

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

In the Matter of Allocation of Conserved)
Water Application CW-102,)
Deschutes and Jefferson Counties)

FINAL ORDER OF APPROVAL ON
COMPLETION OF ALLOCATION OF
CONSERVED WATER 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. 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. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the measure as implemented and the date on which the measure was implemented; (b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented; (c) The amount of water needed to supply existing rights after implementation of the conservation measure; (d) The amount of water conserved by implementing the conservation measure; (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 and the proposed location of use; (g) The applicant's choice of priority date for the conserved water; (h) Evidence that the measure was implemented within five years prior to the date of filing the application; and (i) Any other information the commission considers necessary to evaluate the application. ORS 537.465.

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

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.

25-percent of the funds used to finance the conservation measures comes from federal or state sources not subject to repayment. ORS 537.470(3).

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. The Applicant requests an Allocation of Conserved Water under Certificates 72279 and 90177 issued in the name of North Unit Irrigation District.
3. The Applicant proposed to conserve approximately 137 acre-feet (AF) of Crooked River water and 610 AF of Deschutes River water by lining approximately 2.2 miles of NUID's 58-11 irrigation lateral, and improving the overall efficiency of the delivery system.

Canal lining and improving the overall efficiency of a delivery system are both proven water conservation techniques.

4. On November 12, 2013, NUID adopted an Allocation of Conserved Water Policy that conforms to the requirements of OAR 690-018-0025.
5. Allocation of Conserved Water application CW-115 will be finalized prior to the finalization of CW-102. Therefore, the respective acres, rate, and volume starting points have been adjusted to incorporate the modifications described in CW-115.
6. Certificate 90177 was superseded by Certificate 95488 on December 16, 2020, which incorporated the changes from CW-115.
7. The portion of the first right to be modified is as follows:
Certificate: 95488 in the name of NORTH UNIT IRRIGATION DISTRICT (perfected under Permit S-33954)
Use: IRRIGATION of 218.2 ACRES
Priority Date: SEPTEMBER 18, 1968
Rate: 5.07 CUBIC FEET PER SECOND, together with all other rights perfected under Permit S-33954 shall not exceed 118.31 cfs.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent), and 3.97 acre-feet for each acre irrigated during the irrigation season of each year. This right is further subject to the terms and conditions of: 1) a stipulation between the North Unit Irrigation District and the Oregon State Game Commission, recorded in Miscellaneous Records of the Water Resources Department at Volume 4, Page 2028; 2) the Interoffice Memo regarding North Unit Irrigation District Water Accounting dated July 12, 1996, recorded in Miscellaneous Records of the Water Resources Department at Volume 9, Pages 225-226, as modified by the Crooked River Minimum Flow Agreement; and 3) the agreement between North Unit Irrigation District and the Deschutes River Conservancy referred to as the Crooked River Minimum Flow Agreement, recorded in the Miscellaneous Records of the Water Resources Department at Volume 9, Pages 218-224.

Source: CROOKED RIVER, tributary of the DESCHUTES RIVER

Authorized Point of Diversion (POD):

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

Authorized Place of Use served by a portion of the 58-11 Lateral:

Twp	Rng	Sec	¼ ¼	Acres
9 S	14 E	32	NE NE	6.3
9 S	14 E	32	SW NE	33.5
9 S	14 E	32	NE SE	7.3
9 S	14 E	32	NE SE	27.0
9 S	14 E	32	NW SE	21.8
9 S	14 E	32	SW SE	18.2
9 S	14 E	33	NW NE	1.9
9 S	14 E	33	SW NE	23.3
9 S	14 E	33	SE NW	9.2
9 S	14 E	33	SE NW	0.6
9 S	14 E	33	NE SW	6.4
9 S	14 E	33	NW SW	12.9
9 S	14 E	33	NW SE	9.0
10 S	14 E	5	SW NE	1.8
10 S	14 E	6	NE NE	4.8
10 S	14 E	6	NW NE	10.0
10 S	14 E	6	SW NE	15.9
10 S	14 E	6	SE NE	6.5
10 S	14 E	8	NE NE	1.8
Total				218.2

