

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

In the Matter of Allocation of Conserved )  
Water Application CW-76, )  
Hood River County )  
 )  
 )

FINAL ORDER ON FINALIZATION OF  
ALLOCATION OF CONSERVED WATER  
CW-76; AND PARTIAL CANCELLATION  
OF WATER RIGHT CERTIFICATE 39049

**Applicant**

Dee Irrigation District  
4835 O'Leary Road  
Hood River, OR 97031

**Agent**

Confederated Tribes of Warm Springs  
6030 Dee Highway  
Parkdale, OR 97041

**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, sold, or gifted 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 instream right created by the allocation of conserved water will be issued. ORS 537.470(6).

Any irrigation district organized under ORS Chapter 545 or a water control district organized under ORS chapter 553 shall, after providing public notice and holding a public meeting, adopt an allocation of conserved water policy in accordance with OAR 690-018-0025.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

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 018, 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. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Findings of Fact**

1. On August 1, 2013, the Department issued a Final Order Approving Allocation of Conserved Water CW-76; and Partial Cancellation upon Finalization of Certificate 39049, recorded at Special Order Volume 91, Pages 16 - 27.
2. On September 17, 2014, the Department issued a Final Order on Completion of Allocation of Conserved Water CW-76 (Completion Order), recorded at Special Order Volume 91, Pages 309-317. The Department mailed a copy of the Completion Order on September 18, 2013. The Completion Order established the following quantities of conserved water:

Conserved Water Description				
Certificate	Maximum CFS	Maximum AF	AF/AC	Source
39048	1.50	276.50	0.75	West Fork of Hood River
39049	1.50	276.50	0.75	No Name Creek (Unnamed) & Springs (Camp Creek)
Total	3.00	553.00		

3. The Completion Order also set forth the partial cancellation of water right Certificate 39049 upon finalization of the conservation project. The cancellation affects only one source and its associated rate from Deer Creek under Certificate 39049.



4. The Completion Order established the reduced rates and duties for the existing uses under Certificates 39048 and 39049 as follows:

Originating Certificate	Priority	Rate		Duty		Acres
		Maximum CFS	CFS/AC	Maximum AF	AF/AC	
39048	9/13/1909	7.72	1/80	1658.90	2.25	737.3
39049	3/7/1931	6.80	1/40	1658.90	2.25	737.3
		14.52		3317.80		

5. The Completion Order established the priority dates for the conserved water to be the same as the originating rights.
6. To prevent enlargement, the period of use for the water allocated to the State for instream use is adjusted to prevent enlargement of the right. By reducing the season of use, the full rate of water may be protected throughout the season without enlarging the right as follows:

Certificate	Priority Date	Source	Instream Period	Rate (cfs)	Volume (acre-feet)
39048	9/13/1909	West Fork Hood River	June 30 through September 30	1.50	276.50
39049	3/7/1931	No Name Creek (Unnamed) & Springs (Camp Creek)	June 30 through September 30	1.50	276.50
Totals				3.00	553.00

7. The state's instream water rights shall allow for the protection of flows from June 30 through September 30, for public benefit for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
8. On October 4, 2018, Dee Irrigation District submitted a Request for Finalization, requesting the Department finalize the allocation of conserved water as set forth in the Completion Order and as listed below:

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
39048	100%	1.5	276.5	0%	0	0	100%	1.50	276.5
39049	100%	1.5	276.5	0%	0	0	100%	1.50	276.5

### Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order on Completion of Allocation of Conserved Water CW-76, recorded at Special Order Volume 91, Pages 309-317; and Final Order Approving Allocation of Conserved Water CW-76, and Partial Cancellation

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.

upon Finalization of Certificate 39049, recorded at Special Order Volume 91, Pages 16-27, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-76 is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

**Now, therefore, it is ORDERED:**

1. The changes proposed in CW-76 are approved.
2. Certificate 39049 is partially cancelled. The rate of 6.92 cfs from Deer Creek is removed as a source of water from Certificate 39049.
3. The right to the use of water is restricted to beneficial use at the places of use described below, and is subject to all other conditions and limitations contained in Certificates 39048 and 39049.
4. A superseding certificate shall be issued for Certificate 39048 at the reduced rate and duty as follows:

**Certificate:** 39048 in the name of DEE IRRIGATION DISTRICT (perfected under Permit S-165)

**Use:** IRRIGATION of 737.3 ACRES

**Priority Date:** SEPTEMBER 13, 1909

**Rate:** 7.72 CUBIC FEET PER SECOND (cfs)

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.25 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** WEST FORK OF HOOD RIVER, tributary to HOOD RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	29	SE NE	2100 FEET SOUTH AND 5190 FEET WEST FROM THE NE CORNER OF SECTION 28

**Authorized Place of Use:**

IRRIGATION						
Twps	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	1	SE NE		4.2
1 N	9 E	WM	1	NE SE		10.8
1 N	9 E	WM	1	NW SE		3.6
1 N	9 E	WM	1	SW SE		11.8
1 N	9 E	WM	1	SE SE		20.8
1 N	9 E	WM	12	NE NE		32.0
1 N	9 E	WM	12	NW NE		28.8
1 N	9 E	WM	12	SW NE		34.0
1 N	9 E	WM	12	SE NE		29.4
1 N	9 E	WM	12	SE NW		11.0
1 N	9 E	WM	12	NE SW		29.4
1 N	9 E	WM	12	SW SW		5.4



IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	12	SE SW		34.0
1 N	9 E	WM	12	NE SE		28.4
1 N	9 E	WM	12	NW SE		33.4
1 N	9 E	WM	12	SW SE		35.2
1 N	9 E	WM	12	SE SE		38.8
1 N	9 E	WM	13	NE NE		24.6
1 N	9 E	WM	13	NW NE		32.2
1 N	9 E	WM	13	SW NE		35.7
1 N	9 E	WM	13	SE NE		18.5
1 N	9 E	WM	13	NE NW		36.4
1 N	9 E	WM	13	NW NW		14.8
1 N	9 E	WM	13	SW NW		25.0
1 N	9 E	WM	13	SE NW		38.2
1 N	9 E	WM	13	NE SW		35.5
1 N	9 E	WM	13	NW SW		27.0
1 N	9 E	WM	13	SW SW		0.7
1 N	9 E	WM	13	SE SW		0.9
1 N	9 E	WM	13	NE SE		9.4
1 N	9 E	WM	13	NW SE		16.6
1 N	9 E	WM	14	NE SE		3.8
1 N	9 E	WM	14	SW SE		0.6
1 N	10 E	WM	7	NW NW	1	0.8
1 N	10 E	WM	7	SW NW	2	8.8
1 N	10 E	WM	7	NW SW	3	8.0
1 N	10 E	WM	7	SW SW	4	7.0
1 N	10 E	WM	18	NW NW	1	1.8
Total						737.3

5. A superseding certificate shall be issued for Certificate 39049 at the reduced rate and duty, incorporating the partial cancellation from Deer Creek, as follows:

**Certificate:** 39049 in the name of DEE IRRIGATION DISTRICT (perfected under Permit S-18546)

**Use:** SUPPLEMENTAL IRRIGATION of 737.3 ACRES

**Priority Date:** MARCH 7, 1931

**Rate:** 6.80 CUBIC FEET PER SECOND, being 4.54 cfs from Unnamed Creek (aka No Name Creek), and 2.26 cfs from springs (0.39 cfs from south channel, 0.39 cfs from middle channel, and 1.48 cfs from north channel of Camp Creek)

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.25 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the acre-foot limitation allowed herein.

**Source:** UNNAMED CREEK and SPRINGS (CAMP CREEK), tributaries to the WEST FORK OF HOOD RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Source/Description
1 N	9 E	WM	28	NW NE	CAMP CREEK: 500 FEET SOUTH AND 2470 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 390 FEET SOUTH AND 2440 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 160 FEET SOUTH AND 2180 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	SW NW	NO NAME CREEK: 2050 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF SECTION 28

