

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

In the Matters of Allocation of Conserved )  
Water Application CW-71 and Transfer )  
Application T-11318, Deschutes County )  
 )

FINAL ORDER OF APPROVAL ON  
COMPLETION AND FINALIZATION OF  
ALLOCATION OF CONSERVED  
WATER CW-71

**Applicants:**

Uncle John Ditch Landowners		
Eileen Stein, City Manager City of Sisters PO Box 39 Sisters, OR 97759	Sharon Amestoy 7209 SE Madison St. Portland, OR 97215-2937	Lazy Z Ranch LLC Horse Heaven, Lazy Z Ranch 4389 Croisan Ridge Way S. Salem, OR 97302
Richard Morrow R & B Ranch Cherry Hills PO Box 1671 Sisters, OR 97759	Bruce Rognlien 1679 Alta Mura Rd. Pacific Palisades, CA 90272	Bill Willitts 251 S. Elm Street Sisters, OR 97759-1079

Three Sisters Irrigation District  
Attn: Marc Thalacker, Manager  
PO Box 2230  
Sisters, OR 97759

**Agent:**  
Deschutes River Conservancy  
Attn: Gen Hubert  
700 NW Hill  
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).

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.

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

### **Findings of Fact**

1. On January 12, 2012, the Landowners of the Uncle John Ditch and Three Sisters Irrigation District (TSID) filed an application for an Allocation of Conserved Water. The Department assigned the application number CW-71.
2. On November 24, 2014, the Applicants amended CW-71 clarifying the places of use and superseding certificate numbers involved in the conservation measures, and submitted amended maps.
3. The conservation measure to be implemented consists of piping 3.8 miles of the unlined Uncle John Ditch with high density polyethylene (HDPE) pipe which would eliminate loss due to seepage. A seepage analysis conducted by Black Rock Engineering determined that an average of 22% of water is lost to leakage when the ditch conveys the full amount of certificated irrigation water.
4. Canal or lateral piping with HDPE pipe is a proven water conservation technique.

5. The first right to be modified by CW-71 is as follows:

**Certificate:** 86824 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)  
**Use:** IRRIGATION of 59.5 ACRES  
**Priority Date:** 1880  
**Rate:** 1.23 CUBIC FEET PER SECOND  
**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	704	18.0
15 S	10 E	WM	10	NW SW	704	0.3
15 S	10 E	WM	10	SW SW	704	1.2
15 S	10 E	WM	10	SE SW	704	37.0
15 S	10 E	WM	10	SW SE	704	3.0

6. The second right to be modified by CW-71 is as follows:

**Certificate:** 83355 in the name of G.W. McFARLANE (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)  
**Use:** IRRIGATION of 30.0 ACRES  
**Priority Date:** 1880  
**Rate:** 0.62 CUBIC FOOT PER SECOND  
**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	30.0

7. The third right to be modified by CW-71 is as follows:

**Certificate:** 85389 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)  
**Use:** IRRIGATION of 2.5 ACRES  
**Priority Date:** 1880  
**Rate:** 0.08 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NW SE	704	2.4
15 S	10 E	WM	10	SW SE	704	0.1

8. The fourth right to be modified by CW-71 is as follows:

**Certificate:** 85391 in the name of CITY OF SISTERS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 3.0 ACRES

**Priority Date:** 1880

**Rate:** 0.10 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SW	704	3.0

9. The fifth right to be modified by CW-71 is as follows:

**Certificate:** 86828 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 18.0 ACRES

**Priority Date:** 1880

**Rate:** 0.57 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SE	704	3.0
15 S	10 E	WM	10	SE SE	704	4.2
15 S	10 E	WM	15	NE NE	200	10.8

10. The sixth right to be modified by CW-71 is as follows:

**Certificate:** 86826 in the name of CITY OF SISTERS and LAZY Z MEADOWS, LLC (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 35.5 ACRES

**Priority Date:** 1881

**Rate:** 0.71 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NE NE	200	6.6
15 S	10 E	WM	15	NW NE	200	28.9

11. The seventh right to be modified by CW-71 is as follows:

**Certificate:** 85392 in the name of CITY OF SISTERS and HAWK'S HAVEN RESERVE, LLC, BRUCE & MARLEEN ROGNLIEN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 30.0 ACRES

