

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

In the Matter of Proposed Allocation of)
 Conserved Water Application)
 CW-61, Deschutes County)
)
)

FINAL ORDER APPROVING
 ALLOCATION OF CONSERVED
 WATER CW-61

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 018 implements the statutes and provides the Department’s procedures and criteria for evaluating allocation of conserved water applications.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT
 1055 SW LAKE COURT
 REDMOND OR 97756
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Agent

DESCHUTES RIVER CONSERVANCY
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 BEND, OR 97701
andy@deschutesriver.org

Findings of Fact

1. On June 15, 2009 the Deschutes River Conservancy (DRC), acting as the agent for Central Oregon Irrigation District (COID), filed an Allocation of Conserved Water Application. The Department assigned the application number CW-61.
2. The Applicants initially proposed that the water conserved by this project would be protected instream during all three seasons and under both the October 31, 1900 and December 2, 1907 priority dates as allowed under Water Right Certificate 83571. On October 29, 2009 the Applicants requested the Department to amend Allocation of Conserved Water Application CW-61 to protect the full quantity of conserved water during seasons one and two under the October 31, 1900 priority date and under both priority dates during season three.
3. The application requests an Allocation of Conserved Water under Certificate 83571 in the name of COID.
4. COID adopted an allocation of conserved water policy pursuant to OAR 690-018-0025, on May 10, 2005.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is an order in other than a 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.

5. Water has been used within the last five years according to the terms and conditions of the rights. The record contains no evidence that would demonstrate the rights are subject to forfeiture under ORS 540.610.
6. On June 15, 2005 COID submitted evidence to the Department, indicating that the North Canal has a capacity sufficient to carry 590.145 cubic feet per second (cfs) of water and approximately 183,623 acre-feet (AF), to the lands served by the canal. A diversion structure and ditch or a pump, pipeline and sprinkler system(s) sufficient to use the full amount of water allowed under the existing right are present. COID does not, as a normal practice, divert the maximum rate allowed under Certificate 83571. However, COID has the capacity to divert the full rate to the lands.
7. Water Right Certificate 83571, in the name of Central Oregon Irrigation District, has priority dates of October 31, 1900 for 978.297 cfs and December 2, 1907 for the balance of approximately 392.080 cfs as allowed by the decree, if all lands were served by the main canal system. However, this right may be further modified by any cancellations, transfers or other allocation of conserved water projects, completed pursuant to ORS 537 and ORS 540.
8. The number of acres served by Certificate 83571 is approximately:

Type of Use	Inchoate	Allowed by Certificate 83571
Irrigation	519.617	42,919.893
Equivalent Acres for Pond Maintenance	63.700	147.110
Equivalent Acres for Industrial	0.000	87.100
Equivalent Acres for Dust Abatement	0.000	2.800
Equivalent Acres for Municipal	23.500	781.957
Equivalent Acres for Quasi-Municipal	58.370	7.000
Equivalent Acres for Mining	16.000	0.000
Domestic Use and Livestock	--	--
TOTAL ACRES :	681.187	43,945.86

9. The water right evidenced by Certificate 83571 has had many transfers and other modifications which may, have reduced the rate and duty associated with the water right. The applicant describes the starting point for the water right from the North Canal (POD #11) as 590.145 cfs and 189,480.68 AF with October 31, 1900 and December 2, 1907 priority dates. This is consistent with the total diversion allowed from the North Canal as listed on Certificate 83571 for all uses, including inchoate rights. However, Certificate 83571 at POD #11, has been modified (reduced) by the following instream transfers: T-10299 (34.080 AC), T-10300 (39.400 AC), T-10391 (39.580 AC), T-10224 (83.900 AC), T-9150 (8.720 AC), T-10544 (118.990 AC), T-10553 (36.070 AC), T-10562 (27.450 AC) T-10274 (6.200), T-10292 (35.250 AC), T-10712 (23.810 AC), T-10508 (59.620 AC), T-10778 (94.200 AC). Additionally, the following orders resulted in partial cancellations of Certificate 83571: Special Order Volume 74, Page 45 (1.130 AC), Special Order Volume 74, Page 103 (0.600 AC), Special Order Volume 73, Page 888 (5.060 AC) and Special Order Volume 73, Page 894 (0.700 AC). The rates and duties associated with these modifications have been subtracted from the initial rate/duty shown in the tables below.

10. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 83571, which are not listed in Finding of Fact #9, will cause a corresponding change to the rate, duty and total number of acres served by this right.
11. This conservation project will eliminate 19.600 cfs of seepage loss from the Central Oregon North Canal by using 108-inch Steel pipe to replace approximately 2.5 miles of open, unlined canal. The replacement of open, unlined canals with pipelines is a proven technology for conserving water.
12. The point of diversion associated with the allocation of conserved water project is as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	NORTH CANAL POD #11: 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.

