

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

In the Matter of Allocation of Conserved     ) FINAL ORDER ON FINALIZATION OF  
Water Application CW-102,                     ) ALLOCATION OF CONSERVED WATER  
Deschutes and Jefferson Counties         ) CW-102

**Applicant:**

North Unit Irrigation District  
2024 NW Beech Street  
Madras, OR 97741

**Applicable Law**

Any person or group of persons holding a water use subject to transfer as defined in ORS 540.505 may submit an application for an Allocation of Conserved Water to the Water Resources Commission for a conservation project that has not yet been implemented or was implemented within five years prior to the submission of the application. ORS 537.465. 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, put to a different use, or be leased or sold to another user. OAR 690-018-0010.

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. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the proposed measures; (b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities; (c) The amount of water that will be needed for the original, authorized use after implementation of the conservation measures; (d) The amount of conserved water expected from implementation of the conservation measures; (e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470; (f) The intended use of any water allocated to the applicant; (g) The applicant's choice of priority date for the conserved water; and (h) Any other information the commission considers necessary to evaluate the effectiveness of the proposal. ORS 537.465.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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 a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. ORS 537.465.

If an application for the allocation of conserved water is approved, the Department shall issue orders describing the changes in the original water rights. Once the conservation project is finalized, the Department shall issue new certificates preserving the previously established-priority date of the rights to reflect the unaffected portion of the water rights. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 18, implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

### **Findings of Fact**

1. On February 12, 2018, North Unit Irrigation District (NUID) filed an Allocation of Conserved Water Application. The Department designated the application number CW-102.
2. On November 12, 2013, NUID adopted an Allocation of Conserved Water Policy that conforms to the requirements of OAR 690-018-0025.
3. The conservation project involved lining approximately 2.2 miles of NUID's 58-11 irrigation lateral and improving the overall efficiency of the delivery system. The lining of the canal conserved approximately 137 acre-feet (AF) of Crooked River water and 610 AF of Deschutes River water.
4. Canal piping or lining are proven measures for conserving water.
5. An Order of Approval on Completion of Allocation of Conserved Water CW-102 (Approval Order) was issued on January 19, 2021. The order is recorded at Special Order Volume 118, Pages 365-386.
6. A Memorandum of Agreement to Perpetually Lease Water to Instream Use (Lease Agreement) was executed by NUID and OWRD on January 29, 2021. The Lease Agreement was recorded as part of the Order of Approval in Pages 383-386 of Special Order Volume 118.

7. The Approval Order established the quantities of water conserved and allocated as follows:

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
95488	66%	0.21	90.42	34%	0.11	46.58	100%	0.32	137.00
72279	66%	1.35	402.60	34%	0.69	207.40	100%	2.04	610.00

8. The Approval Order established the reduced rates for the existing uses as follows:

Source	Originating Certificate	Acres Equivalent	Rate (CFS)	Volume (AF)
Crooked River	95488	4,410.80	102.35*	17,352.53
Deschutes River	72279	49,916.00	1078.76**	252,866.14

\* Maximum combined diversion rate for all rights perfected under Permit S33954 is 103.22 cfs.

\*\* Maximum combined diversion rate for all rights perfected under Permit S-23196 is 1098.11 cfs.

9. The Approval Order established the priority date for any conserved water to be originating priority dates plus one minute.
10. The Approval Order established 66% of the conserved water was dedicated to the state for an instream water right.
11. The Approval Order established the areas within which the Applicant's portion of conserved water was to be used for out-of-stream uses as follows:

Township 9 South	Ranges 13 and 14 East, W.M.
Township 10 South	Ranges 13 and 14 East, W.M.
Township 11 South	Ranges 12, 13, and 14 East, W.M.
Township 12 South	Ranges 12, 13, and 14 East, W.M.
Township 13 South	Ranges 12, 13, and 14 East, W.M.

12. The Approval Order established the deadline for filing a Request for Finalization of March 31, 2021.
13. On March 25, 2021, the Department issued a Determination and Final Order on Proposed Instream Lease (IL-1837).
14. On March 26, 2021, the NUID electronically submitted a Request for Finalization.

### Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order of Approval on Completion of Allocation of Conserved Water CW-102, recorded at Special Order Volume 118, Pages 365-386, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-102, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

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

1. The project is complete, and no additional time is needed for finalization.
2. Water Right Certificates 95488 and 72279 are modified. The reduced rates and volume for the existing uses are as follows:

Source	Originating Certificate	Acres Equivalent	Rate (CFS)	Volume (AF)
Deschutes River	72279	49,916.00	1078.76*	252,866.14
Crooked River	95488	4,410.80	102.35**	17,352.53

\* Maximum combined diversion rate for all rights perfected under Permit S-23196 is 1098.11 cfs.

\*\*Maximum combined diversion rate for all rights perfected under Permit S-33954 is 117.99 cfs.