**Priority Date:** 1886

**Rate:** 0.60 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION - HAWK'S HAVEN RESERVE, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	706	9.9
15 S	10 E	WM	10	SE NW	706	12.6
15 S	10 E	WM	10	NE SW	706	0.3
15 S	10 E	WM	10	NW SW	706	0.2

IRRIGATION - CITY OF SISTERS						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	15	NW NE	200	7.0

12. The eighth right to be modified by CW-71 is as follows:

**Certificate:** 85386 in the name of HAWK'S HAVEN RESERVE, LLC, BRUCE and MARLEEN ROGNLIEN (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 40.0 ACRES

**Priority Date:** 1895

**Rate:** 0.80 CUBIC FOOT PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION - HAWK'S HAVEN RESERVE						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	706	3.6
15 S	10 E	WM	10	SW NW	706	18.8
15 S	10 E	WM	10	SE NW	706	16.1
15 S	10 E	WM	10	NE SW	706	1.5

13. The portion of the ninth right to be modified by CW-71 is as follows:

**Certificate:** 85393 in the name of SHARON AMESTOY, AMESTOY RANCH, LLC; LAZY Z RANCH c/o JAY POULOS (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 24.6 ACRES

**Priority Date:** 1900

**Rate:** 0.492 CUBIC FEET PER SECOND (if available at the original point of diversion being within the NW¼ SW¼, Section 9, Township 15 South, Range 10 East, W.M.; 910 Feet South and 160 Feet East from the W¼ Corner of Section 9) or its equivalent in case of rotation, measured at the point of diversion

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION – AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NE	702	0.9
15 S	10 E	WM	10	SE NE	702	6.8
15 S	10 E	WM	10	NE SE	702	6.8
15 S	10 E	WM	10	NW SE	702	2.0

IRRIGATION – LAZY Z RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	700	8.1

14. A portion of the tenth right to be modified by CW-71 was under Certificate 85387. Certificate 85387 was superseded by Certificate 87243 under Transfer T-10907. The portion to be modified under Certificate 87243 is as follows:

**Certificate:** 87243 in the name of SHARON AMESTOY, AMESTOY RANCH, WILLITTS, LLC, R & B RANCH, LLC, c/o RICK MORROW (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)

**Use:** IRRIGATION of 48.3 ACRES

**Priority Date:** 1908

**Rate:** 0.966 CUBIC FEET PER SECOND

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION – WILLITTS, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SW NW	800	1.3
15 S	10 E	WM	10	NW SW	800	3.7

IRRIGATION – AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SE	702	17.8
15 S	10 E	WM	10	SW SE	702	0.3
15 S	10 E	WM	10	SE SE	702	8.9

IRRIGATION – R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	11	NW SW	1300	10.0
15 S	10 E	WM	11	SW SW	1300	6.3

15. Another portion of the tenth right to be modified by CW-71 was under Certificate 85387. This portion of the right was involved in Transfer T-10907, and was confirmed in

Determination of Satisfactory Proof, recorded in Special Order Volume 91, Pages 428-430. The portion to be modified under Special Order Volume 91, Page 429 is as follows:

**Order:** Special Order Volume 91, Pages 428-430 (formerly a portion of Certificate 85387) in the name R & B RANCH, LLC, c/o RICK MORROW (confirmed by Decree of the Circuit Court of the State of Oregon for Deschutes County)  
**Use:** IRRIGATION of 23.7 ACRES  
**Priority Date:** 1908  
**Rate:** 0.47 CUBIC FEET PER SECOND  
**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION - R & B RANCH, LLC					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	10 E	WM	11	SW NE	5.6
15 S	10 E	WM	11	SE NE	5.5
15 S	10 E	WM	11	NE SE	12.4
15 S	10 E	WM	11	SE SE	0.2

16. A portion of the eleventh right to be modified by CW-71 was under Certificate 85388. Certificate 85388 was superseded by Certificate 87242 under Transfer T-10907. The portion to be modified under Certificate 87242 is as follows:

**Certificate:** 87242 in the name of SHARON AMESTOY, AMESTOY RANCH, LLC (perfected under Permit E-176)  
**Use:** IRRIGATION of 14.5 ACRES  
**Priority Date:** October 7, 1912  
**Rate:** 0.18 CUBIC FOOT PER SECOND  
**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION - AMESTOY RANCH						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	10	SE NE	702	11.9
15 S	10 E	WM	10	NE SE	702	2.6

17. Another portion of the eleventh right to be modified by CW-71 was under Certificate 85388. This portion of the right was involved in Transfer T-10907, and was confirmed in



