

**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 Deschutes |) | ALLOCATION OF |
| Resources Conservancy on behalf of the Lost |) | CONSERVED WATER |
| and Boulder Ditch Improvement District, for |) | |
| Certificate 80559, Wasco County, Oregon |) | |

Application History

On November 7, 2003, the Deschutes Resources Conservancy (DRC) on behalf of the Lost and Boulder Ditch Improvement District filed an application for the allocation of conserved water under water right certificate 34533. The Department assigned this conserved water application number C-35. On December 2, 2003, the DRC modified the application via e-mail. On July 29, 2004, the DRC rescinded the modification. On October 19, 2004, the DRC modified the total quantity of water conserved from 98.5 acre-feet to 170 acre-feet.

The conservation project, located in Wasco County, was completed in November 2002. The project consists of piping a portion of the open ditch distribution system. The application proposes to allocate 100 percent of the conserved water to the state for instream use.

On December 16, 2003 and February 10, 2004, the Department published notice inviting public comments on the application. On February 9, 16, and 23, 2004, The Dalles Chronicle published notice inviting public comments on the application. No comments were received.

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.

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.

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.

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 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. The applicant undertook a conservation project that piped approximately 2,250 feet of the existing open ditch distribution system.
2. The applicant proposed the following allocation of conserved water:

| Certificate | Priority Date | Time Period | Before Project | After Project | Conserved Water |
|-------------|-------------------|---------------------|----------------|---------------|-----------------|
| 34533 | 1911 (Tract 2) | April 1 – June 30 | 16.08 cfs | 15.68 cfs | 0.40 cfs |
| | | July 1 – October 31 | 7.84 cfs | 7.44 cfs | 0.40 cfs |
| | | April 1- October 31 | 1881.8 AF | 1711.8 AF | 170.0 AF |

Subsequent to the submittal of the application Certificate 34533 was cancelled. Certificate 80559 was issued to confirm that portion of the water rights not modified by the January 15, 2004 order approving Transfer Application 7765.

3. The proposed allocation of conserved water will result in reduced diversions for the uses allowed under the original rights. The reduced amounts and the quantity conserved are:

| Certificate | Priority Date | Time Period | Before Project | After Project | Conserved Water |
|-------------|-------------------|---------------------|----------------|---------------|-----------------|
| 80559 | 1911 (Tract 2) | April 1 – June 30 | 13.51 cfs | 13.11 cfs | 0.40 cfs |
| | | July 1 – October 31 | 6.75 cfs | 6.35 cfs | 0.40 cfs |
| | | April 1- October 31 | 1621.0 AF | 1451.0 AF | 170.0 AF |

4. The applicants have obtained the required land use approvals.
5. 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.
6. In consultation with the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation, the Department has determined that conserved water is needed to support instream uses.
7. There is an existing instream water rights on Boulder Creek, Certificate 73247, with a December 3, 1991 priority date.

8. 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 applicant requests that 100 percent of the allocation of conserved water go to the state.
9. The state's portion of the conserved water shall be allocated in the following manner:

| Certificate | Priority Date | Time Period | Rate & Volume Limitation | Instream Reach |
|-------------|---------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 80559 | 1911 | April 1 – October 31 | 0.4 cfs 170.0 AF | Boulder Creek POD (2010 Feet North and 180 Feet West from the SE Corner of Section 27, being within the NE ¼ SE ¼ Section 27, T 4 S, R 10 E; also described as Latitude N 45.19180 degrees, Longitude W 121.52433 degrees) to mouth of Boulder Cr |

10. Under ORS 537.485 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 of the existing rights.
11. The applicant has completed the conservation project and has not requested additional time to finalize the allocation under OAR 690-018-0050(3)(i).
12. 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 reduced diversion for the uses allowed under the original water rights.
- 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 new rate and season duty for the existing water right shall be:

| Certificate | Priority Date | Time Period | After Project Rate and Duty |
|-------------------|---------------|---------------------|-----------------------------|
| 80559, Tract 2 | 1911 | April 1 – June 30 | 13.11 cfs |
| | | July 1 – October 31 | 6.35 cfs |
| | | April 1- Oct 31 | 1451.0AF |

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, in the following manner:

| Certificate | Priority Date | Time Period | Rate & Volume Limitation | Instream Reach |
|-------------|---------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 80559 | 1911 | April 1 – October 31 | 0.4 cfs 170.0 AF | Boulder Creek POD (2010 Feet North and 180 Feet West from the SE Corner of Section 27, being within the NE ¼ SE ¼ Section 27, T 4 S, R 10 E; also described as Latitude N 45.19180 degrees, Longitude W 121.52433 degrees) to mouth of Boulder Cr |

H. The applicant has completed the conservation project and has requested finalization of the allocation of the conserved water.

I. 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-35 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.

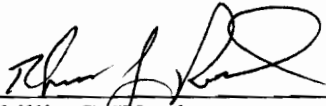
Now, therefore, it is ORDERED:

1. Certificate 80559 is cancelled. A new superceding certificate shall be issued for irrigation of 540.35 acres for Tract 2 lands. The priority date shall be 1911. Tract 2 shall be limited to a diversion of not to exceed one acre foot per acre during any 30 day period up to July 1st of each year and not to exceed 3 acre feet per acre during any irrigation season, provided that the rate of flow shall not exceed one-fortieth of a second foot per acre up to July 1st of each year and thereafter not to exceed one-eightieth of a second foot per acre, except in case of rotation. The maximum rate for Tract 2 lands up to July 1st shall be 13.11 cfs; and thereafter 6.35 cfs, with a maximum duty not to exceed 1451.0 acre feet. All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new instream water right certificate shall be issued to 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 | Time Period | Rate & Volume Limitation | Instream Reach |
|---------------|----------------------|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1911 | April 1 – October 31 | 0.4 cfs 170.0 AF | Boulder Creek POD (2010 Feet North and 180 Feet West from the SE Corner of Section 27, being within the NE ¼ SE ¼ Section 27, T 4 S, R 10 E; also described as Latitude N 45.19180 degrees, Longitude W 121.52433 degrees) to mouth of Boulder Cr |

Dated at Salem, Oregon this 31st day of JANUARY 2005.


 Phillip C. Ward
 Director

Mailing date: FEB 0 1 2005