

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

In the Matter of Instream Transfer) SUPERSEDING FINAL ORDER AND
Application T-9824 (Mitigation Credit) CORRECTION OF ERRORS IN A
Project MP-27), Deschutes County, Oregon) PREVIOUS ORDER

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
1055 SW Lake Court
Redmond, Oregon 97756

FINDINGS OF FACT

Instream Transfer

1. Central Oregon Irrigation District (COID), for various property owners (listed in Finding # 3, below), filed an application to permanently transfer the place of use and the character of use under Certificates 76358 and 76714 to instream use and to acquire mitigation credits for the primary right transferred instream. Tammy Sailors, Creative Water Solutions, LLC, is the

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.

authorized agent acting on behalf of the applicant. The Department assigned the application number T-9824. The application was submitted on November 22, 2004.

2. Tammy Sailors notified the Department by email on January 31, 2005 that the applicant intends to transfer only the primary water right instream for mitigation credits, and the supplemental right will not be transferred instream. On March 15, 2005, the applicant amended the application to reduce the number of acres of irrigation rights proposed to be transferred instream.
3. The water right is appurtenant to lands owned as outlined in the following table. The water right has been Quit Claimed to COID on behalf of the various property owners.

Parcel #	Owner	T	R	S	¼ ¼	Current Tax Lot
1.	Deschutes Irrigation LLC	14S	13E	16	SW SW	2002
2.	Echo Rim LLC	15S	13E	5	NE NE	107
3.	Jill Hausner, Carl & Kimberly K. Robbins	15S	13E	5	NW NE	105
4.	Deschutes Irrigation LLC	15S	13E	8	NE NE	1500
5.	Piculell & Mayberry Group	15S	13E	9	NW NW	400
6.	David & Tammy Sailors	15S	13E	17	SW SW	2919
7.	David & Tammy Sailors	15S	13E	18	SE SE	2918
8.	Forked Horn LLC c/o John Pewther	15S	13E	19	SE NW	1007
9.	Forked Horn LLC c/o John Pewther	15S	13E	19	NE SW	1007
10.	Oxford Family, LLC	16S	14E	8	NE NE	100
11.	Oxford Family, LLC	16S	14E	8	NW NE	100
12.	Oxford Family, LLC	16S	14E	8	SW NE	100
13.	Oxford Family, LLC	16S	14E	8	SE NE	100

4. The portion of the right to be transferred under T-9824 is as follows:

Certificate: 76358 in the name of Central Oregon Irrigation District
Use: Irrigation
Acres: 83.1 total, being 21.3 acres from POD#1 and 61.8 acres from POD #11
Priority Date: October 31, 1900 and 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 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): 1.039 cfs, being 0.266 cfs from POD#1 and 0.773 cfs from POD #11

Season 2 (limited to 1/60 cfs per acre): 1.385 cfs, being 0.355 cfs from POD #1 and 1.030 cfs from POD #11

Season 3 (limited to 1/32.4 cfs per acre): 2.565 cfs,
POD #1: 0.469 cfs under the 1900 priority date and 0.189 cfs under the 1907 priority date

POD #11: 1.359 cfs under the 1900 priority date and 0.548 cfs under the 1907 priority date

Duty: Not to exceed 9.91 acre-feet (AF) per acre per year: 823.52 AF, being 211.08 AF from POD #1 and 612.44 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, will not be 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' S & 1535' W from the NE corner of Section 13
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ 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	0.5
15	S	13	E	W.M.	5	NE NE	105	11	12.3
15	S	13	E	W.M.	5	NW NE	105	11	29.2
15	S	13	E	W.M.	8	NE NE	103	11	2.0
15	S	13	E	W.M.	9	NW NW	400	11	6.0
15	S	13	E	W.M.	17	SW SW	2900	11	6.6
15	S	13	E	W.M.	18	SE SE	1900	11	4.4
15	S	13	E	W.M.	19	SE NW	1007	11	0.6
15	S	13	E	W.M.	19	NE SW	1007	11	0.2

Township		Range		Meridian	Sec	¼ ¼		Tax Lot	POD	Acres
16	S	14	E	W.M.	8	NE	NE	100	1	9.3
16	S	14	E	W.M.	8	NW	NE	100	1	0.8
16	S	14	E	W.M.	8	SW	NE	100	1	8.4
16	S	14	E	W.M.	8	SE	NE	100	1	2.8

