

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

In the Matter of the Proposed Allocation of ) FINAL ORDER APPROVING  
Conserved Water submitted by the Deschutes ) ALLOCATION OF  
River Conservancy on the behalf of the Central ) CONSERVED WATER  
Oregon Irrigation District for Certificate 76358, )  
Deschutes and Crook Counties, Oregon )

**Application History**

On August 25, 2003, the Deschutes Resources Conservancy on the behalf of the Central Oregon Irrigation District (COID) filed an application for the allocation of conserved water under water right Certificates 76358. The Department assigned this conserved water application number C-29. Since filing the application, the Deschutes Resources Conservancy has changed its name to the Deschutes River Conservancy.

The Alfalfa Piping Project, located in Deschutes County, was completed on March 31, 1999. This application was received within five years of project completion, as allowed by ORS 537.465. The project replaced approximately 9,820 feet of the open ditch Laterals H and I with High Density Polyethylene (HDPE) pipe. The application proposes to allocate 100 percent of the conserved water created by piping the laterals to the State for instream use.

On September 9, 2003, the Department published a public notice inviting public comments on the application. On September 9, 16, and 23, 2003, the Bend Bulletin published a public notice inviting public comments on the application. No comments were received.

On June 17, 2005, the Department received evidence from COID indicating that the Central Oregon Canal has a capacity sufficient to carry the portion of Certificate 76358, being 760 cubic feet per second (cfs), used to deliver water to the lands served by this canal.

**Applicable Law**

Under ORS 537.465 (2003 HB 2456), any person holding a water use subject to transfer as defined in ORS 540.505 may submit an application to the Water Resources Commission for approval of an allocation of conserved water that was implemented within five years prior to submission of the application. Under the Allocation of Conserved Water Program, a portion of the water proposed to be conserved by an applicant may be used on additional lands, may be put to a different use, or be leased or sold to another user. OAR 690-018-0010. A portion of the water conserved is allocated to the State to be converted to an instream water right or to revert to the public for appropriation by other water users.

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.

Under ORS 537.470(3) (2003 HB 2456), after determining any quantity of water needed to mitigate the effects on other water rights, 25 percent of the conserved water shall be allocated to the state and 75 percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state sources.

If an application for the allocation of conserved water is approved, the Department shall issue orders for proposed new certificates covering the changes in the original water rights and once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates shall be issued describing the right created by the allocation of conserved water. ORS 537.470(6).

Under ORS 537.455 to 537.500 and OAR 690-018-0010 to 690-018-0090, the Department has considered the application, and makes the following:

**Findings of Fact**

1. Water right Certificate 76358 was issued in the name of COID with priority dates of October 31, 1900, for approximately 985.0 cfs and December 2, 1907, for the balance of approximately, 397.22 cfs, allowed by the decree, if all lands were served by the main canal system. However, this right may be further modified by any cancellations, transfers, and other allocation of conserved water projects, completed pursuant to ORS 537 and ORS 540.
2. COID undertook a conservation project that consisted of piping a portion of open ditch laterals H and I, off the Central Oregon canal, with HDPE pipe.
3. The number of acres served by Certificate 76358 is approximately:

43746.930	Acres for irrigation
781.957	Equivalent acres for municipal use
158.010	Equivalent acres for pond maintenance
87.100	Equivalent acres for industrial use
7.000	Equivalent acres for quasi-municipal use
<u>2.800</u>	Equivalent acres for dust abatement, stock water, and domestic use
44783.797	<i>Equivalent acres</i>

Any previously approved or pending transfers, cancellations, allocation of conserved water, or other modifications to Certificate 76358 will cause a corresponding change to the total number of acres served by this right.

4. COID does not, as a normal practice, divert the maximum allowable rate under its water right. However, COID has the capacity to divert the full rate to the lands served by the Central Oregon canal. The proposed allocation of conserved water will result in reduction of the maximum allowable diversion for the uses allowed under the original right. The reduced amounts and the quantity conserved are:

Time Period	Rate and Duty Per acre	Priority Date	Before Project	After Project	Conserved Water
April 1 - 30 and October 1 - 31	1/80 cfs 9.91 ac-ft for irrigation season*	October 31, 1900	559.80 cfs 66,728 AF	558.55 cfs 66,577 AF	1.25 cfs 151 AF
May 1 - 14 and September 15 - 30	1/60 cfs 9.91 ac-ft for irrigation season*	October 31, 1900	746.40 cfs 42,545 AF	744.73 cfs 42,446 AF	1.67 cfs 99 AF
May 15 - September 14	1/32.4 cfs 9.91 ac-ft for irrigation season*	October 31, 1900	985.00 cfs 238,390 AF	982.8 cfs 237,854 AF	2.20 cfs 536 AF
		December 2, 1907	397.22 cfs 96,145 AF	396.33 cfs 95,928 AF	0.89 cfs 217 AF

\* includes a 45% transmission loss allowed for diversions through the district's main canal system. For lands not served from the district main canal system, but by direct pumping from the Deschutes River, the 45% transmission loss is not allowed.

