

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

In the Matter of the Allocation of Conserved) ORDER FINALIZING THE
Water Application CW-49 for Certificate) ALLOCATION OF CONSERVED
74135, Deschutes and Jefferson Counties) 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 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Findings of Fact

1. On February 28, 2007, Lower Bridge Sub-District #2 of Three Sister Irrigation District and the landowners listed below filed an allocation of conserved water application. The Department assigned the application number CW-49.

William & Pamela Brandon	Randy & Mary Burdick	Steve Calavan
Glenn Cooper	Tim DiPaolo	Thayne & Margaret Dutson
Dana & Evelyn Dykes	Ken & Jacqueline Gibbs	Joseph & Dana Giegerich
William Kelley	Don Kidson	David Ludi
David & Chris Lawrence	Long Hollow Ranch	McKenzie Canyon Group
Darwin McKibbin	Steven and Linda Mohr	David & Phyllis Mulkey
David & Ruth Parks	Sherode & Susan Powers	Mostafa & Naoko Shirazi
Steve & Kathy Simpson	Stephen & Elizabeth Sparks	Stephen Spear
Kenneth Taylor	Marc & Pamela Thalacker	Kenneth R. Tisher

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.

Jacqueline A. Thomas
DeeAnn R. McCoy

William F. Vejrostek

2. On July 27, 2007, the Department issued Special Order Volume 72, Page 697 approving the allocation of conserved water application.
3. On April 1, 2008, the Deschutes River Conservancy, agent for the applicant, indicated that the conservation project has been completed and requested that the project be finalized.

Now, therefore, it is ORDERED:

Consistent with Special Order Volume 72, Page 697, the Department takes the following actions:

1. Certificate 74135 shall be modified. A new superseding certificate shall be issued to Three Sisters Irrigation District for the remaining portion of Certificate 74135 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 74135 as described below:

Priority Date	Rate (cfs)
1895	1.20
1899	0.03
1904	0.28
<i>Total</i>	<i>1.51</i>

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 74135. The associated priority date and rate of the remaining right shall be approximately:

Priority	Maximum CFS
1869	0.96
1885	1.58
1887	3.00
1889	4.03
1893	0.79
1895	111.94
1899	2.12
1900	1.08
1901	0.45
1903	7.21
1904	16.85

The maximum per acre rate of the acres affected by this allocation of conserved water, described below, is reduced from 1/52 cfs per acre to 1/54.08 cfs per acre.

<u>Lot</u>	<u>αQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
	SE¼ SE¼	1300	34.00	IRR Section 19	1904	Cooper, Glenn

