

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

In the Matter of the Proposed Allocation of)	FINAL ORDER APPROVING
Conserved Water by Eagle Crest, Inc for)	ALLOCATION OF CONSERVED
certificate 74145, Deschutes County,)	WATER
Oregon)	

ORS 537.455 to 537.500; chapter 726, Oregon Laws 1997, as amended by chapter 394, Oregon Laws 1999; and OAR Chapter 690, Division 18, authorize and establish the process and criteria for allocations of conserved water.

Findings of Fact

1. Eagle Crest, Inc. filed an application for an allocation of conserved water. The Department assigned the application number C-13.
2. The application requests allocation of water conserved by a project involving lands with water rights confirmed under certificate 74145. Eagle Crest, Inc. is the owner of the lands affected by the proposed allocation and is a qualified applicant for allocation of conserved water. Swalley Irrigation District, in whose name the certificate was issued, approved the application.
3. The portion of the right affected by the proposed allocation of conserved water allows the use of water from the Deschutes River, a tributary of the Columbia River, for the irrigation of 169.4 acres in Sections 13, 14, 23 and 24, Township 15 South, Range 12 East, W.M. The priority date of the right is September 1, 1899.
4. Since issuance of the certificate in 1997, certificate 74145 has been modified by several water right transfers approved pursuant to ORS Chapter 540. The transfers did not involve the lands affected by the proposed allocation of conserved water.
5. Public notice was published as required under OAR 690-18-050.
6. The application includes a land use information form completed and signed by Deschutes County indicating that the required land use approvals have been obtained by the applicant.

This is a final order in other than 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

7. The Oregon Department of Fish and Wildlife provided comments in support of the application and indicating that additional in-stream flow is needed to improve aquatic resources and their habitat.
8. Water for the applicant's lands may be diverted at either of two points of diversion. POD 3 is a part of Swalley Irrigation District's distribution system. POD 15 is at a point on the Deschutes River adjacent to the applicant's lands. The right includes a 43 percent allowance for transmission losses for uses from the main Swalley Canal. However, the allowance is not allowed for uses from POD 15.
9. The portion of the water right affected by the allocation of conserved water allows the diversion of the following quantities of water:

Period	At POD 3	At POD 15
Apr. 1 to May 1 & Oct. 1 to Nov. 1	2.04 cfs	1.16 cfs
May 1 to May 15 & Sept. 15 to Oct. 1	2.73 cfs	1.56 cfs
May 15 to Sept. 15	5.06 cfs	2.89 cfs
Annual Duty	1,623 ac-ft	925 ac-ft

10. The conservation project is complete and involves the use of a fully automated and controlled permanent underground sprinkler system for most irrigated areas. Agricultural wheel line sprinklers and large gun sprinklers are being used for pasture and ball field areas. Water use to the irrigated lands is measured by a water meter. The conservation project allows a reduction in the quantity of water required for the existing beneficial use diverted at POD 15 as follows:

Period	Existing Right at POD 15	Right after Allocation at POD 15	Conserved Water
Apr. 1 to May 1 & Oct. 1 to Nov. 1	1.16 cfs	0.85 cfs	0.31 cfs
May 1 to May 15 & Sept. 15 to Oct. 1	1.56 cfs	1.14 cfs	0.42 cfs
May 15 to Sept. 15	2.89 cfs	2.12 cfs	0.77 cfs
Annual Duty	925 ac-ft	508 ac-ft	417 ac-ft

11. The project was funded by the applicant and did not involve the use of federal or state non-reimbursable funds. The statutory formula for allocation of conserved water is 75 percent to the applicant and 25 percent to the state. This would yield the following allocation:

Period	Conserved Water	Applicant's Share	State's Share
Apr. 1 to May 1 & Oct. 1 to Nov. 1	0.31 cfs	0.23 cfs	0.08 cfs
May 1 to May 15 & Sept. 15 to Oct. 1	0.42 cfs	0.31 cfs	0.11 cfs
May 15 to Sept. 15	0.77 cfs	0.58 cfs	0.19 cfs
Annual Duty	417 ac-ft	313 ac-ft	104 ac-ft

12. The applicant has agreed that, if conserved water is used out-of-stream, the conserved water will be allocated 70 percent to the applicant and 30 percent to the state. This yields the following allocation:

Period	Conserved Water	Applicant's Share	State's Share
Apr. 1 to May 1 & Oct. 1 to Nov. 1	0.31 cfs	0.22 cfs	0.09 cfs
May 1 to May 15 & Sept. 15 to Oct. 1	0.42 cfs	0.29 cfs	0.13 cfs
May 15 to Sept. 15	0.77 cfs	0.54 cfs	0.23 cfs
Annual Duty	417 ac-ft	292 ac-ft	125 ac-ft

