

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

In the Matter of Proposed Allocation of)	FINAL ORDER APPROVING
Conserved Water Application)	ALLOCATION OF CONSERVED
CW-39, Deschutes County)	WATER

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT
1055 S.W. LAKE COURT
REDMOND OR 97756

Findings of Fact

1. On November 21, 2005, Central Oregon Irrigation District (COID) filed an allocation of conserved water application. The Department assigned the application number CW-39.
2. The application requests an allocation of conserved water under Certificate 76358 in the name of COID.
3. The applicant has an allocation of conserved water policy pursuant to OAR 690-018-0025.
4. 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.
5. On February 24, 2006, the Department received evidence from COID indicating that the Pilot Butte Canal (also known as the North Canal) has a capacity sufficient to carry the portion of Certificate 76358, being 668 cubic feet per second (cfs), used to deliver water to the lands served by the canal. A diversion structure and ditch or a pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present. 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.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is an order in other than a 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.

6. Water right Certificate 76358 was issued in the name of Central Oregon Irrigation District 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.

7. 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
2.800	Equivalent acres for dust abatement, stock water, and domestic use
44783.797	Equivalent acres

8. The water right evidenced by Certificate 76358 has had many modifications, including, but not limited to, transfers and allocations of conserved water that have reduced the rate and duty associated with the water right. The applicant describes the starting point for the water right as 981.05 cfs and 415,690.5 AF at 1900 priority date, and 398.62 cfs and 168,903.2 AF at 1907 priority date. No information was provided as to how these quantities were determined as the starting point for the applicant's before project determination of the water right.

9. The before project rate and duty for project are best described by water right Certificate 76358, and not the information listed in Finding of Fact #8. Any previously approved or pending transfers, cancellations, allocation of conserved water, or other modifications to Certificate 76358 will cause a corresponding change to the rate, duty, and total number of acres served by this right.

10. The conservation project involved piping approximately 3,818 feet of the H-14-1 ditch (north of Terrebonne), off the Pilot Butte Canal, using 18-inch C-900 PVC pipe and installing AWWA type valves. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.

11. The point of diversion associated with the allocation of conserved water project is as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH & 630 FEET WEST FROM E1/4 CORNER, SECTION 29

12. Public notice was published on January 3, 2006, in the Department's weekly notice and on January 6, 13, and 20, 2006, in The Bulletin as required under OAR 690-018-0050.

13. On February 16, 2006, timely comments were received from WaterWatch. WaterWatch indicated two primary concerns. First, that the allocation of 50% of the conserved water to new uses would injure downstream instream rights. They recommended allocating 100% of

the conserved water to instream uses to avoid injury. Second, WaterWatch indicated a concern of whether COID was “ready, willing, and able” to use the full amount of its water right. Subsequent to the filing of WaterWatch’s comments, the Department found that COID’s system is capable of passing the full amount of its water right through their system. This finding was based on a February 27, 2006, memorandum from the State Engineer.

14. Pursuant ORS 537.485, the applicant requests that the priority dates of the conserved water be the same as the originating rights.

15. The proposed allocation of conserved water will result in a reduced diversion for the uses allowed under Certificate 76358 as follows:

Time Period	Priority Date	Rate (cfs)	Duty (AF)
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.30	36
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.40	24
Season 3: May 15 - September 14	October 31, 1900	0.53	129
	December 2, 1907	0.21	51
Duty Summary:	October 31, 1900		189
	December 2, 1907		51
	Total		240

16. The proposed allocation of conserved water will not harm existing rights, as described below:

The applicant has indicated that the rate associated with the applicant’s share of the conserved water have the same rate and duty as the existing acres. This would allow up to 12.0 new acres of irrigation.

The proposed allocation will not harm existing out-of-stream or instream water rights in the Upper Deschutes (above Bend) or 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 water is not required and the return flows are, therefore, not required.

Out-of-stream rights in the Lower Deschutes River (below Lake Billy Chinook) are not harmed since there is always sufficient flow for these rights. Instream flows in the Lower Deschutes River are generally met from March through May. The increased consumptive use of irrigating up to 12.0 additional acres may result in reduced return flows. The effects of these return flows are attenuated since the flow would return equally throughout the year.

The monthly decreased return flow in the Lower Deschutes River resulting from increased consumptive use of irrigating up to 12.0 additional acres could average 0.03 cfs/month. Although there may be a decrease in Lower Deschutes River flows from November to March of 0.03 cfs, this is more than offset by the 0.15 to 0.37 cfs increase in flow from April through October.

17. The application includes land use information forms completed and signed by Deschutes County demonstrating that the application is compatible with the local comprehensive land use plan.
18. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.
19. After this allocation of conserved water, the water right held by the applicant, not including cancellations, transfers, and other allocations of conserved water that have modified Certificate 76358 will allow use of the following quantities of water:

Time Period	Rate and Duty Per acre	Priority Date	Before Project	Conserved Water	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	559.80 cfs 66,728 AF	(0.30) cfs (36) AF	559.50 cfs 66,692 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	746.40 cfs 42,545 AF	(0.40) cfs (24) AF	746.00 cfs 42,521 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	985.00 cfs 238,390 AF	(0.53) cfs (129) AF	984.47 cfs 238,261 AF
		December 2, 1907	397.22 cfs 96,145 AF	(0.21) cfs (51) AF	397.01 cfs 96,094 AF
Duty Summary:		October 31, 1900	347,663 AF	(189) AF	347,474 AF
		December 2, 1907	96,145 AF	(51) AF	96,094 AF
Total Duty			443,808 AF	(240) AF	443,568 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.

