

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

In the Matter of Proposed Allocation of) FINAL ORDER APPROVING
Conserved Water Application) ALLOCATION OF CONSERVED
CW-53, Hood River County) WATER

Authority

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 18 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Applicant

East Fork Irrigation District
P.O. Box 162
Odell, Oregon 97044

Agent

Attn: Kimberly Schonek
Oregon Water Trust
522 SW Fifth Avenue, Suite 825
Portland, Oregon 97204

Findings of Fact

1. On August 23, 2007 the East Fork Irrigation District (EFID) filed an allocation of conserved water application. The Department assigned the application number CW-53.
2. On December 5, 2007, the amount of non-reimbursable federal and state project funding was modified. On December 20, 2007, and January 18, 2008, the amount of conserved water requested was modified.
3. The portion of Certificate 81340 involved in the allocation of conserved water is as follows:
Certificate: 81340 in the name of EAST FORK IRRIGATION DISTRICT (confirmed by Hood River decree)
Use: IRRIGATION of 8,526.52 acres
Priority Date: NOVEMBER 25, 1895
Rate: 106.55 CUBIC FEET PER SECOND (cfs)
Source: EAST FORK HOOD RIVER, tributary to HOOD RIVER
Rate and Duty Limitation: Not described on certificate.

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

4. Certificate 81340 does not describe the duty, per acre rate, or season of use of the right. However information is available from the Final Decree of the Circuit Court for Hood River County, dated May 2, 1932 indicating that the duty allowed for the right is 3.0 acre-feet/acre (AF/ac), with a rate of 1/80 cfs/acre (Decree Finding No. 28). Under terms and conditions of the aforementioned decree, the irrigation season was fixed as beginning on the 15th day of April and ending on the 1st day of October of each year (Decree Finding No. 23).
5. The maximum duty associated with this right is 25,579.56 AF (3.0 AF/ac multiplied by 8,526.52 acres).
6. EFID operates and maintains the water delivery system for the benefit of the landowners in the area.
7. EFID has an allocation of conserved water policy pursuant to OAR 690-018-0025.
8. The conservation project involves piping approximately 1.5 miles of the East Fork Irrigation District's Central Canal, an open, unlined canal. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
9. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application CW-53.
11. Public notice was published in the Department's weekly notice on September 4, 2007 and in the Hood River News on October 17, 24, and 31, 2007, as required under OAR 690-018-0050. No comments were received in response to these notices.
12. On January 31, 2008, the Department issued a Proposed Final Order proposing to approve Allocation of Conserved Water CW-53, and mailed a copy to the applicant and agent.
13. On March 14, 2008, the Department received a request from the applicant and agent to amend the application to 1) allow the use of the applicant's share of the conserved water within the district boundaries and 2) to extend the finalization period until January 1, 2010.
14. On March 28, 2008, a red-lined Draft Final Order was e-mailed to the applicant and agent. This red-line draft order responded to and highlighted changes to the Proposed Final Order

based on the applicant's letter of March 14, 2008. On March 31 and April 1, 2008, the applicant and agent, respectively, gave their consent to the red-lined changes.

15. Pursuant ORS 537.485, the applicant requests that the priority date of the conserved water be the same as the originating right.
16. The proposed allocation of conserved water, once complete, will result in the conservation of 2.10 cfs and 703.93 AF. The quantity of water allowed for diversion under Certificate 81340 will be reduced by this quantity.
17. The proposed allocation of conserved water will not harm existing rights so long as 1) the quantity of water protected in the stream reach does not exceed the quantity of water legally available at the original point of diversion, and 2) the stream channel losses and gains are calculated based on available data and the use of water by senior appropriators will determine the amount of water to which the right is entitled downstream from the original point of diversion within the specified stream reach.
18. The application includes land use information forms completed and signed by representatives of Hood River County Planning Department demonstrating that the application is compatible with the local comprehensive land use plan. Additionally, the Department provided notification of the proposed action to Hood River County.
19. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.
20. After the allocation of conserved water, the water right held by the applicant will allow use of the following quantities of water:

Certificate	Priority Date	Before Project Maximum Rate and Duty	After Project Maximum Rate and Duty	Conserved Water Rate and Duty
81340	NOVEMBER 25, 1895	106.55 cfs 25,579.56 AF	104.45 cfs 24,875.63 AF	2.10 cfs 703.93AF

21. In consultation with the Oregon Department of Fish and Wildlife, Department of Environmental Quality, and Oregon Parks and Recreation Department, the Department has determined that conserved water is needed to support instream uses in East Fork Hood River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.
22. Fifty-one and 58/100 percent of the funding for this project is from federal and state non-reimbursable funding.
23. Pursuant to OAR 690-018-0012(1), the applicants propose that 51.58 percent of the conserved water be allocated to the State for an instream water right and that 48.42 percent be temporarily reserved instream until a permanent place of use is determined by EFID.

