

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

In the Matter of Allocation of Conserved Water Application CW-79, Deschutes County)
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FINAL ORDER ON COMPLETION AND
FINALIZATION OF ALLOCATION OF
CONSERVED WATER APPLICATION
CW-79

Applicant

Three Sisters Irrigation District
PO Box 2230
Sisters, OR 97759

Agent

Deschutes River Conservancy
Attn: Zachary Tillman
700 NW Hill Street
Bend, OR 97701

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 proposed conservation measures; (b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities; (c) The amount of water that will be needed for the original, authorized use after implementation of the conservation measures; (d) The amount of conserved water expected from implementation of the conservation measures; (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; (g) The applicant's choice of priority date for the conserved water; and (h) Any other information the commission considers necessary to evaluate the effectiveness of the proposal. 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 25-percent of the funds used to finance the conservation measures comes from federal or state sources. ORS 537.470(3).

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.

If an application for the allocation of conserved water is approved, the Department shall issue orders covering the changes in the original water rights and once the conservation project is finalized new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

ORS 537.455 to 537.500 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. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

Findings of Fact

1. On June 23, 2015, the Department issued a Final Order Approving Allocation of Conserved Water CW-79, recorded at Special Order Volume 96 Pages 357 – 367.
2. On June 26, 2015, Three Sisters Irrigation District filed a Notice of Completion and a Request for Finalization for CW-79, notifying the Department that the conservation measures have been completed and requesting finalization of the allocation.
3. The conservation measures in CW-79 proposed the conservation of the following amount of water:

Certificate	Priority	Before Project		After Project		Conserved Water	
		Rate		Rate (CFS)		Rate (CFS)	Duty
		Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS	Maximum AF
74135	1895	125.63	0.02	124.29	0.02	1.34	567.78

4. The reduced rate for the existing uses under Certificate 74135 is as follows:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	1.30	79.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	92.04	5716.75
1899	2.03	108.80
1900	0.75	54.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	124.29	7467.10

5. Pursuant to ORS 537.470(3), the Applicant has requested 100% of the conserved water be allocated for an instream water under the 1895 priority date for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation as follows:

Priority	State's Portion		Applicant's Portion		Conserved Water	
	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
1895	1.34	100 %	0	0%	1.34	567.78

6. Three Sisters Irrigation District requested the Department protect the new instream water right created from the conserved water under Certificate 74135 from the authorized point of diversion on Whychus Creek, at approximately river mile 23.5, to the mouth at river mile 0.0.

Conclusions of Law

As set forth in the Final Order Approving Allocation of Conserved Water CW-79, recorded in Special Order Volume 96, Pages 357-367, the project described is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

1. The proposed change will result in a reduced diversion for the uses allowed under the original water right.
2. The proposed allocation of conserved water will not harm existing water rights.
3. The application is consistent with the requirements established in OAR 690-005-0045.

Now, therefore, it is ORDERED:

1. The quantity of water conserved and allocated 100% to the State is as follows:

Conserved Water Description		
Certificate	Priority	Maximum CFS
74135	1895	1.34

2. The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificate 74135, and any related decree.
3. Water Right Certificate 74135 is modified. The reduced rate for the existing uses under Certificate 74135 is as follows:

Use: IRRIGATION, POND MAINTENANCE, INDUSTRIAL USE, AND STOCK WATER
Limit/Duty: 1/50 Cubic Foot per Second per Acre, as modified by prior conserved water applications
Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER

Priority, Rate, Acreage:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	1.30	79.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	92.04	5716.75
1899	2.03	108.80
1900	0.75	54.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	124.29	7467.10

4. **Water Use Measurement Conditions:**

- a. TSID shall maintain, monitor, and operate the existing measurement devices, or such other suitable measurement devices approved by the Director, on TSID's main canal in such a manner to render reliable measurements.
- b. TSID shall maintain the meters or measuring devices in good working order.
- c. TSID and the water users shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

5. An instream water right certificate shall be issued for Whychus Creek to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation from the authorized point of diversion at approximately River Mile 23.5:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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 Whychus Creek at River Mile 0.0.

Priority Date	Instream Period	Rate Instream
1895	April 1 through October 31	1.34 cfs

The instream right created shall be additive to any instream water rights established pursuant to ORS 537.341, 537.346, 537.348 or 537.470 from the authorized point of diversion to River Mile 19.5 for the period of March 1 through September 14. For the period of September 15 to October 31, the instream right created shall replace a portion of any instream water right created pursuant to ORS 537.341, 537.346, and shall be additive to any instream water right created pursuant to ORS 537.348 or 537.470 from the authorized point of diversion to River Mile 19.5.

The instream right created shall replace a portion of any instream water right established pursuant to ORS 537.341 and 537.346, and shall be additive to any instream water right established pursuant to 537.348 and 537.470 from River Mile 19.5 to the mouth of Whychus Creek.

Dated at Salem, Oregon this 7 day of July, 2015.



Dwight French, Water Rights Services Administrator for
THOMAS M. BYLER, DIRECTOR

Mailing Date: JUL 09 2015