

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

In the Matter of Allocation of Conserved ) FINAL ORDER WITHDRAWING ORDER  
Water Application CW-101, ) APPROVING ALLOCATION OF CONSERVED  
Umatilla County ) WATER APPLICATION CW-101 and  
) WITHDRAWING APPLICATION

**Applicant**

Hudson Bay District Improvement Company  
PO Box 110  
Milton-Freewater, OR 97862

**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).

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 January 2, 2018, Hudson Bay District Improvement Co. (HBDIC) filed an allocation of conserved water application under Certificates 83940, 83953, 83954, 87756, and 93399. The Department assigned the application number CW-101.

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. 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 petition for judicial review and 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.

2. The District operates and maintains the water delivery system for the benefit of the landowners in the area. The District was incorporated on September 2, 1952, under ORS 554.
3. The conservation project involved piping approximately 4.1 miles of open canal to eliminate seepage losses. The piping of an open canal is a proven technology for conserving water.
4. Application CW-101 proposed a rate reduction of approximately 5.51 cubic feet per second (cfs) and proposed to reduce the annual volume by 1503.34 acre-feet (AF). The applicant proposed to protect approximately 70% (3.85 cfs) of the water conserved instream.

Conserved Water Description					
		Certificate		Needed	Conserved Water
		Rate		Rate	Rate
Certificate	Acres	Maximum CFS	CFS/AC	Maximum CFS	Maximum CFS
83940	496.30	10.30	0.0375	9.57	0.73
83953	814.90	30.56	0.0375	28.39	2.17
83954	321.24	12.04	0.0375	11.18	0.86
87556	480.45	13.20	0.0375	12.27	0.93
93399	483.83	11.66	0.0375	10.84	0.82
Totals		77.76		72.25	5.51

5. The development of the conservation measures were to begin no earlier than September 1, 2015, with a projected implementation date of September 1, 2020. The Applicant requested the deadline for submitting the Notice of Completion of September 1, 2020.
7. Notice of the proposed conservation project was published in the Department's weekly notice on January 30, 2018, and in the Valley Herald newspaper on January 26, and February 2, 2018, as required under OAR 690-018-0050(1)(a) and (2). Comments were received from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) on February 22, 2018.
8. On August 28, 2018, the Department issued its Final Order Approving Allocation of Conserved Water Application CW-101 (Final Order), and mailed copies to the Applicant and interested parties on August 29, 2018. The Final Order is recorded at Special Order Volume 109, Pages 204-222.
9. The Final Order established the deadline for submitting a Notice of Completion of September 1, 2020. The deadline for submitting a Request for Finalization was established as on or before September 1, 2025.
10. On October 29, 2020, the Department contacted John Zerba, Agent listed on the application for HBDIC, via email to inform him of the missed deadline for submitting the Notice of Completion. The email requested him to submit the Notice of Completion form as soon as possible. A response to the email request was not received.

11. On December 8, 2020, the Department sent a letter to HBDIC via email requesting submission of the Notice of Completion on or before December 31, 2020. The email was sent to John Zerba. The email was also sent to Jason Zerba who was now listed as agent for HBDIC on the Secretary of State's business registry. In addition, a copy of the letter was mailed on December 10, 2020, to Tim Deruwe, who is listed as the President of HBDIC on the Secretary of State's business registry.
12. No response to the letter was received by the December 31, 2020 deadline.
13. On January 4, 2020, Jason Zerba left a voice mail message with OWRD indicating HBDIC was not pursuing the piping project.
14. On behalf of HBDIC, Jason Zerba sent an e-mail on January 5, 2021, to OWRD voluntarily requesting withdrawal of application CW-101.
15. The provisions of ORS 537.463 recognize the provisions of ORS 537.455 to 537.500 (allocation of conserved water statutes) establish a voluntary program and shall apply only to those persons who choose to apply for an allocation of conserved water under ORS 537.465.

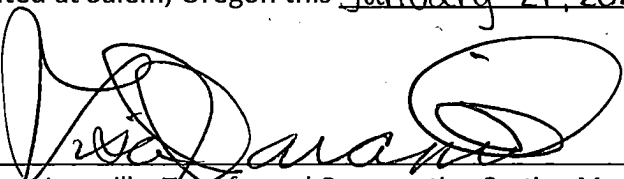
**Conclusions of Law**

The voluntary request by HBDIC to withdraw Allocation of Conserved Water Application CW-101, is not consistent with ORS 537.463.

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

The Final Order Approving Allocation of Conserved Water CW-101, recorded at Special Order Volume 109, Pages 204-222, is WITHDRAWN and is of no further force or effect.

Dated at Salem, Oregon this January 21, 2021.

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

Mailing Date: January 22, 2021