24. The amounts of water to be allocated to the applicant for new out-of-stream use, and the amount of water to be allocated to the State for an instream water right are:

Certificate	Priority Date	Conserved Water Rate (cfs) and Duty (AF)	New Lands Out-of-Stream Rate (cfs) and Duty (AF)	Instream Water Right Rate (cfs) and Duty (AF)
81340	NOVEMBER 25, 1895	2.10 cfs 703.93 AF	1.02 cfs 341.91 AF	1.08 cfs 362.02 AF

25. The applicant's conserved water may be used to irrigate a maximum of 81.34 acres of new land located either within the EFID boundaries or within Sections 13, 24, 25, and 36 of Township 2 North, Range 10 East, W.M., and Sections 18, 19, 30 and 31 of Township 2 North, Range 11 East, W.M., that are served by the point of diversion for Certificate 81340.

26. The stream reach for state's instream water right is from the previously authorized point of diversion, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM NW CORNER OF SECTION 4

To the mouth of East Fork Hood River at River Mile 0.0.

27. The instream use shall allow the use and protection of flows from April 15 through September 30.

28. The applicant completed the project in April 2006. The applicant has requested until January 1, 2010, to finalize the project.

29. 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 CW-53 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 18. Water will be conserved that can be allocated without harming other water rights.

Now, therefore, it is ORDERED:

1. Unless the Director grants an extension of time, the applicant has until January 1, 2010, to file a notice that the project worked as anticipated and to finalize the project, or to request that the project be modified. If no request to finalize the Department is received by January 1, 2010, the Department shall finalize the project.
2. While the East Fork Irrigation District (EFID) is evaluating the project to see if it worked as anticipated, 100 percent of the conserved water will be protected as an instream water right.

This water will be protected in East Fork Hood River from the authorized point of diversion (approximately River Mile 23.5) for Certificate 81340 at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM NW CORNER OF SECTION 4

To the mouth of East Fork Hood River at River Mile 0.0.

The priority date, rate, and season associated with the instream right shall be:

Priority Date	Rate (cfs)	Time Period
NOVEMBER 25, 1895	2.10	April 15 through September 30

If the project performs as expected, and applicant does not request that the project be modified, then upon receipt of a request to finalize the project, or after January 1, 2010, (whichever is first), the Department shall:

3. Modify Certificate 81340. A new superseding certificate shall be issued to EFID for the remaining portion of Certificate 81340 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 81340 as described below:

Priority Date	Rate (cfs)	Duty (AF)
NOVEMBER 25, 1895	2.10	703.93

The acreage, rate, duty, and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other prior modification to Certificate 81340. The associated priority date and rate of the remaining right shall be approximately:

Priority Date	Rate (cfs)	Duty (AF)
NOVEMBER 25, 1895	104.45	24,875.63

The maximum per acre rate of the acres affected by this allocation of conserved water remains at 1/80 cfs per acre.

The place of use shall be those lands described under Certificate 81340, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications.

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

4. The conserved water held by EFID may be used to irrigate a maximum of 81.34 acres of new land located either within the EFID boundaries or within Sections 13, 24, 25, and 36 of Township 2 North, Range 10 East, W.M., and Sections 18, 19, 30 and 31 of Township 2 North, Range 11 East, W.M., that are served by the point of diversion for Certificate 81340, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM NW CORNER OF SECTION 4

The maximum rate and duty for the lands shall be 1/80 cfs per acre and 3.0 AF/ac.

5. The conserved water held by EFID shall be reserved instream until a permanent place of use is determined. The priority date and rate that shall be reserved instream are:

Priority Date	Rate (cfs)	Duty (AF)	Time Period
NOVEMBER 25, 1895	1.02	341.91	April 15 through September 30

This water will be protected in East Fork Hood River from the authorized point of diversion (approximately River Mile 23.5) for Certificate 81340 at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM NW CORNER OF SECTION 4

To the mouth of East Fork Hood River at River Mile 0.0.

6. Once a permanent place of use is determined for the applicant's share of the conserved water, EFID shall submit a statement consistent with OAR 690-018-0062 (3)(a) that identifies:
- a. The name and address of the person(s) using the water;
 - b. A description of the type of beneficial use of the water;
 - c. A legal description of the place of use; and
 - d. A map that meets the standards in OAR 690-310-0050.

Prior to water being used at the new location, approval must be obtained from the Department. Once water has been used at the new location, if the applicant notifies the Department that the respective right has become appurtenant to the specified lands and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.

When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

All other conditions and limitations of the existing water right, Certificate 81340, and any related decree shall be included in the new certificate.

If the permanent place of use is to be the same location as to where the water is being temporarily reserved instream, then EFID need only submit a statement requesting that the instream place of use be made permanent.

- A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in East Fork Hood River from the authorized point of diversion (approximately River Mile 23.5) for Certificate 81340 at:

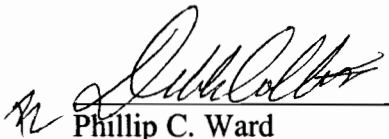
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM NW CORNER OF SECTION 4

To the mouth of East Fork Hood River at River Mile 0.0.

The instream water right shall be for a total of 1.08 cfs, with a NOVEMBER 25, 1895, priority date, 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 rights shall allow for the use and protection of flows from April 15 through September 30.

Dated at Salem, Oregon this 10th day of April, 2008.


 Phillip C. Ward
 Director

Date of Mailing: APR 22 2008