Determination of Satisfactory Proof, recorded in Special Order Volume 91, Pages 428-430. The portion to be modified under Special Order Volume 91, Page 430 is as follows:

**Order:** Special Order Volume 91, Pages 428-430 (formerly a portion of Certificate 85388) in the name of R & B RANCH, LLC, c/o RICK MORROW (perfected under Permit E-176)  
**Use:** IRRIGATION of 14.9 ACRES  
**Priority Date:** October 7, 1912  
**Rate:** 0.19 CUBIC FOOT PER SECOND  
**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

**Authorized Place of Use:**

IRRIGATION - R & B RANCH, LLC						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	Acres
15 S	10 E	WM	11	SE NE	1300	4.1
15 S	10 E	WM	11	SW NE	1300	10.8

18. The portion of the twelfth right to be modified by CW-71 is as follows:

**Certificate:** 74135, in the name of Three Sisters Irrigation District (TSID). This right was confirmed by the Whychus [Squaw] Creek Decree.

**Use:** IRRIGATION of 215.7 ACRES and STOCK WATER

**Priority Date/Rate:**

Priority	Rate (cfs)
1889	0.400
1895	1.614
1903	2.300
Total	4.314

**Limit/Duty:** 1/50 cfs Acre, as modified by prior conserved water applications

**Source:** WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER

**Authorized Point of Diversion:**

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

**Authorized Place of Use:**

IRRIGATION							SUPPLEMENTAL INFORMATION		
Priority	Twp	Rng	Mer	Sec	Q-Q	Acres	Transfer	Tax Lot	Water User
1889	15 S	10 E	WM	11	SW SW	20.0	T-10910	1300	Morrow
1895	15 S	10 E	WM	10	NE SE	2.1	T-10910	1300	Morrow
1895	15 S	10 E	WM	10	SE SE	9.0	T-10910	1300	Morrow
1895	15 S	10 E	WM	11	SW SW	1.5	T-10910	1300	Morrow
1895	15 S	10 E	WM	11	SE SW	8.5	T-10910	1300	Morrow
1895	15 S	10 E	WM	11	NE SW	23.1	T-10910	1300	Morrow
1895	15 S	10 E	WM	11	SW NW	0.7	T-10910	1300	Morrow
1895	15 S	10 E	WM	11	SE NW	9.5	T-10910	1300	Morrow

IRRIGATION							SUPPLEMENTAL INFORMATION		
Priority	Twp	Rng	Mer	Sec	Q-Q	Acres	Transfer	Tax Lot	Water User
1895	15 S	10 E	WM	11	NW SW	6.3	T-10910	1300	Morrow
1895	15 S	10 E	WM	10	SW NW	5.7	T-10900	706	Rognlien
1895	15 S	10 E	WM	10	SE NW	3.1	T-10900	706	Rognlien
1895	15 S	10 E	WM	10	NE SW	1.9	T-10900	706	Rognlien
1895	15 S	10 E	WM	10	SW NE	9.0	T-10900	706	Rognlien
1895	15 S	10 E	WM	10	NW SW	0.3	T-10900	706	Rognlien
1903	15 S	10 E	WM	10	SE NE	0.1	T-8900	702	Lazy Z LLC
1903	15 S	10 E	WM	10	SE NW	2.5	T-8900	700	Lazy Z LLC
1903	15 S	10 E	WM	10	NE SW	0.6	T-8900	700	Lazy Z LLC
1903	15 S	10 E	WM	10	NE SE	3.8	T-8900	702	Lazy Z LLC
1903	15 S	10 E	WM	10	NE SE	4.9	T-8900	702	Amestoy
1903	15 S	10 E	WM	10	SW NE	17.1	T-8900	700	Horse Heaven Ranch
1903	15 S	10 E	WM	10	SE NE	0.1	T-8900	702	Amestoy
1903	15 S	10 E	WM	10	NW SE	25.6	T-8900	700	Horse Heaven Ranch
1903	15 S	10 E	WM	10	SW SE	1.3	T-8900	700	Horse Heaven Ranch
1903	15 S	10 E	WM	11	SW NW	3.3	T-8900	1300	Cherry Hills Acres
1903	15 S	10 E	WM	11	SE NW	22.2	T-8900	1300	R & B
1903	15 S	10 E	WM	11	NE SW	16.6	T-8900	1300	Cherry Hills Acres
1903	15 S	10 E	WM	11	NW SW	13.0	T-8900	1300	Cherry Hills Acres
1903	15 S	10 E	WM	11	SE SW	3.9	T-8900	1300	Cherry Hills Acres
Total						215.7			

19. The rates associated with Certificate 74135 have been affected by previous transfers, cancellations, and allocations of conserved water.