8. The portion of the second right to be modified is as follows:

Certificate: 72279 in the name of NORTH UNIT IRRIGATION DISTRICT (perfected under Permit S-23196)
Use: IRRIGATION of 967.5 ACRES
Priority Date: FEBRUARY 28, 1913
Rate: 20.95 CUBIC FEET PER SECOND, together with all other rights perfected under Permit S-23196 shall not exceed 1101.0 cfs, measured at the points of diversion from the sources.
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.25 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further subject to the terms and conditions of the State Engineer's Orders dated January 20, 1955 and February 4, 1955.
Sources: DESCHUTES RIVER, WICKIUP RESERVOIR (constructed under Permit R-1677), and HAYSTACK RESERVOIR (constructed under Permit R-1754), tributaries of the COLUMBIA RIVER

Authorized Points of Diversion (PODs):

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
12 S	13 E	WM	27	SW NE	HAYSTACK RESERVOIR
17 S	12 E	WM	29	SE NE	DESCHUTES RIVER: 1700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29
22 S	9 E	WM	7	SW NE	WICKIUP RESERVOIR

Authorized Place of Use served by a portion of the 58-11 Lateral:

Twp	Rng	Sec	Q-Q	Acres
9 S	14 E	32	SE NE	36.4
9 S	14 E	32	NE SE	1.6
9 S	14 E	32	NE SE	3.0
9 S	14 E	32	SE SE	36.9
9 S	14 E	32	SW SE	19.2
9 S	14 E	33	NW NW	28.4
9 S	14 E	33	SW NW	39.1
9 S	14 E	33	NW SW	3.5
9 S	14 E	33	SW SW	8.1
10 S	14 E	4	NW SW	7.6
10 S	14 E	4	SW SW	29.1
10 S	14 E	5	NE NE	32.2
10 S	14 E	5	NW NE	35.9
10 S	14 E	5	SW NE	32.8
10 S	14 E	5	SE NE	38.5
10 S	14 E	5	NE NW	38.4
10 S	14 E	5	NW NW	37.1
10 S	14 E	5	SW NW	38.2
10 S	14 E	5	SE NW	34.2
10 S	14 E	5	NE SW	12.6
10 S	14 E	5	SE SW	30.0

Twp	Rng	Sec	Q-Q	Acres
10 S	14 E	5	NE SE	7.1
10 S	14 E	5	NW SE	38.5
10 S	14 E	5	SW SE	39.9
10 S	14 E	5	SE SE	28.2
10 S	14 E	6	NE NE	29.1
10 S	14 E	6	NW NE	6.7
10 S	14 E	6	SW NE	6.4
10 S	14 E	6	SE NE	28.1
10 S	14 E	8	NE NE	35.2
10 S	14 E	8	NW NE	39.4
10 S	14 E	8	SW NE	37.0
10 S	14 E	8	SE NE	33.8
10 S	14 E	8	NE NW	30.0
10 S	14 E	8	NE SE	27.2
10 S	14 E	9	NW NW	38.1
Total				967.5

9. Water right Certificate 72279 has been modified by multiple transactions that have reduced the rate and duty of the right. On February 4, 2004, the Department issued a Final Order Approving Allocation of Conserved Water Application CW-24, recorded at Special Order Volume 59, Pages 184-194. On September 24, 2013, the Department issued a Final Order of Approval on Completion and Finalization of Allocation of Conserved Water CW-75, recorded at Special Order Volume 91, Pages 331-359.