<u>Lot</u>	<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
	SW¼ NE¼	1401	17.50	IRR	1895	Cooper, Glenn
	SW¼ NE¼	1401	23.50	IRR	1904	Cooper, Glenn
	SE¼ NE¼	1401	8.50	IRR	1904	Cooper, Glenn
	NE¼ NW¼	1401	22.00	IRR	1904	Cooper, Glenn
	SW¼ NW¼	1401	8.50	IRR	1904	Cooper, Glenn
	SE¼ NW¼	1401	17.00	IRR	1895	Cooper, Glenn
	SE¼ NW¼	1401	23.00	IRR	1904	Cooper, Glenn
	NW¼ SW¼	1401	18.00	IRR	1904	Cooper, Glenn
	NW¼ SW¼	1401	4.00	POND	1904	Cooper, Glenn
	SW¼ SW¼	1401	30.00	IRR	1904	Cooper, Glenn
	NE¼ SE¼	1401	4.00	IRR	1904	Cooper, Glenn
	NW¼ SE¼	1401	6.00	IRR	1904	Cooper, Glenn
Section 20						
	NW¼ NW¼	1401	39.00	IRR	1895	Cooper, Glenn
	SW¼ NW¼	1900	37.00	IRR	1895	Mulkey, David & Phyllis
	NW¼ SW¼	1900	21.00	IRR	1895	Mulkey, David & Phyllis
	NW¼ SW¼	1900	8.00	IRR	1899	Mulkey, David & Phyllis
	NW¼ SW¼	1900	11.00	IRR	1904	Mulkey, David & Phyllis
	SW¼ SW¼	2000	16.00	IRR	1895	Kidson, Don
Section 29						
	NE¼ NE¼	1401	11.00	IRR	1895	Cooper, Glenn
	NE¼ NE¼	1401	30.00	IRR	1904	Cooper, Glenn
	SW¼ NE¼	1900	2.00	IRR	1895	Mulkey, David & Phyllis
	SW¼ NE¼	1900	14.00	IRR	1904	Mulkey, David & Phyllis
	SE¼ NE¼	1900	38.00	IRR	1895	Mulkey, David & Phyllis
	SE¼ NE¼	1900	1.00	POND	1895	Mulkey, David & Phyllis
	NE¼ SE¼	1900	40.00	IRR	1904	Mulkey, David & Phyllis
	NW¼ SE¼	1900	20.00	IRR	1904	Mulkey, David & Phyllis
	SW¼ SE¼	2000	6.00	IRR	1895	Kidson, Don
	SW¼ SE¼	2000	0.50	POND	1895	Kidson, Don
	SE¼ SE¼	2000	9.00	IRR	1895	Kidson, Don
	SE¼ SE¼	2000	5.00	IRR	1904	Kidson, Don
Section 30						
	NE¼ NE¼	2000	9.00	IRR	1895	Kidson, Don
	NW¼ NE¼	2000	6.00	IRR	1895	Kidson, Don
	SW¼ NE¼	2000	8.00	IRR	1895	Kidson, Don
	SE¼ NE¼	2000	13.50	IRR	1895	Kidson, Don
	NE¼ SW¼	2100	3.50	IRR	1895	Page, Richard
	SE¼ SW¼	2100	25.00	IRR	1895	Page, Richard
Section 31						
	NW¼ NW¼	2000	1.00	IRR	1895	Kidson, Don
Section 32						
Township 13 South, Range 12 East, W.M.						

<u>Lot</u>	<u>gQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
	NE¼ SW¼	101	5.00	IRR	1895	Long Hollow Ranch
	SW¼ SW¼	101	18.00	IRR	1895	Long Hollow Ranch
	SW¼ SW¼	101	4.00	IRR	1904	Long Hollow Ranch
	SE¼ SW¼	101	32.00	IRR	1895	Long Hollow Ranch
	SE¼ SW¼	101	2.00	IRR	1904	Long Hollow Ranch
	NW¼ SE¼	101	16.00	IRR	1895	Long Hollow Ranch
	SW¼ SE¼	101	36.50	IRR	1895	Long Hollow Ranch
	SE¼ SE¼	101	26.00	IRR	1895	Long Hollow Ranch
Section 1						
	SE¼ SE¼	101	11.00	IRR	1895	Long Hollow Ranch
Section 2						
	NE¼ NE¼	101	25.50	IRR	1895	Long Hollow Ranch
	NE¼ NE¼	101	1.00	IRR	1904	Long Hollow Ranch
	NW¼ NE¼	101	17.50	IRR	1895	Long Hollow Ranch
	NW¼ NE¼	101	2.50	IRR	1904	Long Hollow Ranch
	NE¼ NW¼	101	4.00	IRR	1895	Long Hollow Ranch
Section 11						
	NE¼ NE¼	103	23.50	IRR	1895	Long Hollow Ranch
	NW¼ NE¼	103	8.50	IRR	1895	Long Hollow Ranch
	NW¼ NW¼	100	6.00	IRR	1895	Long Hollow Ranch
	NW¼ NW¼	100	3.00	IRR	1904	Long Hollow Ranch
Section 12						
	NW¼ NE¼	200	5.00	IRR	1895	Simon, Jim
	SW¼ NE¼	300	0.68	IRR	1895	Friend, Chester & Pamela
	SE¼ NE¼	401	14.00	IRR	1895	Friend, Chester & Pamela
	NE¼ NW¼	200	19.50	IRR	1904	Simon, Jim
	SW¼ NW¼	500	13.50	IRR	1895	Simon, Jim
	SE¼ NW¼	500	5.50	IRR	1895	Simon, Jim
	NE¼ SW¼	500	8.00	IRR	1895	Simon, Jim
	NW¼ SW¼	500	33.00	IRR	1895	Simon, Jim
	SW¼ SW¼	700	21.50	IRR	1895	Kavanagh, Geraldine
	SW¼ SW¼	700	0.50	IRR	1904	Kavanagh, Geraldine
	SW¼ SW¼	800	4.00	IRR	1895	Kavanagh, Geraldine
	SE¼ SW¼	600	5.87	IRR	1895	Sanders, Ed & Betty
	NE¼ SE¼	401	37.00	IRR	1895	Friend, Chester & Pamela
	NW¼ SE¼	300	1.50	IRR	1895	Friend, Chester & Pamela
	SW¼ SE¼	400	22.00	IRR	1895	Sanders, Ed & Betty
	SE¼ SE¼	400	12.00	IRR	1895	Sanders, Ed & Betty
	SE¼ SE¼	401	12.00	IRR	1895	Friend, Chester & Pamela
Section 13						
	SE¼ SE¼	700	3.50	IRR	1895	Kavanagh, Geraldine
	SE¼ SE¼	700	3.10	IRR	1904	Kavanagh, Geraldine
	SE¼ SE¼	800	2.00	IRR	1895	Kavanagh, Geraldine
Section 14						