13. The applicant has requested that the priority dates of the conserved water rights be the same as the priority date of the originating right.
14. The applicant's portion of the conserved water would be sufficient to irrigate 43.85 acres if applied at the same rate and duty as would be allowed under the applicant's existing right after the allocation of conserved water. This would result in a depletion of water in the Deschutes Basin of up to 71 ac-ft or a reduction in flow in the Deschutes River below Lake Billy Chinook of 0.10 cfs on a year around basis.
15. The applicant has not identified a use of the applicant's share of the conserved water and has requested that the water be reserved instream pursuant to ORS 537.470 and OAR 690-018-0080(2).
16. The only water rights calling on the Deschutes River that have been identified as potentially affected by the allocation of conserved water are the instream water rights. The allocation of conserved water would enhance flows in the middle Deschutes River during the irrigation season and would have no effect on flows during other portions of the year. The allocation of conserved water would enhance flows in the lower Deschutes River during the irrigation season and diminish flows during other periods of the year. On average, the allocation would result in a net improvement in flows in the lower Deschutes River.
17. Pursuant to OAR 690-18-050, in reviewing the application for allocation of conserved water the Department has determined the following:

- a) The proposed allocation of conserved water will result in reduced diversions for the uses allowed under the original right ranging from 0.31 cfs to 0.77 cfs as established in finding of fact 10.
- b) The proposed allocation will not harm other out-of-stream water rights and the impacts on the instream water rights during months outside the irrigation season are mitigated by the enhancement of flows during the irrigation season as described in finding of fact 16.
- c) The application is compatible with the local comprehensive land use plan as established in finding of fact 6.
- d) No harm will occur to other water rights and, therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate.
- e) Consistent with finding of fact 10, the new rate and duty for the portion of the water right affected by the allocation of conserved water shall be:

Period	Reduced Right for Existing Use (POD 3)	Reduced Right for Existing Use (POD 15)
Apr. 1 to May 1 & Oct. 1 to Nov. 1	1.49 cfs	0.85 cfs
May 1 to May 15 & Sept. 15 to Oct. 1	2.00 cfs	1.14 cfs
May 15 to Sept. 15	3.72 cfs	2.12 cfs
Annual Duty	892 ac-ft	508 ac-ft

- f) The state's portion of the conserved water is needed to improve aquatic resources and their habitat between the site of POD 15 and Lake Billy Chinook.
- g) No federal or state non-reimbursable funds were used in the project and, depending on the disposition of the applicant's share of the conserved water, 70 percent of the water shall be allocated to the applicant and 30 percent shall be allocated to the state (if conserved water is used out-of-stream) or 75 percent of the water shall be allocated to the applicant and 25 percent shall be allocated to the state (to the extent the conserved water remains instream).
- h) The applicant's portion of the conserved water may be diverted at POD 15 and used to irrigate up to 43.85 acres within Sections 10, 11, 12, 13, 14, 15, 22, 23 or 24, Township 15 South, Range 12 East, W.M. upon notice to the Department pursuant to OAR 690-18-090. Additionally, the applicant may reserve the water instream for management as an instream water right from the site of POD 15 to Lake Billy Chinook.
- i) The conservation project is complete and the allocation of conserved water shall be finalized on issuance of the final order approving the allocation.

18. Certificate 74145 contains errors in the locations of the points of diversion that occurred at the time that the certificate was issued. The errors associated with POD #1, #4, and #11 were typographical. The error associated with POD #15 was as a result of using an incorrect final proof map. The errors are as follows:

Point of Diversion	Erroneous POD Location	Correct POD Location
1	SE ¼ NE ¼, Section 32, T. 17 S., R. 12 E., W.M.; 100 feet South and 50 feet East from the most Northerly corner of tax lot 4100.	SE ¼ NW ¼, Section 32, T. 17 S., R. 12 E., W.M.; 100 feet South and 50 feet East from the most Northerly corner of tax lot 4100.
4	NW ¼ SE ¼, Section 20, T. 17 S., R. 20 E., W.M.; 1980 feet North and 1980 feet West from the SE Corner of Section 20.	NW ¼ SE ¼, Section 20, T. 17 S., R. 12 E., W.M.; 1980 feet North and 1980 feet West from the SE Corner of Section 20.
11	SE ¼ SE ¼; Section 30, T. 16 S., R. 12 E., W.M.; 1248.59 feet North and 38 feet West from the SE corner of Section 30.	SE ¼ SE ¼; Section 30, T. 16 S., R. 12 E., W.M.; 1248.59 feet North and 138 feet West from the SE corner of Section 30.
15	Additional district diversion: NW ¼ SE ¼, Section 14, T. 15 S., R. 12 E., W.M.; 2170 feet North and 1350 feet West from the SE Corner of Section 14.	Additional district diversion: NE ¼ SE ¼, Section 14, T. 15 S., R. 12 E., W.M.; 2065.82 feet North and 1401.41 feet East from the S Quarter Corner of Section 14.