Priority Date	Max. Rate (cfs)	T-6854	CW-30	CW-34	CW-44	CW-49	CW-50	CW-51	CW-33	CW-56	CW-66	CW-77	CFS Starting Point
1869	0.96												0.96
1885	1.58		-0.28										1.30
1887	3.00												3.00
1889	4.03												4.03
1893	0.79												0.79
1895	114.33			-1.50	-1.20	-1.20	-1.20	-1.20	-2.00	-1.20	-8.00	-1.33	95.50
1899	2.18				-0.03	-0.03	-0.03	-0.03		-0.03			2.03
1900	1.08		-0.33										0.75
1901	0.45												0.45
1903	7.21	-0.33											6.88
1904	17.41	-3.35			-0.28	-0.28	-0.28	-0.28		-0.28			12.66
Totals	153.02	-3.68	-0.61	-1.50	-1.51	-1.51	-1.51	-1.51	-2.00	-1.51	-8.00	-1.33	128.35

20. Based on the November 24, 2014, amendment, the Applicants request the following quantity of water be conserved:

Originating Certificate				Quantity Needed after Conservation Measures	Conserved Water
Certificate Number/Transfer	Priority Date	Acres	Max. CFS	Max. CFS	Max CFS
86824	1880	59.50	1.230	0.959	0.271
83355	1880	30.00	0.620	0.484	0.136
85389	1880	2.50	0.080	0.062	0.018
85391	1880	3.00	0.100	0.078	0.022
86828	1880	18.00	0.570	0.445	0.125
86826	1881	35.50	0.710	0.554	0.156
85392	1886	30.00	0.600	0.468	0.132
85386	1895	40.00	0.800	0.624	0.176
85393	1900	24.60	0.492	0.384	0.108
85387/87243	1908	48.30	0.966	0.753	0.213
85387/T-10907	1908	23.70	0.474	0.370	0.104
85388/87242	10/7/1912	14.50	0.180	0.140	0.040
85388/T-10907	10/7/1912	14.90	0.190	0.148	0.042
74135/T-10910	1889	20.00	0.400	0.312	0.088
74135/T-10910	1895	60.70	1.210	0.944	0.266
74135/T-10900	1895	20.00	0.400	0.312	0.088
74135/T-8900	1903	115.00	2.300	1.794	0.506
<b>Totals</b>		<b>560.20</b>	<b>11.322</b>	<b>8.831</b>	<b>2.491</b>

21. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
22. Diversion structures, canals, and ditches sufficient to deliver the full quantity of water allowed under the existing rights were present within the five-year period prior to submission of Allocation of Conserved Water application CW-71.
23. The Applicants request the priority date for any conserved water be the same as the originating right.
24. The Oregon Watershed Enhancement Board provided some of the funding for the project. The Applicants have requested the entirety of conserved water be permanently dedicated to instream use for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. Therefore, pursuant to OAR 690-018-0012(1), 100 percent of the conserved water will be allocated to the state.

25. In consultation with the Oregon Department of Fish and Wildlife (ODFW), the Department has determined the water allocated to the state is necessary to support instream flows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and recreation. The proposed instream right is located in an ODFW flow restoration priority watershed and is also in a reintroduction area for spring Chinook and summer steelhead. OAR 690-018-0050(4)(f).
26. On November 20, 2014, the Applicants through their agent filed a Notice of Completion and Request for Finalization of the allocation.
27. The application as amended meets the requirements of OAR 690-018-0040.
28. Notice of Allocation of Conserved Water Application CW-71 was published in the Department's weekly notice on March 20, 2012, and in the *Bend Bulletin* newspaper on January 12 and 19, 2013, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
29. On December 23, 2014, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water Application CW-71 and mailed a copy to the applicants. No timely protests were filed.