- The proposed allocation will not harm existing out-of-stream or in-stream water rights in the Upper Deschutes (above Bend), Middle Deschutes River (above Lake Billy Chinook) because the diversions will be reduced and the downstream return flows are not available until Lake Billy Chinook.

Some of the water which was previously diverted and which will no longer be diverted would have returned to the Lower Deschutes River outside of the irrigation season and would have slightly increased winter time flows in the Lower Deschutes River. However, the diversion of this water is not required and therefore is not considered in the injury evaluation. The proposed allocation will increase streamflows from April through October. The flow will remain the same the rest of the year. Therefore, the proposed allocation will harm neither out-of-stream, nor in-stream water rights in the Lower Deschutes River.

- The applicants have obtained the required land use approvals.
- The proposed allocation of conserved water will not harm other water rights and, therefore, no reduction in the quantity of conserved water will be needed to mitigate for harm to existing water rights.
- The per acre rate and duty for the existing water rights shall remain the same, being:
 

April 1 through April 30 and October 1 through October 31	1 cfs to 80.0 acres
May 1 through May 14 and September 15 through September 30	1 cfs to 60.0 acres
May 15 through September 14	1 cfs to 32.4 acres

The above rate per acre applies to each acre irrigated by the COID main canal systems during the irrigation season of each year, not to exceed 9.91 acre-feet for each acre irrigated during

the irrigation season as measured at the diversion from the source. The quantities reflect a 45% transmission loss as determined by decree of the Circuit Court for Deschutes County, dated March 24, 1933. Those lands not served from the district canal systems but by direct pumping from the Deschutes River are not allowed the 45% transmission loss.

9. In consultation with the Oregon Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation, the Department has determined that conserved water is needed to support instream uses. Additional streamflows are needed in the Middle Deschutes River to provide for improved habitat for incubation, rearing and migration of redband trout, brown trout and mountain whitefish. Additional flows are also needed to contribute to the aesthetic values of the Middle Deschutes River Scenic Waterway.
10. Under ORS 537.470(3) (2003 HB 2456), after determining the quantity of water needed, if any, to mitigate the effects on other water rights, 25 percent of the conserved water shall be allocated to the State and 75 percent to the applicant unless the applicant proposes a higher allocation to the State or more than 25 percent of the funds used to finance the conservation measures comes from federal or state sources. The COID funded 51.42 percent of the project; however they are requesting that 100 percent of the allocation of conserved water go to the state for instream protection.
11. The State's portion of the conserved water shall be allocated to instream use in the following manner:

Priority Date	Season of Use	Rate and Volume Limitation	Instream Reach
October 31, 1900	April 1 - 30 and October 1 - 31	1.25 cfs 151 AF	From Central Oregon Canal POD #1 (SW1/4 NE 1/4 Sect. 13, T 18 S, R 11 E, W.M., 1520 feet south and 1535 feet west from the NE Corner of Section 13), to Lake Billy Chinook at River Mile 120
October 31, 1900	May 1 - May 14 and September 15 - 30	1.67 cfs 99 AF	
October 31, 1900	May 15 - September 14	2.20 cfs 536 AF	
December 2, 1907		0.89 cfs 217 AF	

12. Under ORS 537.485 (2003 HB 2456), the priority of any right to the use of conserved water, including an in-stream water right, shall be either the same as or one minute after the priority of the water right held by the person implementing the conservation measures. The applicant has requested that the conserved water be assigned the same priority date as the existing rights.
13. The applicant has completed the conservation project, which was completed within five years prior to the date of filing the application, and has not requested additional time to finalize the allocation under OAR 690-018-0050(3)(i).

14. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

**Ultimate Findings of Fact**

The ultimate findings of fact that the Department must make are described in OAR 690-018-0050.