5. 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. On January 31, 2005, Tammy Sailors, Creative Water Solutions, agent for the applicant, submitted a request to amend the transfer application so as to not include transfer of the supplemental right to instream use.
6. A total of 823.52 acre-feet (AF) of water may be beneficially used annually for primary irrigation under the portion of existing Certificate 76358 proposed for transfer.
7. Application T-9824 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.
8. On December 20, 2004, the applicant submitted a revised Water Right Transfer Supplemental Form B for the Instream Water Right Transfer application that contained information pertaining to the period and quantity of water to be allocated to instream use. Because the applicant subsequently amended the application to reduce the number of acres of irrigation rights proposed to be transferred instream, Supplemental Form B required additional modification. On March 18, 2005, the applicant indicated via telephone to the Department that the information contained in Supplement Form B could be modified by the Department using an instream flow rate calculator put together by the Department for Instream Lease applications filed by COID.
9. Application T-9824 proposes to change the place of use of the portion of the primary right, described in Finding 4, 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 Department's instream flow rate calculator indicates, and the applicant agreed to modify their request to state, that the quantities of water to be transferred and protected instream are as follows:

Certificate	Priority Date	Rate Instream	Volume Instream
Reach #1			
76358	October 31, 1900 & December 2, 1907	Season 1, modified to end on October 26: 0.146 CFS under the 1900 priority date Season 2: 0.195 CFS under the 1900 priority date Season 3: 0.362 CFS, being 0.258 CFS under the 1900 priority date and 0.104 CFS under the 1907 priority date	116.10 AF, being 90.75 AF under the 1900 priority date and 23.35 AF under the 1907 priority date

Certificate	Priority Date	Rate Instream	Volume Instream
Reach #2			
76358	October 31, 1900 & December 2, 1907	Season 1, modified to end on October 26: 0.425 CFS under the 1900 priority date Season 2: 0.567 CFS under the 1900 priority date Season 3: 1.049 CFS, being 0.748 CFS under the 1900 priority date and 0.301 CFS under the 1907 priority date	336.84 AF, being 263.29 AF under the 1900 priority date and 73.55 AF under the 1907 priority date

11. To prevent injury and enlargement, the 45% transmission loss, which is identified in certificate 76358, is not included in the amount of water that may be transferred and protected instream ORS 540.530, OAR 690-380-4010 & OAR 690-077-0075. The water previously diverted to offset transmission losses will remain in the river and become available for other users.
12. 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	Volume Instream
76358	October 31, 1900 & December 2, 1907	Season 1, modified to end on October 26: 0.571 CFS under the 1900 priority date Season 2: 0.762 CFS under the 1900 priority date Season 3: 1.41 CFS, being 1.005 CFS under the 1900 priority date and 0.405 CFS under the 1907 priority date	452.94 AF

13. There are several existing instream water rights located within the same instream reaches proposed by the applicant. The Department has identified the following existing instream water rights:

Certificate	Instream Protection Mechanism	Priority Date	Instream Rate	Period Protected Instream	Instream Reach	Instream Purpose
80400	ORS 537.348 (instream transfer process) and replaces a portion of certificate 59778	10/10/1903	0.35 CFS	April 1 to November 1	POD (SW ¼ SE ¼, Section 6, T18S, R12E) to Lake Billy Chinook	Fisheries Enhancement (mitigation credit project MP-1)
59778	ORS 537.346 (minimum stream flow conversion)	11/3/1983	660 CFS	Year-Round	Spring River (Section 6, T 20S, R 11E, WM) to the North Canal Dam	Supporting aquatic life and minimizing pollution
80856	ORS 537.348 (instream transfer process) and is in addition to certificate 80400	10/31/1900 & 12/2/1907	0.13 CFS during Season 1 (1900 priority), 0.17 CFS during Season 2 (1900 priority), and 0.30 CFS during Season 3, (being 0.22 CFS with 1900 priority and 0.08 CFS with 1907 priority)	April 1 to November 1	COID North Canal to Lake Billy Chinook	Aquatic and fish species (mitigation credit project MP-11)