***Allocation of Conserved Water Review Criteria [OAR 690-018-0050]***

30. As evidenced by Findings of Fact #20, the proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a).
31. On November 13, 2014, the District #11 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined the conservation project could harm other water rights due to the return flows re-entering the stream at approximately River Mile 19.2. The Watermaster determined the instream water rights created could be reduced by 25% from River Mile 19.2 to mitigate for the return flows. OAR 690-018-0050(4)(b) and (d).
32. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c).
33. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates for the existing uses are:

Certificate Number/ Transfer	Priority Date	Acres	New Rate Max. CFS
86824	1880	59.50	0.959
83355	1880	30.00	0.484
85389	1880	2.50	0.062
85391	1880	3.00	0.078
86828	1880	18.00	0.445
86826	1881	35.50	0.554

Certificate Number/ Transfer	Priority Date	Acres	New Rate Max. CFS
85392	1886	30.00	0.468
85386	1895	40.00	0.624
85393	1900	24.60	0.384
85387/87243	1908	48.30	0.753
85387/T-10907	1908	23.70	0.370
85388/87242	10/7/1912	14.50	0.140
85388/T-10907	10/7/1912	14.90	0.148
74135/T-10910	1889	20.00	0.312
74135/T-10910	1895	60.70	0.944
74135/T-10900	1895	20.00	0.312
74135/T-8900	1903	115.00	1.794
<i>Totals</i>		<i>560.20</i>	<i>8.831</i>

Finding of Fact #20.

34. Pursuant to OAR 690-018-0050(4)(e), the rates allocated to the State for instream use are:

Originating Certificate Number/Transfer	Priority Date	Rate (CFS) POD to RM 19.2	Rate (CFS) Protected RM 19.2 to Mouth
86824	1880	0.271	0.203
83355	1880	0.136	0.102
85389	1880	0.018	0.014
85391	1880	0.022	0.017
86828	1880	0.125	0.094
86826	1881	0.156	0.117
85392	1886	0.132	0.099
85386	1895	0.176	0.132
85393	1900	0.108	0.081
85387/87243	1908	0.213	0.160
85387/T-10907	1908	0.104	0.078
85388/87242	10/7/1912	0.040	0.030
85388/T-10907	10/7/1912	0.042	0.032
74135/T-10910	1889	0.088	0.066
74135/T-10910	1895	0.266	0.200
74135/T-10900	1895	0.088	0.066
74135/T-8900	1903	0.506	0.380
<i>Total</i>		<i>2.491</i>	<i>1.871</i>

Finding of Fact #20.

35. In consultation with ODFW, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #25), OAR 690-018-0050(4)(f).
36. Consistent with ORS 537.470(3), the Applicants requested 100% of the conserved water be allocated for instream water rights to be held in trust by the Water Resources Department for the people of Oregon and the priority dates of the instream rights to be the same as the originating rights. (Findings of Fact #23 and #24), OAR 690-018-0050(4)(g).
37. The Applicants requested the Department protect the new instream water rights created from the conserved water from the authorized points of diversion on Whychus Creek to the mouth at the confluence with the Deschutes River at river mile 0.0, and to Lake Billy Chinook at river mile 120 on the middle Deschutes River. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
38. To mitigate for harm to other water rights, the instream reaches for the conserved water must be adjusted to account for return flows re-entering Whychus Creek at River Mile 19.2. These return flows are relied upon by downstream water users.
39. The instream reach requested by the Applicants requires modification. The Applicants proposed to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measureable in the receiving stream (the Deschutes River). The quantity that may be protected instream in Whychus Creek is not measurable in the Deschutes River and may not be protected instream in the Deschutes River.
40. Consistent with OAR 690-077-0015(8) and (10), the State's portion of the conserved water shall have priority dates and rates set forth below, and shall be allocated as instream water rights for maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values. The instream water rights shall provide for the protection of flows in Whychus Creek as follows:

- a. Certificate 86824  
Priority Date: 1880  
Rate: 0.271 cfs

Reach 1: From the authorized point of diversion at approximately River Mile 24.3:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

To River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.  
Priority Date: 1880  
Rate: 0.203 cfs

b.

Originating Certificate Number/Transfer	Priority Date	Reach 1 Max CFS	Reach 2 Max CFS
83355	1880	0.136	0.102
85389	1880	0.018	0.014
85391	1880	0.022	0.017
86828	1880	0.125	0.094
86826	1881	0.156	0.117
85392	1886	0.132	0.099
85386	1895	0.176	0.132
85393	1900	0.108	0.081
85387/87243	1908	0.213	0.160
85387/T-10907	1908	0.104	0.078
85388/87242	10/7/1912	0.040	0.030
85388/T-10907	10/7/1912	0.042	0.032

Reach 1: From the authorized point of diversion at approximately River Mile 23.75:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

To River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.

c.