3. The right to the use of water is restricted to beneficial use at the places of use described in Certificates 95488 and 72279 and is subject to all other conditions and limitations contained in Certificates 95488, 72279, and any related decrees.
4. The quantities of water conserved and allocated to the State are as follows:

Source	Originating Certificate	Maximum Rate	Maximum Duty (Volume)
Crooked River	95488	0.21 cfs	90.42 AF
Deschutes River	72279	1.35 cfs	402.60 AF

5. The quantities of water conserved and allocated to the Applicant are as follows:

Source	Originating Certificate	Maximum Rate	Maximum Duty (Volume)
Crooked River	95488	0.11 cfs	46.58 AF
Deschutes River	72279	0.69 cfs	207.40 AF

6. The areas within which the conserved water may be used for out-of-stream uses are within boundaries of North Unit Irrigation District being within the following:

Township 9 South	Ranges 13 and 14 East, W.M.
Township 10 South	Ranges 13 and 14 East, W.M.
Township 11 South	Ranges 12, 13, and 14 East, W.M.
Township 12 South	Ranges 12, 13, and 14 East, W.M.
Township 13 South	Ranges 12, 13, and 14 East, W.M.

6. An instream water right certificate for the state's portion of conserved water shall be issued for the Crooked River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement from the authorized point of diversion at approximately River Mile 27.6:

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

From the authorized point of diversion for Certificate 95488 at approximately River Mile 27.6:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

To the mouth of Crooked River at River Mile 0.0 and shall be measured at OWRD Gauging Station #14087300.

Priority Date	Instream Period	Instream Rate	Instream Volume
9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.21	90.42

This instream right created shall replace a portion of any 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.

- The Applicant’s portion of conserved water from the Crooked River shall be used and managed instream to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090. The water shall be managed instream from the authorized point of diversion at approximately River Mile 27.6 as follows:

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

From the authorized point of diversion for Certificate 95488 at approximately River Mile 27.6:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

To the mouth of Crooked River at River Mile 0.0 and shall be measured at OWRD Gauging Station #14087300.

Priority Date	Instream Period	Instream Rate	Instream Volume
9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.11	46.58

- An instream right shall be issued for the Deschutes River for the State’s portion of conserved water from natural flow to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement as follows:

**Deschutes River (natural flow):**

**Reach 1:** From the authorized point of diversion for Certificate 72279 at approximately River Mile 164.9:

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
17 S	12 E	WM	29	SE NE	1700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29

Originating Certificate	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
72279	2/28/1913, plus one minute	May 15 to October 11	0.34	100.65

To Lake Billy Chinook at approximately River Mile 120.0.

This instream right created shall replace a portion of any 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.

9. The Applicant's portion of the natural flow component of conserved water from the Deschutes River shall be used and managed instream to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090. The water shall be managed instream as follows:

**Source: Deschutes River (natural flow),** tributary to the Columbia River

From the authorized point of diversion for Certificate 72279 at approximately River Mile 164.9:

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
17 S	12 E	WM	29	SE NE	1700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29

To Lake Billy Chinook at approximately River Mile 120.0.

Originating Certificate	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
72279	2/28/1913, plus one minute	May 15 to October 11	0.17	51.85

10. Until such time as the statutes and rules are updated regarding reservoir storage rights, NUID shall lease a like quantity of the State's portion of conserved water from Wickiup Reservoir. The lease (IL-1837) shall provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement. The lease shall be from Certificate 51229 as follows:

**Source: Wickiup Reservoir** located in the SWNE of Section 7, Township 22 South, Range 9 East, W.M. at approximately River Mile 227.0:

Originating Certificate	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
72279	2/28/1913, plus one minute	November 2 through March 31	1.01	301.95

To Lake Billy Chinook at approximately River Mile 120.0.

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
17 S	12 E	WM	29	SE NE	1700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29

Until such time as the statutes and rules are updated regarding reservoir storage rights, an equivalent quantity to the Applicant's portion from the storage component shall be leased instream by NUID (IL-1837) under Certificate 51229 until a Notice of Use and Disposition form is submitted as required by OAR 690-0018-0062(3)(b). NUID will obtain the necessary contract with the BOR, if any, for the release of stored water from Certificate 51229 as follows:

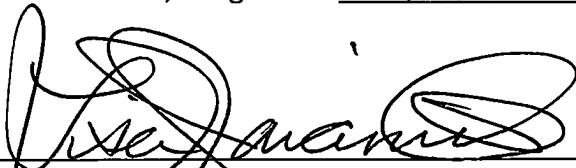
**Source:** Wickiup Reservoir located in the SWNE of Section 7, Township 22 South, Range 9 East, W.M. at approximately River Mile 227.0.

Originating Certificate	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
72279	2/28/1913, <i>plus one minute</i>	November 2 through March 31	0.52	155.55

To Lake Billy Chinook at approximately River Mile 120.0.

11. Within the specified stream reaches, the amount of water to which these rights are entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on the best available data and the use of water by senior appropriators will determine the amount of water to which these rights are entitled downstream from the original points of diversion within the specified stream reaches.
12. On March 25, 2021, the Department issued a Determination and Final Order on Proposed Instream Lease (IL-1837), which is recorded at Special Order Volume 118, Pages 697-700. Instream Lease (IL-1837) satisfies the requirements of #10 above.

Dated at Salem, Oregon this APR 15 2021.



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 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
 THOMAS M. BYLER, DIRECTOR  
 Oregon Water Resources Department

Mailing Date: APR 16 2021