*Located approximately at River Mile 165.

13. Public notice was published on July 14, 2009 in the Department's weekly notice and on July 24, July 31 and August 7, 2009 in *The Bulletin*, as required under OAR 690-018-0050.
14. Pursuant ORS 537.485, the applicant requests that the priority dates of the conserved water be the same as the originating rights.
15. Pursuant OAR 690-018-0020(4) the maximum rate of water conserved by this project is 19.600 cfs. The rate, duty and priority dates for the conserved water are as follows:

Time Period	Priority Date	Rate (cfs)	Duty (AF)
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	19.600	2,371.440
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	19.600	1,166.280
Season 3: May 15 - September 14	October 31, 1900	13.992	3,413.580
	December 2, 1907	5.608	1,368.110
Duty Summary:	October 31, 1900		6,951.300
	December 2, 1907		1,368.110
	Total:		19.600

16. The proposed Allocation of Conserved Water, as described below, will not harm existing rights:

The application indicates that 100 percent of the conserved water will be allocated to instream use.

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 diversions will be reduced and the downstream return flows are not available until Lake Billy Chinook.

Some of the water which was previously diverted and which will no longer be diverted would have returned to the Lower Deschutes River outside of the irrigation season and would have slightly increased wintertime flows in the Lower Deschutes River. However, the diversion of water is not required and the return flows are, therefore, not required.

17. On June 12, 2009 the Applicants provided notice of the proposed conservation project to the Land Use and Planning Departments of Jefferson County, Deschutes County and the City of Bend as required by OAR 690-018-0040(22).
18. No harm to other water rights will occur; therefore, no reduction in the quantity of conserved water to be allocated, is required to mitigate for effects on other water rights.
19. After this allocation of conserved water, the water right held by the applicant, not including cancellations, transfers, and other allocations of conserved water that have modified Certificate 83571 will allow use of the following quantities of water:

Time Period	Rate and Duty Per acre	Priority Date	Before Project	Conserved Water	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	231.288 CFS 25,690.170 AF	19.600 CFS 2,371.440 AF	211.688 CFS 23,318.730 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	308.300 CFS 18,345.123 AF	19.600 CFS 1,166.280 AF	288.700 CFS 17,178.843 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	407.694 CFS 99,463.855 AF	13.992 CFS 3,413.580 AF	393.702 CFS 96,050.275 AF
		December 2, 1907	163.394 CFS 39,862.733 AF	5.608 CFS 1,368.110 AF	157.786 CFS 38,494.623 AF
Duty Summary:		October 31, 1900	143,499.148 AF	6,951.300 AF	136,547.848 AF
		December 2, 1907	39,862.733 AF	1,368.110 AF	38,494.623 AF
Total Duty:			183,066.900 AF	8,319.470 AF	175,042.471 AF

* includes a 45% transmission loss allowed for diversions through the district's main canal system. For lands not served from the district main canal system, but by direct pumping from the Deschutes River, the 45% transmission loss is not allowed.

20. In consultation with the Oregon Department of Parks and Recreation, the Oregon Department of Fish and Wildlife and the Department of Environmental Quality, the Department has determined that conserved water is needed to improve aquatic habitat and to improve water quality in the Deschutes River.

21. COID funded the project with public funds. The Applicants requested that 100 percent of the conserved water be allocated to the State for an instream water right and that the priority of the instream water right remain the same as the originating water right.

22. The amounts of water to be allocated to the state for an instream water right are:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	19.600 CFS 2,371.440 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	19.600 CFS 1,166.280 AF
Season 3: May 15 - September 14	October 31, 1900	13.992 CFS 3,413.580 AF
	December 2, 1907	5.608 CFS 1,368.110 AF

23. The reach for State's instream water right is from the previously authorized point of diversion, being the COID North Canal (POD #11, as described in Finding of Fact #12) at approximately RM 165 to River Mile 120 (near Lake Billy Chinook).

24. The Applicants anticipate the conservation project will be completed by April 15, 2010. If the project is completed on time, the Applicants have until June 15, 2010 to file a notice of completion of the conservation project. Upon filing a notice of completion, the Applicants request that the project be finalized pursuant to OAR 690-018-0062. However, if the conservation project is not completed by April 15, 2010, the Applicants have requested the right to finalize the project incrementally or to request additional time to complete the full project. If the Applicants need additional time or decide to finalize the project incrementally, a proposal with the number of increments and the timeframe during which each increment will be finalized must be submitted to the Department by June 15, 2010.

25. No other conditions or limitations are needed to prevent injury to prevent injury or mitigate for harm to existing water rights.

26. On December 10, 2009 the Department issued a Proposed Final Order, which recommended that Allocation of Conserved Water Application CW-61 be approved. No comments were received in response to that order.