72279 Transaction	Conserved Water Rate (CFS)	Conserved Water Volume (AF)	Certificate Rate (CFS)	Certificate Volume (AF)
Starting Point			1,101.00	262,059.00
CW-24	1.70	724.00	1,099.30	261,335.00
CW-75	18.50	7,858.86	1,080.80	253,476.14

10. Deschutes River water right Certificate 72279 is limited to a diversion of 1101.00 cfs. The quantity of water available for diversion under Certificate 72279 must be reduced to account for the conservation under CW-24 and CW-75. The new starting diversion rate for Certificate 72279 will be 1080.8 cfs.
11. Deschutes River Water Right Certificate 72279 and all other rights perfected under Permit S-23196 are limited to a combined maximum diversion of 1101.00 cfs. To avoid enlargement, the maximum quantity of water available for diversion under Water Right Certificate 72279 and any other rights perfected under Permit S-23196 must be reduced to account for the conservation under CW-24 and CW-75. The new maximum combined rate of diversion for all rights perfected under Permit S-23196 starting point will be 1,100.15 cfs.
12. Based on Findings of Fact #5 through #11, the starting points and the rates associated with Allocation of Conserved Water Application CW-102 are as follows:

Source	Certificate	Priority Date	Acres Equivalent	Max Rate (CFS)	Max Volume (AF)
Crooked	95488	9/18/1968	4,410.80	102.67*	17,489.53
Deschutes	72279	2/28/1913	49,916.00	1,080.80**	253,476.14

* Maximum combined diversion rate for all rights perfected under Permit S-33954 is 103.54 CFS.

** Maximum combined diversion rate for all rights perfected under Permit S-23196 is 1,100.15 CFS.

13. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificates 72279 and 95488 not listed above will cause a corresponding change to the rate, duty, and total number of acres served by these rights.
14. Certificate 72279 does not list a period of use; therefore, pursuant to the Deschutes River Decree, the irrigation season of use is April 1 to November 1.
15. Certificate 95488 does not list a period of use; therefore, pursuant to the Crooked River Decree, the irrigation season of use is February 1 to December 1.
16. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. Diversion structures, canals and ditches sufficient to deliver the full quantity of water allowed under the existing rights were present within the five-year period prior to submission of Allocation of Conserved Water application CW-102.
18. The Applicant has the capacity to divert the full quantity of water available under the subject rights.
19. The canal lining will eliminate seepage loss and result in the following quantities of conserved water:

Certificate	Acres Equivalent	Before Project		After Project		Conserved Water	
		Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)
95488	4,410.80	102.67	17,489.53	102.35*	17,352.53	0.32	137.00
72279	49,916.00	1080.80	253,476.14	1078.76**	252,866.14	2.04	610.00

* Post-project, the maximum combined diversion rate for all water rights perfected under Permit S-33954 is 103.22 CFS.

** Post-project, the maximum combined diversion rate for all water rights perfected under Permit S-23196 is 1,098.11 CFS.

20. The Applicant received approximately 66% of the project costs in the form of federal and state non-reimbursable funds. Pursuant to OAR 690-018-0012(1), the Applicant requests that 66% of the conserved water be dedicated to the state as a new instream water right.

21. The Applicant requested the conserved water be 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

22. On December 19, 2019, the Applicant proposed that its portion of the conserved water be reserved instream for future out-of-stream use within the boundaries of North Unit Irrigation District 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.

23. Pursuant ORS 537.485, the Applicant requests that the priority dates of the conserved water be one minute junior to the originating rights.
24. The Applicant submitted a completed Land Use Form from Jefferson County that indicated the proposed use was allowed outright or is not regulated by Jefferson County's comprehensive plan.
25. On February 5, 2018, the Applicant provided notice of the proposed conservation project to the Land Use and Planning Departments of Deschutes and Jefferson Counties, the Cities of Bend and Madras, and the Confederated Tribes of the Warm Springs Reservation, as required by OAR 690-018-0040(22).
26. The construction of the conservation measures began no earlier than 2011. The conservation measures were implemented in March 2016.
27. The Applicant proposed that any instream water rights created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values, and pollution abatement.
28. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 72279 from the authorized point of diversion at Wickiup Reservoir to Lake Billy Chinook.
29. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 95488 from the authorized point of diversion on the Crooked River to Lake Billy Chinook.
30. On February 14, 2018, the District 11 Watermaster reviewed Allocation of Conserved Water Application CW-102 and determined that the conservation project would result in conserved water, which could be allocated without harm to other rights.