Certificate	Instream Protection Mechanism	Priority Date	Instream Rate	Period Protected Instream	Instream Reach	Instream Purpose
76687	ORS 537.348 (instream transfer process)	9/1/1899	0.144 CFS during Season 1, 0.193 CFS during Season 2, and 0.358 CFS during Season 3	April 1 to November 1	North Canal Dam to Lake Billy Chinook	Fisheries enhancement
80965	ORS 537.470 (allocation of conserved water)	2/28/1913	0.21 CFS limited to 90.5 AF	April 1 through October 31	North Unit ID POD (River Mile 164, T22S, R12E, Sec. 29) to Lake Billy Chinook	Instream use (CW24)
Certificate pending (Sp. Ord. Vol 61, p 630)	ORS 537.470 (allocation of conserved water)	9/1/1899	0.08 CFS 4/1-5/1 & 10/1-11/1; 0.11 CFS 5/1-5/15 & 9/15-10/1; 0.19 CFS 5/15-9/15	April 1 to November 1	POD 15 (Section 14, T15S, R12E) to Lake Billy Chinook	Aquatic life
IS 70695 (pending application)	ORS 537.341 (state agency ISWR application process)	9/19/1990	250 CFS	Year-Round	North Canal Dam to Round Butte Reservoir (aka Lake Billy Chinook)	Anadromous and resident fish rearing

14. The applicant proposes that the instream water right 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), and replace a portion of the existing instream right established pursuant to ORS 537.346 (minimum streamflow conversion), for that portion located between POD #1 and POD #11, with an earlier priority date, during the period April 1 through October 26. The applicant has also identified that this instream transfer application is intended to replace a portion of the pending instream water right application filed by the Oregon Department of Fish and Wildlife under ORS 537.341, if approved, covering a portion of the same reach, from POD #11 to Lake Billy Chinook, with an earlier priority date during the period April 1 through October 26.

15. The Department has identified one existing water right (in addition to the supplemental right under Certificate 76714) appurtenant to a portion of the lands requested for transfer under this application. This right was not identified in the application and is as follows:

A surface water right under Certificate 77591 (priority June 25, 1951) for primary irrigation is appurtenant to 9.3 ac. in the NE ¼ of the NE ¼, 0.8 ac. in the NW ¼ of the NE ¼, 8.4 ac. in the SW ¼ of the NE ¼, and 2.8 ac. in the SE ¼ of the NE ¼, Section 8, T16S, R14E, W.M. (tax lot 100) owned by the Oxford Family LLC, from which the right under certificate 76358 is proposed to be transferred instream.

16. As per OAR 690-380-5120, when more than one primary right is appurtenant to the same land, any later priority date right is considered supplemental to the earlier priority right unless the water user designates otherwise. Therefore, the right under Certificate 77591 (priority June 25, 1951) is presumed to be supplemental to the right under Certificate 76358 (priority 1900 & 1907) on the above lands.
17. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer. The supplemental rights under Certificates 76714 and 77591 are not included in transfer application T-9824, and will be cancelled upon issuance of this final order approving T-9824. Tammy Sailors, agent for the applicant, indicated on January 31, 2005 intent to allow cancellation of the right under Certificate 77591, upon approval of transfer application T-9824.
18. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. Comments in the form of a prematurely-filed protest from the United States Department of the Interior, Bureau of Reclamation (BOR), were filed in response to the notices. The BOR stated that the BOR is the owner of the Crane Prairie Reservoir and related facilities and that, specific to Contract No. Ilr-1143 between the BOR and COID, use of water from Crane Prairie Reservoir is limited to irrigation. No other comments were filed in response to the notices. On April 27, 2005, the Bureau of Reclamation formally withdrew its protest of T-9824.
19. On August 3, 2005, the Department issued a Final Order for the transfer, recorded at Special Order Volume 65, Pages 502 through 515. Shortly following issuance of the order, the Department recognized a scrivener's error in the listing of a certificate number in Conditions #4 and #7 on Page 13, by listing Certificate 75591 rather than Certificate 77591. On August 8, 2005, a correcting order was issued and recorded at Special Order Volume 66, Page 74 to correct the error.
20. The Department has subsequently discovered other scrivener's errors in the August 3, 2005 order in the Authorized Place of Use table in Finding of Fact #4 on Page 504 and in the Authorized Place of Use table in Finding of Fact #37 on Page 512. The Tax Lot number in Section 19, SE NE and NE SE was listed as 1002, when the correct Tax Lot number should be 1007.
21. This order is issued to supersede the previous orders recorded at Special Order Volume 65, Pages 502-515 and Special Order Volume 66, Page 74, and to correct both scrivener's errors.
22. 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.

23. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present on some parcels and a pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present on the remaining parcels. The remaining right certificate issued as a result of this transfer, and other activities associated with certificate 76358, will be reduced by the amount of water transferred to instream use. The reduction will be from the lesser of the maximum quantity listed on the water right or the capacity of the diversion and delivery system.
24. The proposed change would not result in enlargement of the right provided that the lands currently irrigated under the existing rights do not receive water from other rights currently appurtenant to these lands.
25. The proposed change would not result in injury to other water rights.
26. The amount and timing of the proposed instream flow are allowable within the limits and use of the original water right.
27. The protection of flows at the authorized points of diversion 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) The Department is not aware that any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
28. Within the reach proposed by the applicant, 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. Also, as noted in Finding of Fact 14, the Oregon Department of Fish and Wildlife (ODFW) has applied for an instream water right, which will have a priority date of September 24, 1990 if approved, through this reach for anadromous and resident fish rearing. Also, instream certificate 59778, with a priority date of November 3, 1983, is for the purpose of protecting instream flows for aquatic life and minimizing pollution. 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 Department of Environmental Quality's 303d list of water quality limited streams for temperature and pH.
29. By replacing a portion of Certificate 59778 between POD #1 and POD #11, the instream right will provide protection for streamflows previously identified as necessary for supporting aquatic life and minimizing pollution under an earlier priority date. By adding to

other instream water rights between POD # 11 and Lake Billy Chinook, the instream right will provide protection for additional streamflows necessary for fish and wildlife habitat enhancement, pollution abatement, and recreation.

Preliminary Award of Deschutes Basin Mitigation Credits

30. COID and Creative Water Solutions, LLC, agent for COID, have 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 Creative Water Solutions, LLC and COID on behalf of the water rights owners.
31. The Department assigned this mitigation credit project number MP-27.
32. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6) on November 23, 2004. No comments were received in response to this notice.
33. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon State Parks and Recreation Department, Oregon Division 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 November 23, 2004. No comments were received.
34. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
35. On January 31, 2005, Tammy Sailors, Creative Water Solutions, agent for the applicant, clarified that the instream transfer application does not include the supplemental water right, certificate 76714, and that the portion of this right appurtenant to the irrigated lands under the primary right to be transferred to instream use should be cancelled. This supplemental right, therefore, has not been considered in the evaluation of this mitigation credit project.
36. When the Department published notice of this mitigation project, it was identified that the project may generate 249.6 mitigation credits. Since notice of the application was originally completed, the application has been amended to reduce the portion of the water right to be transferred to instream use. Therefore, based upon continued evaluation, the Department has determined that this mitigation project, being the transfer of 83.1 acres of irrigation use to instream use, will provide 149.6 acre-feet of mitigation water. Therefore, **149.6** mitigation credits may be awarded to this mitigation credit project and assigned to Creative Water Solutions, LLC and 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**.

37. The amount of mitigation water described is a portion of the total volume to be transferred instream, being 452.94 AF. The remaining balance of water transferred instream, and not used for mitigation, will benefit instream flows.
38. 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 for the proposed instream water right shall result in completion of the project and verification that the project is complete.
39. On August 3, 2005, the Department issued a Final Order for this instream transfer and mitigation project, recorded at Special Order Volume 65, Pages 502 through 515. Instream water right Certificate 81324 was also issued on August 3, 2005. Mitigation credits were awarded as part of that certificate.

Partial Cancellation of Certificate 76714 and Cancellation of Certificate 77591

40. The applicant has not submitted an affidavit certifying that affected portions of the supplemental water rights under certificates 76714 and 77591 have been abandoned. However, Creative Water Solutions, agent for the applicant, has submitted a request on behalf of the applicant to exclude Certificates 76714 and 77591 from this transfer application. Consistent with OAR 690-380-2250, the Department notified the applicant of the Department's intent to cancel the portion of the supplemental water rights 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 portion of certificate 76714 to be cancelled has been quit claimed to COID. The portion of certificate 77591 to be cancelled is appurtenant to lands owned by Oxford Family LLC.