20. In consultation with the Oregon Department of Fish and Wildlife and the Department of Environmental Quality, the Department has determined that conserved water is needed to support instream uses in the Deschutes River.
21. The Deschutes River Conservancy funded 35.8 percent of the project with non-reimbursable federal funds. The applicant is requesting that 50 percent of the conserved water be allocated to the State for an instream water right, and that the remaining 50 percent of the conserved water be allocated to the applicant.

22. The amounts of water to be allocated to the applicant for irrigation of a maximum of 12.0 acres within Central Oregon Irrigation District are:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.15 cfs 18 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.20 cfs 12 AF
Season 3: May 15 - September 14	October 31, 1900	0.265 cfs 64.5 AF
	December 2, 1907	0.105 cfs 25.5 AF

23. The applicant requests that its share of the conserved water be reserved instream as an instream water right until the applicant identifies the specific place of use for the applicant's share of the conserved water.

24. The amounts of water to be allocated to the state for an instream water right are:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.15 cfs 18 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.20 cfs 12 AF
Season 3: May 15 - September 14	October 31, 1900	0.265 cfs 64.5 AF
	December 2, 1907	0.105 cfs 25.5 AF

25. The stream reach for state's instream water right is from the previously authorized point of diversion, being the COID North Canal (POD #11, as described in Finding of Fact #11) at approximately RM 165 to Lake Billy Chinook at approximately RM 120. The instream use shall allow the use and protection of flows from April 1 through October 31.

26. The applicant has completed the project and request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.

27. 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 CW-39 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. Water will be conserved that can be allocated without harming other water rights.

Now, therefore, it is ORDERED:

The changes proposed in CW-39, as modified by the applicant, are approved.

1. Certificate 76358 shall be modified and a new superseding certificate shall be issued to Central Oregon Irrigation District for the remaining portion of Certificate 76358 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 76358 as described below:

Time Period	Priority Date	Conserved Water
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.30 cfs 36 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.40 cfs 24 AF
Season 3: May 15 - September 14	October 31, 1900	0.53 cfs 129 AF
	December 2, 1907	0.21 cfs 51 AF
Duty Summary:	October 31, 1900	189 AF
	December 2, 1907	51 AF
Total Duty		240 AF

The associated priority date and rate and duty of the remaining right shall be approximately:

Time Period	Rate and Duty Per acre	Priority Date	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	559.50 cfs 66,692 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	746.00 cfs 42,521 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	984.47 cfs 238,261 AF
		December 2, 1907	397.01 cfs 96,094 AF
Duty Summary:		October 31, 1900	347,474 AF
		December 2, 1907	96,094 AF
Total Duty			443,568 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 place of use shall be those lands described under Certificate 76358, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. The conserved water held by COID may be used to irrigate a maximum of 12.0 acres of new land within COID that are served by the COID North Canal located at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH & 630 FEET WEST FROM E1/4 CORNER, SECTION 29

3. The conserved water held by COID shall be reserved instream until a permanent place of use is determined. The priority date, rate, and duty remaining that shall be reserved instream are:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.15 cfs 18 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.20 cfs 12 AF
Season 3: May 15 - September 14	October 31, 1900	0.265 cfs 64.5 AF
	December 2, 1907	0.105 cfs 25.5 AF

This water will be protected in the Deschutes River from the authorized point of diversion for Certificate 76358 at approximately RM 165 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH & 630 FEET WEST FROM E1/4 CORNER, SECTION 29

to Lake Billy Chinook at approximately RM 120.

4. Once a permanent place of use is determined for the applicant's share of the conserved water, COID shall submit a statement consistent with OAR 690-018-0062 (3)(a) that identifies:
- a. The name and address of the person using the water;
 - b. A description of the type of beneficial use of the water;
 - c. A legal description of the place of use; and
 - d. A map that meets the standards in OAR 690-310-0050.

Prior to water being used at the new location, approval must be obtained from the Department. Once water has been used at the new location, if the applicant notifies the Department that the respective right has become appurtenant to the specified lands and

provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.

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.

All other conditions and limitations of the existing water right, Certificate 76358, shall be included in the superseding certificate.

- The Department shall issue a new instream certificate for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River from the authorized point of diversion at approximately RM 165 for Certificate 76358 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH & 630 FEET WEST FROM E1/4 CORNER, SECTION 29

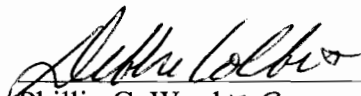
to Lake Billy Chinook at approximately RM 120.

The instream water right shall be as described below:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.15 cfs
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.20 cfs
Season 3: May 15 - September 14	October 31, 1900	0.265 cfs
	December 2, 1907	0.105 cfs

and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon this 28th day of September, 2006.


 Phillip C. Ward
 Director

Date of Mailing: OCT 02 2006