However, based on previous evaluations and reviews, consumptive use of the seepage water conserved could result in a potential reduction to wintertime flows in the Lower Deschutes River.

- a. The proposed allocation of conserved water 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 downstream return flows do not re-enter the Deschutes River above Lake Billy Chinook.
 - b. Out-of-stream rights in the Lower Deschutes (below Lake Billy Chinook) are not harmed since there is always sufficient flow for these rights. Instream flows in the Lower Deschutes are not harmed because the project will not result in any increase to consumptive use of water.
 - c. Some of the water which was previously diverted, and which will no longer be diverted, could have returned to the Lower Deschutes River outside of the irrigation season and could have slightly increased wintertime flows in the Lower Deschutes River. However, the diversion of water is not required and, therefore, the return flows are not required.
 - d. The new instream right created by this project will enhance streamflows in Lower Crooked River. Increasing mid- to late-summer flows in the Crooked River will increase water quality in the Lower Crooked River and in the Lower Deschutes system. The increased water quality in the Deschutes River system as a whole will more than offset any potential reduction in attenuated return flows in the Lower Deschutes River.
31. On March 5, 2018, the Applicant submitted a Notice of Completion indicating the project was complete. The Applicant will submit a Request for Finalization on or before finalization of the allocation on or before March 31, 2021.
 32. The application meets the requirements of OAR 690-018-0040.
 33. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (DEQ) to ascertain whether the proposed instream flows are necessary to support instream flow uses. The DEQ has determined both the Deschutes and Crooked Rivers are water quality limited for flow-related parameters during the proposed season of flow protection. The ODFW has determined the instream water rights from Wickiup Reservoir to Lake Billy Chinook are partially unfulfilled during November through February. The ODFW also concluded that shifts in climate may also increase the need for flow protections in the Deschutes. The ODFW has identified the Crooked River above Lake Billy Chinook as a high priority for streamflow restoration. Therefore, ODFW has concluded the water allocated to the state is necessary to support instream flow purposes.
 34. Certificate 95488 is subject to the Interoffice Memo regarding North Unit Irrigation District Water Accounting (Accounting Agreement) dated July 12, 1996, recorded in Miscellaneous Records of the Water Resources Department at Volume 9, Pages 225-226, as modified by the Crooked River Minimum Flow Agreement. This conserved water

project does not modify the terms of the Accounting Agreement, as no acreages are being modified. Accordingly, the Accounting Agreement is only modified by CW-75, CW-81, CW-115, and the Crooked River Minimum Flow Agreement.

35. Notice of the proposed conservation project was published in the Department's weekly notice on March 13, 2018, and in *The Bulletin* newspaper on March 8 and 15, 2018, as required under OAR 690-018-0050. There were no commenters to the public notice required under OAR 690-018-0050(3).
36. On June 4, 2020, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-102, as mailed a copy to the Applicant and Applicant's attorney on June 5, 2020. On October 5, 2020, the Department issued an Amended Preliminary Determination and mailed a copy to the Applicant and the Applicant's attorney on October 6, 2020. No protests were filed within 60 days from the date of mailing the Preliminary Determinations. OAR 690-018-0050(5) and (6).