<u>Lot</u>	<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
	NE¼ SW¼	600	2.10	IRR	1895	Elmore, Michael
	NE¼ SW¼	700	2.10	IRR	1895	Elmore, Michael
	SE¼ SW¼	600	2.90	IRR	1895	Elmore, Michael
	SE¼ SW¼	900	9.00	IRR	1895	Elmore, Michael
	NW¼ SE¼	700	2.90	IRR	1895	Elmore, Michael
Section 22						
	NE¼ NE¼	100	6.00	IRR	1895	Kavanagh, Geraldine
	NE¼ NE¼	100	1.50	IRR	1904	Kavanagh, Geraldine
	NE¼ NE¼	200	15.00	IRR	1895	Helikson, Paul & Sherry
	NE¼ NE¼	400	1.50	IRR	1895	Kavanagh, Geraldine
	SE¼ NE¼	300	19.80	IRR	1895	Helikson, Paul & Sherry
	SW¼ SW¼	1400	6.80	IRR	1899	Burdick, Robert R.
	SE¼ SW¼	1200	4.20	IRR	1895	Kelley, William & Mildred
	SE¼ SW¼	1300	7.50	IRR	1899	Burdick, Robert R.
	NE¼ SE¼	800	8.00	IRR	1895	Vestal, William & Victoria
	NW¼ SE¼	400	8.00	IRR	1895	Volz, Charles & Jan
	NW¼ SE¼	700	6.50	IRR	1895	Volz, Charles & Jan
	SW¼ SE¼	1000	1.80	IRR	1895	Shirazi, Mostafa & Naoko
	SW¼ SE¼	1100	5.00	IRR	1895	Burdick, Joyce G.
	SW¼ SE¼	1100	5.20	IRR	1899	Burdick, Joyce G.
Section 23						
	NE¼ NE¼	100	2.70	IRR	1895	Sanders, Ed & Betty
	NW¼ NE¼	100	1.50	IRR	1895	Sanders, Ed & Betty
	NW¼ NW¼	400	6.00	IRR	1895	Kavanagh, Geraldine
	NW¼ NW¼	500	1.50	IRR	1895	Kavanagh, Geraldine
Section 24						
	NW¼ NE¼	300	5.00	IRR	1895	Elmore, Michael
	NW¼ NE¼	400	4.00	IRR	1895	Elmore, Michael
Section 27						
Township 13 South, Range 11 East, W.M.						
1	NE¼ NE¼	800	15.50	IRR	1895	Williams, Don & Myrtle
2	NW¼ NE¼	800	27.00	IRR	1895	Williams, Don & Myrtle
	SW¼ NE¼	800	25.00	IRR	1895	Williams, Don & Myrtle
	SE¼ NE¼	800	10.00	IRR	1895	Williams, Don & Myrtle
3	NE¼ NW¼	800	10.50	IRR	1895	Williams, Don & Myrtle
	SE¼ NW¼	800	7.00	IRR	1895	Williams, Don & Myrtle
Section 5						
3	NE¼ NW¼	902	40.00	IRR	1895	Page, Richard
	SE¼ NW¼	902	1.50	IRR	1895	Page, Richard
	SE¼ NW¼	902	6.00	IRR	1904	Page, Richard
	NE¼ SW¼	900	5.00	IRR	1895	Wallace, Al
6	NW¼ SW¼	1000	2.50	IRR	1895	Wallace, Al

