

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

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| In the Matter of Transfer Application | ) | FINAL ORDER APPROVING         |
| T-9849, Deschutes County              | ) | CHANGES IN POINT OF DIVERSION |
|                                       | ) | AND PLACE OF USE              |

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.

**Applicant**

Central Oregon Irrigation District  
2598 N. Highway 97  
Redmond, OR 97756

**Findings of Fact**

- On January 12, 2005, Central Oregon Irrigation District (COID), for Tumalo Irrigation District, filed a transfer application to change the point of diversion and place of use under Certificates 76358 and 76714. The Department assigned the application number T-9849. On May 26, 2005 the applicant amended the application to clarify the location of the proposed point of diversion diversion and place of use, and agreed to condition the use to avoid potential injury to the instream water right.
- The portions of the rights to be transferred are as follows:  
**Certificate:** 76358 in the name of Central Oregon Irrigation District  
**Use:** Irrigation  
**Priority Date:** October 31, 1900 & December 2, 1907  
**Season of Use:** April 1 through 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:** 16.85  
**Quantity (Rate):** Season 1 (limited to 1/80 cfs per acre): 0.211 cfs  
Season 2 (limited to 1/60 cfs per acre): 0.281 cfs

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| 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. |
|--|

Season 3 (limited to 1/32.4 cfs per acre): 0.520 cfs, being 0.371 cfs under the 1900 priority date and 0.149 cfs under the 1907 priority date

**Duty:** Not to exceed 9.91 acre-feet (AF) per acre: (166.98 AF total)

**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.**

**Source:** Deschutes River, tributary to the Columbia River

**Authorized Point of Diversion:**

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Survey Coordinates  |
|----------|---|-------|---|----------|-----|-----|----|---|
| 17       | S | 12    | E | W.M.     | 29  | SE  | NE | POD # 11 (COID North Canal): 850 feet North & 630 feet West of the E ¼ corner of Section 29 |

**Authorized Place of Use:**

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Tax Lot | Acres |
|----------|---|-------|---|----------|-----|-----|----|---------|-------|
| 15       | S | 13    | E | W.M.     | 04  | NW  | NE | 300     | 16.85 |

**Certificate:** 76714 in the name of Central Oregon Irrigation District

**Use:** Supplemental Irrigation

**Priority Date:** February 28, 1913

**Acres:** 16.85

**Quantity:** Not to exceed a portion of the 50,000 acre-feet of stored water for the entire right, if available at the authorized point of diversion from the source, limited to the duty of water as set out in the modified supplemental decree of the circuit court dated March 24, 1933, in the matter of the determination of the relative rights to the use of the water of the Deschutes River and its tributaries. The amount of water allowed under this right, together with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and is further limited to the terms of the Central Oregon Irrigation District, Crook County Improvement District #1, and the Arnold Irrigation District, and subject to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** Crane Prairie Reservoir, tributary to the Deschutes River

**Authorized Point of Diversion:**

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Survey Coordinates  |
|----------|---|-------|---|----------|-----|-----|----|---|
| 17       | S | 12    | E | W.M.     | 29  | SE  | NE | POD # 11 (COID North Canal): 850 feet North & 630 feet West of the E ¼ corner of Section 29 |

**Authorized Place of Use:**

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Tax Lot | Acres |
|----------|---|-------|---|----------|-----|-----|----|---------|-------|
| 15       | S | 13    | E | W.M.     | 04  | NW  | NE | 300     | 16.85 |

3. Application T-9849 proposes to move the authorized point of diversion for each right approximately 0.98 mile upstream in the source to:

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Survey Coordinates                             |  |
|----------|---|-------|---|----------|-----|-----|----|--|--|
| 17       | S | 12    | E | W.M.     | 32  | NW  | NE | 2,050 feet West. from the NE corner of Sec. 32 |  |

4. Application T-9849 proposes to change the place of use of each of the rights to:

| Township |   | Range |   | Meridian | Sec | ¼ ¼ |    | Tax Lot | Acres |
|----------|---|-------|---|----------|-----|-----|----|---------|-------|
| 16       | S | 11    | E | W.M.     | 28  | NE  | NW | 400     | 2.0   |
| 16       | S | 11    | E | W.M.     | 35  | NE  | SE | 2000    | 4.9   |
| 16       | S | 11    | E | W.M.     | 35  | SE  | SE | 2000    | 3.1   |
| 16       | S | 11    | E | W.M.     | 35  | SE  | SE | 2002    | 3.0   |
| 16       | S | 11    | E | W.M.     | 35  | SE  | SE | 2003    | 2.17  |
| 16       | S | 11    | E | W.M.     | 36  | NW  | NW | 10400   | 1.68  |