Allocation of Conserved Water Review Criteria [OAR 690-018-0050]

37. Allocation of Conserved Water Application CW-102 contains all the information required by OAR 690-018-0040.
38. As established in Finding of Fact #19, the proposed Allocation of Conserved Water project will result in a reduced diversion for the uses allowed under the original rights. OAR 690-018-0050(4)(a).
39. Consistent with Finding of Fact #30 the proposed Allocation of Conserved Water will not harm existing water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the effects on other water rights. OAR 690-018-0050(4)(b) and (d).
40. As established in Findings of Fact #24 and #25, CW-102 is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans). OAR 690-018-0050(4)(c).
41. Because the conserved water was developed from delivery system efficiencies, the rate and volume for Certificates 72279 and 95488 must be modified. The new reduced rates and volumes are 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.

(Finding of Fact #19). OAR 690-018-0050(4)(e).

42. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is 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

(Finding of Fact #21).

43. In consultation with ODFW and DEQ, the Department has determined that the conserved water is needed to support instream uses in both the Crooked and Deschutes Rivers. (Finding of Fact #33), OAR 690-018-0050(4)(f).
44. The combination of instream rights for the proposed reaches on the Deschutes and Crooked Rivers do not exceed the amount needed to provide increased public benefits and are consistent with of OAR 690-077-0015(4), (5), and (6).
45. Consistent with ORS 537.470(3), the Applicant requests that 66% of the conserved water be allocated for an instream water right to be held in trust by the Water Resources Department for the people of Oregon and that the priority dates of the instream rights will be the same as the originating rights plus one minute. (Findings of Fact #20 and #23), OAR 690-018-0050(4)(g).
46. Consistent with OAR 690-077-0015(8) and (10), the State's portion of the conserved water from Certificate 95488 shall have a priority date of September 18, 1968, plus one minute, and shall be allocated as an instream water right for maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values, and pollution abatement.
47. Pursuant OAR 690-077-0015(8) the stream reach for the instream right on the Crooked River shall be from the authorized point of diversion for Certificate 95488 located at approximately River Mile 27.6:

Source: Crooked River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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.

The 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. OAR 690-018-0050(4)(h).

48. To prevent enlargement, the season of use has been adjusted so the full rate of water may be protected under Certificate 95488. The right will be protected instream from March 29 through October 30. The rate and season of use for the instream water right shall be as follows:

Source: Crooked River

Originating Certificate	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
95488	9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.21	90.42

49. Certificate 72279 is for the use of natural flow water from the Deschutes River and stored water from Wickiup Reservoir and Haystack Reservoir. Twenty-five percent of the water diverted under Certificate 72279 is from natural flow, and 75 percent is from storage in Wickiup Reservoir. Therefore, any instream water right created in the Deschutes River will encompass two separate reaches; one from Wickiup Dam for the storage component and one from the natural flow component at the authorized point of diversion on the Deschutes River downstream to Lake Billy Chinook.

DESCHUTES RIVER CONSERVED WATER (72279)									
Component	State's Portion			Applicant's Portion			Conserved Water		
	Component Percentage	Rate (CFS)	Duty (Volume) AF	Component Percentage	Rate (CFS)	Duty (Volume) AF	Component Percentage	Rate (CFS)	Duty (Volume) AF
Natural flow	25%	0.34	100.65	25%	0.17	51.85	100%	0.51	152.50
Storage	75%	1.01	301.95	75%	0.52	155.55	100%	1.53	457.50
Totals		1.35	402.60		0.69	207.40	100%	2.04	610.00

50. To prevent enlargement, the season of use has been adjusted so the full rate of water may be protected. The right will be protected instream from May 15 through October 11. Therefore, pursuant OAR 690-077-0015(8) the stream reach for the instream right on the Deschutes River under Certificate 72279 shall be as follows:

Source: Deschutes River (natural flow component) from the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	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, <i>plus one minute</i>	May 15 to October 11	0.34	100.65

A portion of the State's allocation (1.01 cfs/301.95 AF) from the storage component is attributable to a reduction in demand from Wickiup Reservoir. Due to the limitations within the current statutes and rules that prevent a change in character of use of stored water, the Department is unable to convert its portion of conserved water from the storage component under Certificate 72279 via an instream water right certificate. Therefore, a like quantity of water will be protected instream from the primary storage right in Wickiup Reservoir (Certificate 51229) through an instream lease until such time as

the statutes and rules are modified to allow the permanent change to instream use of a reservoir storage right. This stored water under Certificate 51229 may be released at any time regardless of whether it is during or outside the irrigation season.