Review Criteria

Pursuant to OAR 690-018-0050, in reviewing the application for allocation of conserved water the Department has determined the following:

- A. The proposed allocation of conserved water project will result in a reduced diversion for the uses allowed under the original rights by 19.600 cfs as established in Findings of Fact #11, #15 and #19.
- B. Consistent with Finding of Fact #16, the proposed allocation will not harm other water rights.
- C. The conservation project is compatible with the local comprehensive land use plan as established in Finding of Fact #17.
- D. Consistent with Finding of Fact #18, no harm to other water rights will occur; therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for affects on other water rights.
- E. The new rates and duties for POD #11 of Certificate 83571 are described in Finding of Fact #19.
- F. Consistent with Finding of Fact #20, the State's portion of the conserved water is needed to improve aquatic habitat and water quality in the Deschutes River between the POD (as described in Finding of Fact #12) and the Madras Gauge at River Mile 120 (near Lake Billy Chinook).
- G. Consistent with Finding of Fact #21, the Applicants requested that 100% of the conserved water be allocated to an instream water right to be held in trust by the Water Resources Department for the people of Oregon and that the priority date of the conserved water right is the same as the originating right.
- H. The State's portion of the conserved water shall be allocated as an instream water right for the support of aquatic life and shall provide for the protection of flows in the Deschutes River from the authorized point of diversion for COID at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	NORTH CANAL POD #11*: 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.

*Located approximately at River Mile 165.

to River Mile 120 (near Lake Billy Chinook). The instream water right shall be for a total of 19.600 cfs, with priority dates of October 26, 1900 and December 2, 1907 and shall replace a portion of the 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, unless otherwise specified by a subsequent order establishing a new instream water right. The rights shall allow for the use and protection of flows from April 1 through October 31, and at other times when COID is diverting water. (Finding of Fact #23).

- J. Consistent with Finding of Fact #25, no other conditions or limitations are needed to prevent injury or mitigate for harm to existing water rights.

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-61, is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018. Water will be conserved which can be allocated without harming other water rights.

Now; therefore, it is ordered that:

The changes proposed in CW-61, as modified by the applicant, are approved.

1. Certificate 83571 shall be modified and a new superseding certificate shall be issued to Central Oregon Irrigation District for the remaining portion of Certificate 83571 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 83571 as described below:

Time Period	Priority Date	Conserved Water
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	19.600 CFS 2,371.440 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	19.600 CFS 1,166.280 AF
Season 3: May 15 - September 14	October 31, 1900	13.992 CFS 3,413.580 AF
	December 2, 1907	5.608 CFS 1,368.110 AF
Duty Summary:	October 31, 1900	6,951.300 AF
	December 2, 1907	1,368.110 AF
Total Duty:		8,319.410 AF

The associated priority date, rate and duty of the remaining right (at POD #11) shall be approximately:

Time Period	Rate and Duty Per acre	Priority Date	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	211.688 CFS 23,318.730 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	288.700 CFS 17,178.843 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	393.702 CFS 96,050.275 AF
		December 2, 1907	157.786 CFS 38,494.623 AF
Duty Summary:		October 31, 1900	136,547.848 AF
		December 2, 1907	38,494.623 AF
Total Duty (POD #11):			175,042.471 AF

* includes a 45% transmission loss allowed for diversions through the district's main canal system.

The place of use shall be those lands described under Certificate 83571, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications to the certificate.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

- Upon receipt of a request to finalize Allocation of Conserved Water Project CW-61, the Department shall issue a new instream certificate for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River from the authorized point of diversion at approximately RM 165 for Certificate 83571 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	NORTH CANAL POD #11*: 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.

*Located approximately at River Mile 165.

to the Madras Gauge at approximately RM 120 (near Lake Billy Chinook).

The instream water right shall be as described below:

Time Period	Priority Date	Conserved Water
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	19.600 CFS 2,371.440 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	19.600 CFS 1,166.280 AF
Season 3: May 15 - September 14	October 31, 1900	13.992 CFS 3,413.580 AF
	December 2, 1907	5.608 CFS 1,368.110 AF
Duty Summary:	October 31, 1900	6,951.300 AF
	December 2, 1907	1,368.110 AF

and shall replace a portion of 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, unless otherwise specified by a subsequent order establishing a new instream water right.

- The Applicants have until June 15, 2010 to file a notice of completion of the conservation project, to request additional time or to request the right to finalize the project incrementally. If the Applicants request the right to finalize the project incrementally, a proposal with the number of increments and the time by which each increment will be finalized must be submitted to the Department by June 15, 2010.

Dated at Salem, Oregon this 26th day of February 2010.

for 
Phillip C. Ward
Director

Date of Mailing: MAR 08 2010