Originating Certificate Number/Transfer	Priority Date	Reach 1 Max CFS	Reach 2 Max CFS
74135/T-10910	1889	0.088	0.066
74135/T-10910	1895	0.266	0.200
74135/T-10900	1895	0.088	0.066
74135/T-8900	1903	0.506	0.380

Reach 1:

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 River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.

41. The instream rights shall allow the use and protection of flows from April 1 through October 31, or at such other times as TSID is diverting water for a beneficial use under Certificate 74135. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
42. The protection of flows within the proposed reaches is appropriate, considering:
- i. The instream water use begins at the recorded point of diversion;
  - ii. The location of confluences with other streams downstream of the point of diversion;
  - iii. There are no known areas of natural loss of stream flow to the river beds downstream from the point of diversion; and
  - iv. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of Reach 1 and have been accounted for in Reach 2 of the instream water rights.
- OAR 690-077-0015(8).
43. The combination of instream rights for the proposed reaches does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
44. Instream Water Right Certificates 73223 and 73224 established pursuant to ORS 537.336 (state agency process) with priority dates of October 11, 1990, exist for portions of the stream reach where the new instream water right is proposed. Certificate 73223 provides for a stream reach from Indian Ford Creek at river mile 19.5 to the mouth of Whychus [Squaw] Creek, to provide the required stream flow for migration, spawning, egg incubation, fry emergency, and juvenile rearing. Certificate 73224 provides for a stream reach from South Fork Whychus [Squaw] Creek at river mile 35.0 to Indian Ford Creek at river mile 19.5, to provide the required stream flow for migration, spawning, egg incubation, fry emergence, and juvenile rearing.
45. The flow targets at the time of establishing the instream water rights were based on the needs of resident redband trout and did not account for the flows necessary to support reintroduced Mid-Columbia summer steelhead trout and spring Chinook salmon. The current instream flows under Certificates 73223 and 73224 are insufficient for the reintroduction of anadromous runs of Mid-Columbia summer steelhead trout and spring Chinook salmon. Summer steelhead trout are listed as threatened under the federal Endangered Species Act. The additional flows beyond the established state agency instream water rights are necessary and will provide a public benefit as follows:
- a. Adult upstream migration. For steelhead (September-January) and for Chinook (May-August) flows need to be higher than the instream water rights for: 1) physical passage of large fish upstream over riffles and shallow bars, and 2) migration cues – relatively high flows to stimulate upstream movement to spawning grounds.
  - b. Spawning. Habitat Suitability Criteria for steelhead trout and Chinook salmon spawning indicate that the anadromous fish prefer water about 0.5 ft. deeper and 0.8 ft./sec. faster than resident rainbow trout. This equates to a much higher recommended flow for anadromous vs. resident spawning.



- c. Outmigration. Outmigrating juvenile steelhead trout (March-June) and Chinook salmon (February-March) will benefit greatly from higher flows to facilitate emigration of juveniles downstream to the mainstem Deschutes.
- d. The proposed instream right is located in an ODFW flow restoration priority watershed.

OAR 690-077-0015(10) and (11).

- 46. By adding to other instream water rights established pursuant to ORS 537.335 (state agency process), ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water rights established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).
- 47. There are no areas for which the conserved water is proposed to be used for out-of-stream uses. (Finding of Fact #23), OAR 690-018-0050(4)(h).
- 48. Pursuant to OAR 690-018-0062, on November 20, 2014, the Applicant notified the Department that the Allocation of Conserved Water Project has been completed and requested the project be finalized. OAR 690-018-0050(4)(i).
- 49. If the instream water rights are conditioned as set forth in Findings of Fact #31 and #38, no other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

## CONCLUSIONS OF LAW

- 1. The project described in Allocation of Conserved Water Application CW-71, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Division 018.
- 2. The proposed changes under CW-71 will result in reduced diversion for the uses allowed under the original water rights. Findings of Fact #20 and 32.
- 3. The proposed allocation of conserved water, as conditioned, will not harm existing water rights. Finding of Fact #49.
- 4. The application is consistent with the requirements established in OAR 690-005-0045.

### Now, therefore, it is ORDERED:

- 1. The changes proposed in Allocation of Conserved Water Application CW-71 are approved.