The protection will be from Wickiup Dam located in the SWNE of Sec. 7, Township 22 South, Range 9 East, W.M. to Lake Billy Chinook at approximately River Mile 120.0:

NUID shall obtain the necessary contract with the BOR, if any, for the release of stored water from Certificate 51229 [primary storage right] as follows:

Originating Certificate	Priority Date	Instream Period	Rate (CFS)	Volume (AF)
51229	2/28/1913, <i>plus one minute</i>	November 2 through March 31	1.01	301.95

51. The instream rights to be created by Allocation of Conserved Water Project CW-102 are consistent with the criteria for establishment of an instream right as outlined in OAR 690-077-0015.
52. The Applicant requested the season of use for the instream water right created from this conserved water project in the Deschutes River to be January 1 through March 31. However, the season of use for the natural or live flow component of conserved water under Certificate 72279 shall be within the irrigation season as specified in Finding of Fact #50. Because the storage component of the conserved water under Certificate 72279 is coming from the primary reservoir right (Certificate 51229), the season of use has been adjusted so the rate is not exceeded during the period of protection.
53. Pursuant to OAR 690-018-0062, the Applicant indicated that the project is complete. (Finding of Fact #31). All conserved water, both the Applicant's portions and the State's portions, shall be managed instream, as identified in Findings of Fact #46 through #50, until a request for finalization is submitted as outlined below:

Crooked River:

From the authorized Point of Diversion for Certificate 95488:

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

Originating Certificate	CW Holder	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
95488	Applicant	9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.11	46.58
95488	State	9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.21	90.42
Totals				0.32	137.00

To the mouth of Crooked River at River Mile 0.0, and shall be measured at OWRD Gauging Station #14087300. (Findings of Fact #19, #21, #47, and #48).

Deschutes River:

Deschutes River (natural flow component) from the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	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	CW Holder	Priority Date	Period of Use	Rate (CFS)	Volume (AF)
72279	Applicant	2/28/1913, plus one minute	May 15 to October 11	0.17	51.85
72279	State	2/28/1913, plus one minute	May 15 to October 11	0.34	100.65
Totals				0.51	152.50

To Lake Billy Chinook at approximately River Mile 120.0. (Findings of Fact #49 and #50).

Deschutes River (storage component):

Due to the limitations within the current statutes and rules regarding storage rights, the following quantity of water will be protected instream from storage in Wickiup Reservoir via an instream lease until the Request for Finalization is submitted. NUID will obtain the necessary contract with the BOR, if any, for the release of stored water under Certificate 51229 as follows:

From Wickiup Reservoir located in the SWNE of Section 7, Township 22 South, Range 9 East, W.M.

Originating Certificate	CW Holder	Priority Date	Instream Period	Rate (CFS)	Volume (AF)
51229	Applicant	2/28/1913, plus one minute	November 2 through March 31	0.52	155.55
51229	State	2/28/1913, plus one minute	November 2 through March 31	1.01	301.95
Totals				1.53	457.50

To Lake Billy Chinook at approximately River Mile 120.0.

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.

54. The areas within which the conserved water is proposed to be used for out-of-stream uses are within North Unit Irrigation District 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.

(Finding of Fact #22).

55. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #30)
56. The deadline for submitting the Request for Finalization is on or before March 31, 2021. (Finding of Fact #31)

Conclusions of Law:

1. 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, Division 018.
2. Pursuant to OAR 690-018-0050(4), the project will conserve water and can be allocated without harming existing water rights.
3. Consistent with ORS 537.470(3), the State’s portion of the conserved water is necessary to support instream flow purposes in accordance with ORS 537.332 to 537.360.

