

**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 Oregon Water ) ALLOCATION OF  
Trust, on behalf of Kathleen Deggendorfer ) CONSERVED WATER, and  
Trust and Gertrude Boyle, Certificate 74135, ) CORRECTING ORDER FOR  
Deschutes County, Oregon ) TRANSFER 8743

**Application History**

On December 1, 2004, the Oregon Water Trust on behalf of Kathleen Deggendorfer Trust and Gertrude Boyle filed an application for the allocation of conserved water for certificate 74135. The Department assigned this conserved water application number C-30.

The conservation project is located in Deschutes County. The project was completed in December 2004. The project proposes to allocate 100 percent of the conserved water to the state for instream use. The project consists of moving the point of diversion downstream (previously approved under Transfer 8743), pumping directly from Squaw Creek instead of using the Thompson Ditch, and changing water application methods from flood irrigation to sprinkler

On December 14, 2004, the Department published notice inviting public comments on the application. On December 14, 21, and 28, 2004, The Bulletin 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.

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

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.

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 within Three Sisters Irrigation District (TSID) that moved the point of diversion downstream (previously approved under Transfer 8743) to pump directly from Squaw Creek, eliminating the use of Thompson Ditch, and changed the method of irrigation from flood to sprinkler. Due to this transfer, the lands involved in the allocation of conserved water are no longer served by TSID.
2. The applicant proposed the following allocation of conserved water for the water right described in Special Order Volume 55, Page 1338, approving transfer T-8743 for a change in point of diversion on the original certificate 74135:

Water Right	Priority Date	Before Project Rate (cfs)	After Project (cfs)	Conserved Water (cfs)
Special Order Vol. 55, Page 1338	1885	1.04	0.76	0.28
	1900	1.08	0.75	0.33

3. Certificate 74135 was cancelled by the order approving Transfer 8743. This allocation of conserved water modifies the allowable rate of diversion for the inchoate right.
4. There are two scrivener’s errors in Special Order Volume 55, page 1338 approving Transfer 8743. First, on page 1338, the last paragraph misidentified the full rate and should have identified that the amount of water that this right is entitled to is “**2.12 CUBIC FEET PER SECOND, BEING 1.04 CFS FOR 1885 PRIORITY DATE AND 1.08 CFS FOR 1900 PRIORITY DATE.**” Second, on page 1341, the sixth paragraph misidentified the certificate number and should have identified that “Except as modified herein, all other conditions and restrictions of Certificate **74135** remain in effect.”
5. The proposed allocation of conserved water will result in reduced diversions for the uses allowed under the right described in Special Order Volume 55, Page 1338. The reduced amounts are:

Water Right	Priority Date	Before Project Rate (cfs)	After Project (cfs)	Conserved Water (cfs)
Special Order Vol. 55, Page 1338	1885	1.04	0.76	0.28
	1900	1.08	0.75	0.33

6. The applicants have obtained the required land use approvals.
7. 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. Any return flows from this property would not be available to other water right holders in Squaw Creek, since the return flows enter the Deschutes River,

Crooked River, or the very lower end of Squaw Creek, where no water rights would be harmed.

8. 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.
9. There are existing instream water rights on Squaw Creek, established pursuant to ORS 537.341 and 537.348.
10. 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.
11. Under ORS 537.485 the priority date 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 date of the water right held by the person implementing the conservation measures. The applicant has requested that the conserved water be assigned a priority date one minute after the original right.
12. The state's portion of the conserved water shall be allocated in the following manner:

Water Right	Priority Date	Time Period	Rate Limitation (cfs)	Instream Reach
Special Order Vol. 55, Page 1338	1885 + one minute	April 1 through October 31	0.28	POD (998 FEET NORTH & 1211 FEET EAST FROM SW CORNER, SECTION 21) being within the SW ¼ SW ¼ Section 21, T 15 S, R 10 E, W.M) to the mouth of Squaw Cr
	1900 + one minute		0.33	

13. The applicant has completed the conservation project and has not requested additional time to finalize the allocation under OAR 690-018-0050(3)(i).
14. 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 right.
- 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 for the lands associated with the existing water right shall be:

Water Right	Priority Date	After Project (cfs)	Rate Per Acre (cfs)
Special Order Vol. 55, Page 1338	1885	0.76	1/68.4
	1900	0.75	1/72

This rate shall apply to the following lands approved under Transfer 8743:

Twp	Rng	Mer	Sec	Q-Q	GLot	1885 Acres	1900 Acres
15 S	10 E	WM	2	NE NE	1	24.8	10.7
15 S	10 E	WM	2	NW NE	2		30.5
15 S	10 E	WM	2	SW NE			2.8
15 S	10 E	WM	2	SE NE		27.2	3.2
15 S	10 E	WM	2	NE NW	3		0.3
15 S	10 E	WM	2	NW NW	4		5.3
15 S	10 E	WM	2	NE SE			1.2

- 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:

Water Right	Priority Date	Time Period	Rate Limitation (cfs)	Instream Reach
Special Order Vol. 55, Page 1338	1885 + one minute	April 1 through October 31	0.28	POD (998 FEET NORTH & 1211 FEET EAST FROM SW CORNER, SECTION 21) being within the SW ¼ SW ¼ Section 21, T 15 S, R 10 E, W.M) to the mouth of Squaw Cr
	1900 + one minute		0.33	

- 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-30 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. The authorized rate of diversion for the water right described in Special Order Volume 55, Page 1338, shall be reduced and on final proof the issuance of a confirming certificate shall not exceed the following:


Priority Date	Maximum Rate (cfs)	Rate Per Acre (cfs)	Maximum Acres
1885	0.76	1/68.4	52
1900	0.75	1/72	54
<b>Total</b>	<b>1.51</b>		<b>106</b>

The scrivener's errors described in Finding of Fact 4 shall be corrected. All other conditions and limitations of the water right use approved under Transfer 8743 shall be included in any confirming right certificate issued under Transfer 8743.

2. A new instream water right certificate, Certificate 81674, 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 Limitation (cfs)	Instream Reach
1885 + one minute	April 1 through	0.28	POD (998 FEET NORTH & 1211 FEET EAST FROM SW CORNER, SECTION 21) being within the SW ¼ SW ¼ Section 21, T 15 S, R 10 E, W.M) to the mouth of Squaw Cr
1900 + one minute	October 31	0.33	

Dated at Salem, Oregon this 4<sup>th</sup> day of October 2005.

  
 Phillip C. Ward  
 Director

Date of Mailing: OCT 07 2005