Conclusion of Law

The project described in the application for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500; chapter 726, Oregon Laws 1997, as amended by chapter 394, Oregon Laws 1999; 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. Certificate 74145 is cancelled.
2. The Department shall issue a new certificate confirming the reduction in the rate of diversion for the lands affected by the allocation of conserved water, incorporating any water right transfers completed pursuant to ORS Chapter 540, and correcting errors in the descriptions of the locations of PODs 1, 3, 11, and 15 that occurred on issuance of certificate 74145.
3. The applicant's portion of the conserved water shall be reserved instream pending notification to the Department of the applicant's intent to use the water. The quantity of water reserved instream shall be 0.23 cfs for the periods April 1 to May 1 and October 1 to

November 1, 0.31 cfs for the periods May 1 to May 15 and September 15 to October 1, and 0.58 cfs for the period May 15 to September 15. The instream water shall have a priority date of September 1, 1899. The water reserved instream shall be managed to carry the water from the site of POD 15 located in the NW ¼ SE ¼, Section 14, T 15 S, R 12 E, to river mile 120 in the NE ¼ SW ¼, Section 29, T 12 S, R 12 E, W.M. (Lake Billy Chinook).

4. On notification to the Department of the applicant's intent to use the conserved water pursuant to OAR 690-18-090, the applicant may divert conserved water at POD 15 for the irrigation of up to 43.85 acres within Sections 10, 11, 12, 13, 14, 15, 22, 23 or 24, Township 15 South, Range 12 East, W.M. The right associated with the use shall allow the diversion of 0.22 cfs for the periods April 1 to May 1 and October 1 to November 1, 0.29 cfs for the periods May 1 to May 15 and September 15 to October 1, and 0.54 cfs for the period May 15 to September 15 and shall have a priority date of September 1, 1899. The annual duty of the right shall be 3 acre-feet per acre. The right shall be subject to all other terms and conditions of the original right, including those of the decree. If the applicant notifies the Department that the right has become appurtenant to specified lands and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location, with a priority date of September 1, 1899.
5. The Department shall issue certificates for instream water rights to confirm a change in use and place of use of the water conserved as described below. The instream water rights shall have a priority date of September 1, 1899 and shall provide for the protection of flows in the Deschutes River from the site of POD 15 located in the NW ¼ SE ¼, Section 14, T 15 S, R 12 E, to river mile 120 in the NE ¼ SW ¼, Section 29, T 12 S, R 12 E, W.M. (Lake Billy Chinook). The quantities of water to be protected under the instream water rights shall be additive to the quantity to be protected under the instream water right established under certificate 76687 and the other instream water rights established under this order. The instream water rights shall be subject to all other terms and conditions of the original right, including those of the decree. The instream water rights shall be issued as follows:
 - a. On finalization of this order, a certificate for an instream water right shall be issued allowing the use of 0.08 cfs for the periods April 1 to May 1 and October 1 to November 1, 0.11 cfs for the periods May 1 to May 15 and September 15 to October 1, and 0.19 cfs for the period May 15 to September 15 for the support of aquatic life.
 - b. If, pursuant to OAR 690-18-090, the applicant notifies the Department that the applicant will use the conserved water as authorized under paragraph 4 of this order, the Department shall issue a certificate for an additional instream water right allowing the use of 0.01 cfs for the periods April 1 to May 1 and October 1 to November 1, 0.02 cfs for the periods May 1 to May 15 and September 15 to October 1, and 0.04 cfs for the period May 15 to September 15 for the support of aquatic life.
 - c. If, prior to any notification to the Department that the applicant will use the water as authorized in this order, the applicant notifies the Department that the applicant's portion of the conserved water should be permanently dedicated to instream use, the Department shall issue a certificate for an additional instream water right allowing the

use of 0.23 cfs for the periods April 1 to May 1 and October 1 to November 1, 0.31 cfs for the periods May 1 to May 15 and September 15 to October 1, and 0.58 cfs for the period May 15 to September 15 for the support of aquatic life.

Dated at Salem, Oregon this 30th day of September, 2004.


For Phillip C. Ward
Acting Director

Mailing date:
 OCT 06 2004