Now, therefore, it is ORDERED:

1. The changes proposed in Allocation of Conserved Water CW-102 are approved.
2. The quantities of water conserved and allocated are 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

3. Water Right Certificates 95488 and 72279 are modified. The reduced rates and volume 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.

4. 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.
5. The Applicant shall allow the Watermaster access to the meters or measuring devices. Where a meter is located within a private structure, the Watermaster shall be granted access upon reasonable notice.
6. All conserved water (state’s and applicant’s portions) shall be dedicated and managed instream until a Request for Finalization is submitted, as follows:

Crooked River:

From the authorized Point of Diversion for Certificate 95488:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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.

Originating Certificate	Priority Date	Instream Period	Rate (CFS)	Volume (AF)
95488	9/18/1968, <i>plus one minute</i>	March 29 through October 30	0.32	137.00

Deschutes River:

Reach 1: (Storage Component) From Wickiup Reservoir located in the SWNE of Section 7, Township 22 South, Range 9 East, W.M. at approximately River Mile 227.0 on the Deschutes River:

Originating Certificate	Priority Date	Instream Period	Rate (CFS)	Volume (AF)
72279 via 51229	2/28/1913, <i>plus one minute</i>	November 2 through March 31	1.53	457.50

To Lake Billy Chinook at approximately River Mile 120.0.

Reach 2: (Natural Flow Component) 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	Instream Period	Rate (CFS)	Volume (AF)
72279	2/28/1913, <i>plus one minute</i>	May 15 to October 11	0.51	152.5

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.

Upon filing a Request for Finalization:

7. 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.

8. 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:
9. **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.

10. 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

11. An instream right shall be issued for the Deschutes River for the State's portion of conserved water 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, <i>plus one minute</i>	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.

12. 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, <i>plus one minute</i>	May 15 to October 11	0.17	51.85

13. 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 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 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:

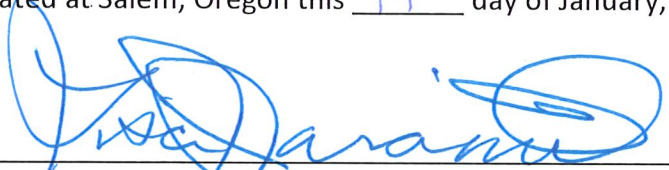
Source: Wickiup Reservoir located in the SWNE of Section 7, Township 22 South, Range 9 East, W.M. at approximately River Mile 227.0.

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

To Lake Billy Chinook at approximately River Mile 120.0.

14. 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.

Dated at Salem, Oregon this 19th day of January, 2021.


 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
 THOMAS M. BYLER, Director

Date of Mailing: Jan. 20, 2021

**MEMORANDUM OF AGREEMENT
TO PERPETUALLY LEASE WATER TO INSTREAM USE**

This AGREEMENT TO PERPETUALLY LEASE WATER TO INSTREAM USE (this “Agreement”) is made this 19th day of January, 2021 (the “Effective Date”), by and between the NORTH UNIT IRRIGATION DISTRICT (“NUID”) and the Oregon Water Resources Department (“OWRD”) (collectively, the “Parties”).

RECITALS

A. NUID is the holder of Water Right Certificates 72279 and 90177. Certificate 72279 is for the use of natural flow water from the Deschutes River and stored water from Wickiup Reservoir and Haystack Reservoir. Certificate 90177 is for the use of natural flow water from the Crooked River.

B. On February 12, 2018, NUID filed an Allocation of Conserved Water Application (designated as application number CW-102), requesting an Allocation of Conserved Water under Certificates 72279 and 90177. As documented in CW-102, NUID proposed to conserve approximately 137 acre-feet (AF) of Crooked River water and 610 AF of Deschutes River water by lining approximately 2.2 miles of NUID’s 58-11 irrigation lateral, and improving the overall efficiency of the delivery system. The project was completed by March 2019.