- A. The allocation of conserved water will result in a reduction in the amount of water that COID could divert for the uses allowed under the original water right.
- B. The proposed allocation of conserved water will not harm existing water rights.
- C. The application is consistent with local land use plans.
- D. No water is needed to mitigate for harm to existing water rights.
- E. The per acre rate and duty for the existing water right shall remain the same.
- F. The conserved water allocated to the state is needed to support instream uses.
- G. One hundred percent of the conserved water will be allocated to the state for instream use, in the following manner:

Priority Date	Season of Use	Rate (cfs)	Instream Reach
October 31, 1900	April 1 - 30 and October 1 - 31	1.25	From Central Oregon Canal POD #1 (SW1/4 NE 1/4 Sect. 13, T 18 S, R 11 E, W.M., 1520 feet south and 1535 feet west from the NE Corner of Section 13), to Lake Billy Chinook at River Mile 120
October 31, 1900	May 1 - 14 and September 15 - 30	1.67	
October 31, 1900	May 15 - September 14	2.20	
December 2, 1907		0.89	

- I. The applicant has completed the conservation project, which was completed within five years prior to the date of filing the application, and has requested finalization of the allocation of the conserved water.
- J. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

**Conclusion of Law**

The project described in the application C-29 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018.

**Now, therefore, it is ORDERED:**

1. Certificate 76358 is cancelled. A new superseding certificate shall be issued for irrigation of 43,746.930 acres, 781.957 equivalent acres for municipal use, 158.01 equivalent acres for pond maintenance, 87.1 equivalent acres for industrial use, 7.0 equivalent acres for quasi-municipal use, and 2.8 equivalent acres for dust abatement, stock water and domestic use, being a total of approximately 44,783.797 equivalent acres. Approval of this Allocation of Conserved Water reduces the amount of water lawfully available under the remaining portion of Certificate 76358 by the following amounts:

Priority Date	Season of Use	Rate and Volume Limitation
October 31, 1900	April 1 - 30 and October 1 - 31	1.25 cfs 151 AF
October 31, 1900	May 1 - May 14 and September 15 - 30	1.67 cfs 99 AF
October 31, 1900	May 15 - September 14	2.20 cfs 536 AF
December 2, 1907		0.89 cfs 217 AF

The acreage, rate, duty, and priority dates are subject to modification by any transfers, cancellations, allocation of conserved water, or other prior modification to Certificate 76358. The associated rate, duty, and priority date shall be approximately:

Time Period	Per acre rate	Priority Date	After Project
April 1 to April 30 and October 1 to October 31	1/80 cfs	October 31, 1900	558.55 cfs 66,577 AF
May 1 to May 14 and September 15 to September 30	1/60 cfs	October 31, 1900	744.73 cfs 42,446 AF
May 15 to September 14	1/32.4 cfs	October 31, 1900	982.8 cfs 237,854 AF
		December 2, 1907	396.33 cfs 95,928 AF

The above rate per acre applies to each acre irrigated by the COID main canal systems during the irrigation season of each year, not to exceed 9.91 acre-feet for each acre irrigated during the irrigation season as measured at the diversion from the source. The quantities reflect a 45% transmission loss as determined by decree of the Circuit Court for Deschutes County, dated March 24, 1933. Those lands not served from the district canal systems but by direct pumping from the Deschutes River are not allowed the 45% transmission loss.

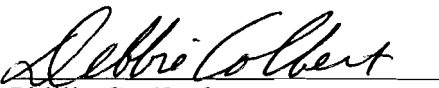
The place of use shall be those lands described under Certificate 76358, as modified by any transfers, cancellations, allocations of conserved water, or other prior modification to Certificate 76358 completed pursuant to ORS 537 and 540. All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new instream water right certificate, Certificate 81612, shall be issued which replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346

and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right shall be issued with the following conditions:

Priority Date	Season of Use	Rate (cfs)	Instream Reach
October 31, 1900	April 1 - 30 and October 1 - 31	1.25	Central Oregon Canal POD #1, (SW1/4 NE 1/4 Sect. 13, T 18 S, R 11 E, W.M., 1520 feet south and 1535 feet west from the NE Corner of Section 13) to Lake Billy Chinook at River Mile 120
October 31, 1900	May 1 - 14 and September 15 - 30	1.67	
October 31, 1900	May 15 - September 14	2.20	
December 2, 1907		0.89	

Dated at Salem, Oregon this 21<sup>st</sup> day of September 2005.

For   
Phillip C. Ward  
Director

Date of Mailing: SEP 22 2005