<u>Lot</u>	<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
6	NW¼ SW¼	1000	6.00	IRR	1904	Wallace, Al
7	SW¼ SW¼	1000	35.00	IRR	1895	Wallace, Al
7	SW¼ SW¼	1000	5.00	IRR	1904	Wallace, Al
	SE¼ SW¼	900	25.50	IRR	1895	Wallace, Al
	SE¼ SW¼	900	6.00	IRR	1904	Wallace, Al
	SW¼ SE¼	800	18.00	IRR	1895	Williams, Don & Myrtle
Section 6						
	NW¼ NE¼	800	11.00	IRR	1895	Williams, Don & Myrtle
	NW¼ NE¼	800	11.50	IRR	1899	Williams, Don & Myrtle
	NE¼ NW¼	999	17.50	IRR	1895	Wallace, Al
1	NW¼ NW¼	1000	31.00	IRR	1895	Wallace, Al
1	NW¼ NW¼	1000	0.50	POND	1895	Wallace, Al
	SE¼ NW¼	1199	27.00	IRR	1895	Lawrence, David & Chris
4	SW¼ SW¼	1102	6.00	IRR	1895	Powers, Sherode & Susan
	SE¼ SW¼	1102	2.50	IRR	1895	Powers, Sherode & Susan
	SE¼ SW¼	1102	2.50	POND	1895	Powers, Sherode & Susan
	SE¼ SW¼	1401	1.00	POND	1904	Thalacker, Marc & Pamela
	SW¼ SE¼	1401	4.00	IRR	1895	Thalacker, Marc & Pamela
	SW¼ SE¼	1401	8.00	POND	1904	Thalacker, Marc & Pamela
	SE¼ SE¼	1401	11.50	IRR	1895	Thalacker, Marc & Pamela
	SE¼ SE¼	1401	6.00	POND	1904	Thalacker, Marc & Pamela
Section 7						
	SW¼ NW¼	1401	32.50	IRR	1895	Thalacker, Marc & Pamela
Section 17						
	NE¼ NE¼	1401	40.50	IRR	1895	Thalacker, Marc & Pamela
	NW¼ NE¼	1401	29.50	IRR	1895	Thalacker, Marc & Pamela
	SW¼ NE¼	1401	37.00	IRR	1895	Thalacker, Marc & Pamela
	SE¼ NE¼	1401	32.50	IRR	1895	Thalacker, Marc & Pamela
	NE¼ NW¼	1102	27.50	IRR	1895	Powers, Sherode & Susan
1	NW¼ NW¼	1102	32.00	IRR	1895	Powers, Sherode & Susan
2	SW¼ NW¼	1102	38.50	IRR	1895	Powers, Sherode & Susan
	SE¼ NW¼	1102	38.00	IRR	1895	Powers, Sherode & Susan
	NE¼ SW¼	1102	23.00	IRR	1895	Powers, Sherode & Susan
	NE¼ SW¼	2200	5.50	IRR	1895	Peterson, Robert & Paula
3	NW¼ SW¼	1102	34.00	IRR	1895	Powers, Sherode & Susan
3	NW¼ SW¼	2100	5.00	IRR	1895	Peterson, Robert & Paula
4	SW¼ SW¼	2100	19.50	IRR	1895	Peterson, Robert & Paula
	NW¼ SE¼	1401	15.00	IRR	1895	Thalacker, Marc & Pamela
	NW¼ SE¼	1401	1.50	IRR	1904	Thalacker, Marc & Pamela
Section 18						

Township 14 South, Range 12 East, W.M.