C. On October 5, 2020, OWRD issued an Amended Preliminary Determination, proposing to approve CW-102. In particular, paragraph 16 of the Amended Preliminary Determination (pp. 17-18) provides as follows:

“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 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, <i>plus one minute</i>	November 2 through March 31	1.01	301.95

To Lake Billy Chinook at approximately River Mile 120.0.”

“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 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, plus one minute	November 2 through March 31	0.52	155.55

To Lake Billy Chinook at approximately River Mile 120.0.”

Consistent with and pursuant to the above requirements, the Parties desire to memorialize NUID’s commitment to perpetually lease water under Certificate 51229, until such time as the relevant statutes and rules are updated regarding reservoir storage rights, under the terms and conditions set forth below.

AGREEMENT

1. Instream Lease of State’s Portion of Conserved Water from Wickiup Reservoir.

Consistent with OWRD’s approval of CW-102, NUID agrees to apply to OWRD to lease water under Certificate 51229 for the maximum five-year term, from the following source, in the following quantity, and for the following purposes:

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

Purpose: Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement

Prior to the expiration of the lease, NUID shall apply to OWRD to renew the lease for an additional five-year term, and shall do so perpetually until such time as the statutes and rules are updated regarding reservoir storage rights. At such time that the statutes and rules are updated regarding reservoir storage rights, NUID shall coordinate with OWRD to have the leased water making up the State’s portion of conserved water from Wickiup Reservoir under CW-102 incorporated into a permanent instream water right.

NUID agrees to abide by any terms and conditions included in OWRD’s approval of the lease application, and OWRD’s approval of any renewal application.

2. Instream Lease of NUID’s Portion of Conserved Water from Wickiup Reservoir.

Consistent with OWRD’s approval of CW-102, NUID agrees to apply to OWRD to lease water

under Certificate 51229 for the maximum five-year term, from the following source, in the following quantity, and for the following purposes:

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

Purpose: Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement

Prior to the expiration of the lease, NUID shall apply to OWRD to renew the lease for an additional five-year term, and shall do so perpetually until such time as the statutes and rules are updated regarding reservoir storage rights, or until a Notice of Use and Disposition form is submitted as required by OAR 690-0018-0062(3)(b). In the event of such a submittal to OWRD, NUID shall request OWRD approval to terminate the lease of NUID's portion of conserved water from Wickiup Reservoir in conjunction with approval of the submittal.

NUID agrees to abide by any terms and conditions included in OWRD's approval of the lease application, and OWRD's approval of any renewal application.

3. **Fees and Assessments.** NUID shall be solely responsible for any fees or assessments associated with the instream lease applications or renewal applications set forth in Paragraphs 1 and 2 above. NUID agrees to submit both initial instream lease applications within 14 days of the Final Determination approving CW-102.

4. **OWRD Consideration and Approval of Lease Applications.** OWRD will process and review the lease applications and any renewal applications described in Paragraphs 1 and 2 above consistent with the statutes and rules governing such applications and renewal applications. If approved, OWRD agrees that the applications and any renewal applications shall satisfy the requirements set forth in paragraph 16 of the Amended Preliminary Determination (pp. 17-18).

5. **General Provisions.**

5.1 **Termination.** This Agreement may be terminated at any time by mutual consent of the Parties, provided that such consent to terminate is in writing and is signed by each of the Parties.

5.2 **Execution.** Each Party to this Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to these terms. This Agreement may be signed in counterparts.

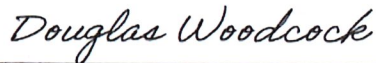
IN WITNESS WHEREOF, NUID and OWRD have executed this Agreement as of the date first written above.

North Unit Irrigation District:



By: _____
Mike Britton
Manager, North Unit Irrigation District

Oregon Water Resources Department:



By: _____
Douglas E. Woodcock
Deputy Director