41. **Certificate:** 76714 in the name of Central Oregon Irrigation District
Use: Supplemental Irrigation
Acres: 83.1 total (21.3 acres from POD#1 and 61.8 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
18	S	11	E	W.M.	13	SW NE	POD #1 (Central Oregon Canal): 1520' S & 1535' W from the NE corner of Section 13
17	S	12	E	W.M.	29	SE NE	POD # 11 (COID North Canal): 850' N & 630' W of the E ¼ 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	0.50
15	S	13	E	W.M.	5	NE	NE	105	11	12.3
15	S	13	E	W.M.	5	NW	NE	105	11	29.2
15	S	13	E	W.M.	8	NE	NE	103	11	2.0
15	S	13	E	W.M.	9	NW	NW	400	11	6.0
15	S	13	E	W.M.	17	SW	SW	2900	11	6.6
15	S	13	E	W.M.	18	SE	SE	1900	11	4.4
15	S	13	E	W.M.	19	SE	NW	1007	11	0.60
15	S	13	E	W.M.	19	NE	SW	1007	11	0.20
16	S	14	E	W.M.	8	NE	NE	100	1	9.3
16	S	14	E	W.M.	8	NW	NE	100	1	0.8
16	S	14	E	W.M.	8	SW	NE	100	1	8.4
16	S	14	E	W.M.	8	SE	NE	100	1	2.8

42. **Certificate:** 77591 in the name of Jack McCaffery, perfected under Permit 20396
Use: Irrigation
Acres: 21.3
Priority Date: June 25, 1951
Season of Use: Irrigation season
Quantity: 0.53 cfs
Source: Dry River, tributary to Crooked River
Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
16	S	14	E	W.M.	8	NW	SE	745' S & 1360' W from the E¼ corner of Section 8

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Acres
16	S	14	E	W.M.	8	NE	NE	9.3
16	S	14	E	W.M.	8	NW	NE	0.8
16	S	14	E	W.M.	8	SW	NE	8.4
16	S	14	E	W.M.	8	SE	NE	2.8

CONCLUSIONS OF LAW

The changes in place of use and character of use proposed in application T-9824 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and the scrivener's errors in the order recorded at Special Order Volume 65, Pages 502 to 515 should be corrected in the record.

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 orders entered at Special Order Volume 65, Pages 502 to 515 and Special Order Volume 66, Page 74 are withdrawn and of no further force and effect, and are superseded by this order.
2. The changes in place of use and character of use proposed in application T-9824 are approved.
3. 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 reduces the amount of water lawfully available under the remaining portion of certificate 76358 by 1.039 CFS in Season 1, 1.385 CFS in Season 2, and 2.565 CFS, being 1.828 CFS under the 1900 priority date and 0.737 CFS under the 1907 priority date, in Season 3.
4. 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 #41. Modification of this supplemental water right reduces by 83.1 acres the number of acres to which stored water may be applied for supplemental irrigation under the right.
5. Certificate 77591 is cancelled.

6. 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	Volume Instream
Reach: POD #1 (Central Oregon Canal) to POD #11 (North Canal Dam)				
76358	October 31, 1900 & December 2, 1907	April 1 to May 1 and October 1 through October 26	0.146 CFS under the 1900 priority date	116.10 AF
		May 1 to May 15 and September 15 to October 1	0.195 CFS under the 1900 priority date	
		May 15 to September 15	0.362 CFS, being 0.258 CFS under the 1900 priority date and 0.104 CFS under the 1907 priority date	

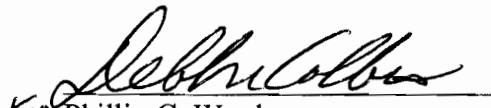
Reach: POD #11 to Lake Billy Chinook				
76358	October 31, 1900 & December 2, 1907	April 1 to May 1 and October 1 through October 26	0.571 CFS under the 1900 priority date	452.94 AF
		May 1 to May 15 and September 15 to October 1	0.762 CFS under the 1900 priority date	
		May 15 to September 15	1.41 CFS, being 1.005 CFS under the 1900 priority date and 0.405 CFS under the 1907 priority date	

7. 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.
8. The former place of use shall no longer be irrigated as part of certificates 76358, 76714, and 77591.
9. **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 Certificate 81324 resulted in completion of the project and verification by the Department that the project is complete. Therefore, mitigation credits, in the amount of 149.6 credits were awarded to this mitigation project as part of Certificate 81324 and

assigned to Creative Water Solutions, LLC and 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 River and/or General Zone of Impact**.

10. 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.
11. 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 8th day of August, 2007.


Phillip C. Ward
Director

Mailing date: AUG 14 2007