Additionally, lands involved in transfer applications T-8392, T-8994, T-9621 are part of this allocation of conserved water project. The authorized place of use ("FROM" lands) as described in these transfer applications and as listed on Certificate 74135 are:

Transfer T-8392:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
SW¼ NE¼	100	4.50	IRR	1895	Simon, Cheryle
SE¼ NW¼	101	1.00	IRR	1895	Simon, Cheryle

Section 5

Township 15 South, Range 11 East, W.M.

Transfer T-8994:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
SE¼ SE¼	700	5.00	IRR	1895	Tumalo Farms

Section 8

Township 15 South, Range 11 East, W.M.

Transfer T-9621:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>	<u>Owner as listed on Certificate 74135</u>
NE¼ SE¼	100	2.00	IRR	1895	Tumalo Farms

Section 8

Township 15 South, Range 11 East, W.M.

The proposed place of use ("TO" lands) which shall have the maximum per acre rate of 1/52 cfs reduced to 1/54.08 cfs per acre are:

Transfer T-8392:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>
NE¼ NE¼	406	5.50	IRR	1895

Section 24

Township 14 South, Range 11 East, W.M.

Transfer T-8994:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>
NE¼ SE¼	3000	2.10	IRR	1895
SE¼ SE¼	3000	2.90	IRR	1895

Section 12

Township 14 South, Range 11 East, W.M.

Transfer T-9621:

<u>qQ</u>	<u>Tax lot</u>	<u>Acres</u>	<u>Type</u>	<u>Priority</u>
NE¼ SW¼	2200	2.00	IRR	1895

Section 18

Township 14 South, Range 12 East, W.M.

The place of use shall be those lands described under Certificate 74135, 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 and any related decree shall be included in the superseding certificate.

2. The conserved water held by Lower Bridge Sub-District #2 of Three Sister Irrigation District may be used to irrigate a maximum of 16.76 acres of new land, being 1.62 equivalent-acres with a 1899 priority date and 15.14 equivalent-acres with a 1904 priority date, within Lower Bridge Sub-District #2 of Three Sister Irrigation District that are served by the Three Sisters Irrigation District point of diversion for Certificate 74135, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

The maximum rate for the lands shall be 1/54.08 cfs per acre-equivalent.

3. The conserved water held by Lower Bridge Sub-District #2 of Three Sister Irrigation District 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)
1899	0.03
1904	0.28
<i>Total</i>	<i>0.31</i>

This water will be protected in Whychus Creek from the authorized point of diversion (approximately River Mile 23.5) for Certificate 74135 at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

to the mouth of the Whychus Creek, at River Mile 0.0.

4. Once a permanent place of use is determined for the applicant's share of the conserved water, Lower Bridge Sub-District #2 of Three Sister Irrigation District shall submit a statement consistent with OAR 690-018-0062 (3)(a) that identifies:
- a. The name and address of the person 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 74135, 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 the Lower Bridge Sub-District #2 of Three Sister Irrigation District need only submit a statement requesting that the instream place of use be made permanent.

5. 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 Whychus Creek from the authorized point of diversion (approximately River Mile 23.5) for Certificate 74135 at:

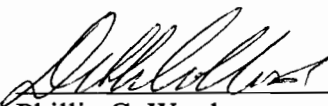
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

to the mouth of the Whychus Creek, at River Mile 0.0.

The instream water right shall be for a total of 1.20 cfs, with a 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 1 through October 31 and at other times when Three Sisters Irrigation District, or its successor, is diverting water.

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


 Phillip C. Ward
 Director

Date of Mailing: APR 22 2008