assigned this mitigation credit project number MP-57.
27. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on January 10, 2006. No comments were received in response to this notice.
28. The Department consulted with representatives from ODFW, DEQ, 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 January 10, 2006. Comments were received from the Oregon Parks and Recreation Department. Comments were supportive of the proposed instream water right.
29. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
30. The Department finds that the proposed transfer of 22.21 acres of irrigation to instream use will provide 40.0 acre-feet of mitigation water. Therefore, 40.0 mitigation credits (1.0 mitigation credit = 1.0 AF of mitigation water) may be awarded to this mitigation credit project and assigned to COID. 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 Zone of Impact and/or General Zone of Impact**.
31. A total of 121.06 AF is proposed to be transferred to instream use and 40.0 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.

32. 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(s) for the proposed instream water right shall result in completion of the project and verification that the project is complete.

Partial Cancellation of Certificate 76714

33. 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-10058. A portion of certificate 76714 to be cancelled has been quit claimed to COID and another portion has not been quit claimed to COID. All persons who were owners at the time primary irrigation rights under certificate 76358 were quit claimed to COID have been notified of cancellation of certificate 76714, however, by the time notification was sent, some land parcels had been sold to new owners. These landowners have also been notified of the proposed cancellation of the supplemental right.

34. Consistent with OAR 690-380-2250, the Department provided notice to COID and additional affected landowners, 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 modified the application to include the supplemental right or withdrew the application. No response was received to the notice.

35. **Certificate:** 76714 in the name of Central Oregon Irrigation District
Use: Supplemental Irrigation
Acres: 22.21 total, being 6.75 acres from POD#1 and 15.46 acres from POD #11
Priority Date: February 28, 1913
Season of Use: April 1 through October 31
Source: Crane Prairie Reservoir, constructed under permit R-1687, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Location
21	S	8	E	W.M.	17	NE NE	Crane Prairie Reservoir Dam
18	S	11	E	W.M.	13	SW NE	POD #1 (Central Oregon Canal): 1520 feet South & 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 & 630 feet West from the E¼ corner of Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	POD	Acres
14	S	13	E	W.M.	16	SW SW	2000	11	0.29
15	S	13	E	W.M.	3	SW NW	1301	11	2.40
15	S	13	E	W.M.	5	SE SE	200	11	0.60
15	S	13	E	W.M.	5	SE SE	700	11	5.00
15	S	13	E	W.M.	5	NW SE	402	11	4.69
15	S	13	E	W.M.	8	SW SW	801	11	0.43
15	S	13	E	W.M.	20	SW NE	1300	11	0.35
15	S	13	E	W.M.	20	SW NE	4200	11	0.30
15	S	13	E	W.M.	20	NW SE	2400	11	0.70
15	S	13	E	W.M.	29	NW NE	1400	11	0.70
17	S	12	E	W.M.	23	SW SW	600	1	1.00
17	S	12	E	W.M.	23	SW SW	700	1	1.50
17	S	12	E	W.M.	23	SW SW	1000	1	0.50
17	S	12	E	W.M.	26	NE SW	700	1	0.75
17	S	12	E	W.M.	34	SE SW	90000	1	0.85
17	S	12	E	W.M.	34	SE SW	90001	1	1.93
17	S	12	E	W.M.	34	SE SW	90002	1	0.12
17	S	12	E	W.M.	34	SE SW	90003	1	0.10

Conclusions of Law

The proposed changes in place of use and character of use in application T-10058 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use proposed in application T-10058 are approved and shall be effective upon issuance of this order.
2. Certificate 76358 is modified and a new instream water right certificate 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 0.27 CFS in Season 1

under the 1900 priority date, 0.37 CFS in Season 2 under the 1900 priority date, and 0.69 CFS, being 0.49 CFS under the 1900 priority date and 0.20 CFS under the 1907 priority date, in Season 3.

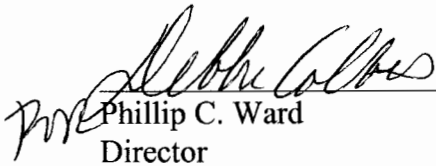
3. Certificate 76714 is modified. The Department shall issue a new water right certificate on a determination that it is necessary to produce a certificate to confirm that portion of the water right not affected by the cancellation described in Finding of Fact #35. Modification of this supplemental water right shall reduce by 22.21 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 from the authorized points of diversion to Lake Billy Chinook. The quantities of water to be protected under the instream water right are as follows:

Certificate	Priority Date	Period Protected Instream	Rate Instream
Reach: POD #1 (Central Oregon Canal) to POD #11 (North Canal Dam)			
76358	October 31, 1900	April 1 through April 30 and October 1 through October 26	0.05 CFS
		May 1 through May 14 and September 15 through September 30	0.06 CFS
		May 15 through September 14	0.12 CFS
Reach: POD #11 to Lake Billy Chinook			
76358	October 31, 1900	April 1 through April 30 and October 1 through October 26	0.15 CFS
		May 1 through May 14 and September 15 through September 30	0.20 CFS
		May 15 through September 14	0.38 CFS

5. 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.
6. The former place of use shall no longer be irrigated as part of certificates 76358 and 76714.

7. **Final 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 is complete. Issuance of the attached instream water right certificate results in completion of the project and verification by the Department that the project is complete. Therefore, mitigation credits, in the amount of **40.0** credits are awarded to this mitigation project and assigned to COID. These mitigation credits 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 Zone of Impact and/or General Zone of Impact**.
8. 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.
9. 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 29th day of August, 2006.


Phillip C. Ward
Director

Mailing date: SEP 14 2006