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

Originating Certificate Number/Transfer	Priority Date	Conserved Water
86824	1880	0.271
83355	1880	0.136
85389	1880	0.018
89391	1880	0.022
86828	1880	0.125
86826	1881	0.156
85392	1886	0.132
85386	1895	0.176
85393	1900	0.108
85387/87243	1908	0.213
85387/T-10907	1908	0.104
85388/87242	10/7/1912	0.040
85388/T-10907	10/7/1912	0.042
74135/T-10910	1889	0.088
74135/T-10910	1895	0.266
74135/T-10900	1895	0.088
74135/T-8900	1903	0.506
Total		<b>2.491</b>

Findings of Fact #20 and #33.

3. Water Right Certificate 85393 is cancelled. A new certificate will be issued for that portion of the right not involved or modified by this Allocation of Conserved Water Application. An additional Certificate will be issued to reflect the reduced rate for that portion of Certificate 85393 involved in this conserved water application as follows:

**Use:** IRRIGATION of 24.6 ACRES

**Priority Date:** 1900

**Rate:** 0.384 CUBIC FOOT PER SECOND (if available at the original point of diversion being within the NW¼ SW¼, Section 9, Township 15 South, Range 10 East, W.M.; 910 Feet South and 160 Feet East from the W¼ Corner of Section 9) or its equivalent in case of rotation, measured at the point of diversion

**Source:** WHYCHUS CREEK (formerly known as Squaw Creek), tributary to the DESCHUTES RIVER

4. Water Right Certificates 86824, 83355, 85389, 85391, 86828, 86826, 85392, 85386, 87243, 85387, 87242, and 85388 are cancelled. New certificates will be issued for the existing uses at the reduced rates as follows:

Certificate Number/ Transfer	Priority Date	Acres	New Rate Max. CFS
86824	1880	59.50	0.959
83355	1880	30.00	0.484
85389	1880	2.50	0.062
85391	1880	3.00	0.078
86828	1880	18.00	0.445
86826	1881	35.50	0.554
85392	1886	30.00	0.468
85386	1895	40.00	0.624
85387/87243	1908	48.30	0.753
85387/T-10907	1908	23.70	0.370
85388/87242	10/7/1912	14.50	0.140
85388/T-10907	10/7/1912	14.90	0.148

5. Water right Certificate 74135 is modified. The rates shall be reduced by the following amounts:

74135/T-10910	1889	0.088
74135/T-10910	1895	0.266
74135/T-10900	1895	0.088
74135/T-8900	1903	0.506

The reduced rates for the existing uses under Certificate 74135 are 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	95.14	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	127.39	7467.10

Findings of Fact #19 and #33.

6. Instream water right certificates shall be issued for Whychus Creek to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. The period of use for the instream water rights shall be from April 1 through October 31, or at such other times that TSID shall be diverting water for a beneficial use under Certificate 74135:

a. Originating Certificate 86824

Priority Date: 1880

Rate: 0.271 cfs

Reach 1: From the authorized point of diversion at approximately River Mile 24.3:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

To River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.

Priority Date: 1880

Rate: 0.203 cfs

b.

Originating Certificate Number/Transfer	Priority Date	Reach 1 Max CFS	Reach 2 Max CFS
83355	1880	0.136	0.102
85389	1880	0.018	0.014
89391	1880	0.022	0.017
86828	1880	0.125	0.094
86826	1881	0.156	0.117
85392	1886	0.132	0.099
85386	1895	0.176	0.132
85393	1900	0.108	0.081
85387/87243	1908	0.213	0.160
85387/T-10907	1908	0.104	0.078
85388/87242	10/7/1912	0.040	0.030
85388/T-10907	10/7/1912	0.042	0.032

Reach 1: From the authorized point of diversion at approximately River Mile 23.75:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH - 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

To River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.

c.

Originating Certificate Number/Transfer	Priority Date	Reach 1 Max CFS	Reach 2 Max CFS
74135/T-10910	1889	0.088	0.066
74135/T-10910	1895	0.266	0.200
74135/T-10900	1895	0.088	0.066
74135/T-8900	1903	0.506	0.380

Reach 1:

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 River Mile 19.2.

Reach 2: From River Mile 19.2 to the mouth of Whychus Creek at the confluence with the Deschutes River.

- The instream rights created shall be additive to any instream water rights established pursuant to ORS 537.341, 537.346, 537.348 or 537.470. Findings of Fact #41 through #46.

Dated at Salem, Oregon this 24 day of February, 2015.

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

Date of Mailing: FEB 27 2015