5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
7. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
8. The proposed point of diversion is located within a stretch of the Deschutes River with flows protected by a junior instream water right under Certificate 59778. Instream water right Certificate 59778 was established at the request of the Oregon Department of Fish and Wildlife (ODFW) with a priority date of November 3, 1983.
9. The proposed new point of diversion is located in Watershed ID #197, Deschutes River, tributary to Columbia River, above Tumalo Creek. The Department’s streamflow model indicates that levels of natural streamflow are unlikely to meet the requirements of the instream water right (660 cfs) year-round. The proposed change in point of diversion would further reduce flows by up to 0.52 cfs in that portion of the stream reach between the existing point of diversion and the new proposed point of diversion. Thus, the instream water right would be injured as a result of the proposed change.

10. Due to storage of water in, and release of water from, Crane Prairie Reservoir, flows in the river are historically sufficient to meet the requirements of the instream water right (660 cfs) except during the periods from April 1-15 when water from reservoir releases is first coming down river, and October 15-31 when water is no longer being released.
11. The applicant submitted a letter to the Department dated May 26, 2005 to condition the transfer by agreeing to not divert water for the allowed use from the proposed POD when, during the irrigation season, flows in the Deschutes River at the proposed point of diversion drop below 660 cfs. Therefore, the proposed change would not result in injury to the instream water right.
12. There are points of diversion for three other certificated water rights located between the existing authorized point of diversion and the proposed new point of diversion (Certificate 75760 (Oct. 10, 1903 priority date), 17239 (Sept. 15, 1906 priority date), and 17152 (Oct. 10, 1903)). The proposed point of diversion change could reduce flows by up to 0.371 cfs in the stream reach between the existing point of diversion and the new proposed point of diversion. However, the Department has concluded that these rights would not be injured because they would no longer be subject to regulation in response to a call on the water from the senior right (Certificate 76358) which currently is downstream from them.
13. The proposed change would not result in enlargement of the rights.
14. The proposed changes can be effected without injury to other water rights.
15. Tumalo Irrigation District will be responsible for the delivery of the water rights to the new properties. Central Oregon Irrigation District will retain the rights under Certificate 76358 and 76714. The receiving land owners will be responsible for completion of the proposed changes after the final order is issued. These properties are currently owned by:

| <b>Owner</b>  | <b>Township</b> | <b>Range</b> | <b>Section</b> | <b>¼-¼</b> | <b>Tax Lot</b> |
|---|-----------------|--------------|----------------|------------|----------------|
| Ronald Scott & Janet Maria Ellson<br>18161 Couch Market Rd.<br>Bend, OR 97701 | 16 S            | 11 E         | 28             | NE NW      | 400            |
| Columella Properties, LLC<br>20616 Jayhawk Lane<br>Bend, OR 97702             | 16 S            | 11 E         | 35             | NE SE      | 2000           |
| Richard & Monica Miron<br>220 W. Highland Dr.<br>Camarillo, CA 93010          | 16 S            | 11 E         | 35             | SE SE      | 2002           |
| Tumalo Irrigation District<br>64697 Cook Ave.<br>Bend, OR 97701               | 16 S            | 11 E         | 35             | SE SE      | 2003           |
| Tumalo Irrigation District  | 16 S            | 11 E         | 36             | NW NW      | 10400          |

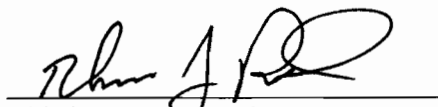
## Conclusions of Law

The changes in point of diversion and place of use in application T-9849, as conditioned under Finding #11 above, are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

### Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-9849 are approved.
2. Water right certificates 76358 and 76714 are modified. The Department shall issue new water right certificates to supersede certificates 76358 and 76714 on a determination that it is necessary to produce a certificate to confirm that portion of the right not involved in this transfer.
3. 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 76358 and 76714 and any related decree.
4. To prevent injury to instream water right Certificate 59778, water shall not be diverted for the allowed use whenever, during the irrigation season, flows in the Deschutes River at the point of diversion drop below 660 cfs.
5. The proposed change shall be completed on or before October 1, 2006.
6. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
7. The former place of use shall no longer be irrigated as part of these water rights.
8. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 3<sup>rd</sup> day of AUGUST, 2005.

  
Phillip C. Ward, Director

Mailing date: AUG 05 2005