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	1	SE NE		4.2
1 N	9 E	WM	1	NE SE		10.8
1 N	9 E	WM	1	NW SE		3.6
1 N	9 E	WM	1	SW SE		11.8
1 N	9 E	WM	1	SE SE		20.8
1 N	9 E	WM	12	NE NE		32.0
1 N	9 E	WM	12	NW NE		28.8
1 N	9 E	WM	12	SW NE		34.0
1 N	9 E	WM	12	SE NE		29.4
1 N	9 E	WM	12	SE NW		11.0
1 N	9 E	WM	12	NE SW		29.4
1 N	9 E	WM	12	SW SW		5.4
1 N	9 E	WM	12	SE SW		34.0
1 N	9 E	WM	12	NE SE		28.4
1 N	9 E	WM	12	NW SE		33.4
1 N	9 E	WM	12	SW SE		35.2
1 N	9 E	WM	12	SE SE		38.8
1 N	9 E	WM	13	NE NE		24.6
1 N	9 E	WM	13	NW NE		32.2
1 N	9 E	WM	13	SW NE		35.7
1 N	9 E	WM	13	SE NE		18.5
1 N	9 E	WM	13	NE NW		36.4
1 N	9 E	WM	13	NW NW		14.8
1 N	9 E	WM	13	SW NW		25.0
1 N	9 E	WM	13	SE NW		38.2
1 N	9 E	WM	13	NE SW		35.5
1 N	9 E	WM	13	NW SW		27.0
1 N	9 E	WM	13	SW SW		0.7
1 N	9 E	WM	13	SE SW		0.9
1 N	9 E	WM	13	NE SE		9.4
1 N	9 E	WM	13	NW SE		16.6
1 N	9 E	WM	14	NE SE		3.8
1 N	9 E	WM	14	SW SE		0.6
1 N	10 E	WM	7	NW NW	1	0.8
1 N	10 E	WM	7	SW NW	2	8.8
1 N	10 E	WM	7	NW SW	3	8.0
1 N	10 E	WM	7	SW SW	4	7.0
1 N	10 E	WM	18	NW NW	1	1.8
Total						737.3



6. Water use measurement conditions:
- a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each of the following locations:
    1. In the section of canal below the diversion of West Fork of Hood River and above No Name Creek diversion. Currently, OWRD gaging station (Gage ID #14116195) fulfills this requirement. However, if OWRD discontinues this gaging station or determines the data collected at this station is not the best method of accurately measuring flow, a different type of measuring device may be required.
    2. Near the end of the new pipeline before any turnouts to Dee Irrigation District patrons, as determined by the Watermaster.
  - b. The water user shall maintain the meters or measuring devices in good working order.
  - c. The water user 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.
7. An instream water right certificate shall be issued for West Fork of Hood River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and recreation as follows:

**Reach 1:**

Source: West Fork Hood River

From the authorized point of diversion under Certificate 39048, located at approximately River Mile 6.2:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	29	SE NE	2100 FEET SOUTH AND 5190 FEET WEST FROM NE CORNER OF SECTION 28

Priority Date	Instream Period	Rate (cfs)	Volume (acre-feet)
9/13/1909	June 30 through September 30	1.50	276.50

To the mouth of the West Fork of Hood River at River Mile 0.0 at the confluence with Hood River.

8. An instream water right certificate shall be issued for No Name (Unnamed) Creek and Springs (Camp Creek) to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and recreation as follows:

**Reach 1**

Source: No Name Creek, tributary to West Fork Hood River

From the authorized point of diversion on No Name Creek under Certificate 39049:

Twp	Rng	Mer	Sec	Q-Q	Source/Description
1 N	9 E	WM	28	SW NW	NO NAME CREEK: 2050 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF SECTION 28

Priority Date	Instream Period	Rate (cfs)	Volume (acre-feet)
3/7/1931	June 30 through September 30	0.86	157.6

To the mouth of No Name Creek at its confluence with the West Fork of Hood River at approximately RM 6.0, then into the West Fork of Hood River to the confluence with Springs (Camp Creek) at approximately RM 5.5:

**Reach 2:**

Source: Springs (Camp Creek), tributary to West Fork Hood River

From the authorized point of diversion for (Springs) Camp Creek under Certificate 39049:

Twp	Rng	Mer	Sec	Q-Q	Source/Description
1 N	9 E	WM	28	NW NE	CAMP CREEK: 160 FEET SOUTH AND 2180 FEET WEST FROM THE NE CORNER OF SECTION 28

Priority Date	Instream Period	Rate (cfs)	Volume (acre-feet)
3/7/1931	June 30 through September 30	0.64	118.9

To the mouth of Springs (Camp Creek) at its confluence with the West Fork of Hood River at approximately RM 5.5.

**Reach 3:**

Sources: No Name Creek and Springs (Camp Creek)

From the confluence of Springs (Camp Creek) and the West Fork Hood River at approximately RM 5.5, in the NWNE of Section 28, Township 1 North, Range 9 East, W.M. at approximately Latitude: 45.5487398718, Longitude: -121.7003085908

Priority Date	Instream Period	Rate (cfs)	Volume (acre-feet)
3/7/1931	June 30 through September 30	1.50	276.5

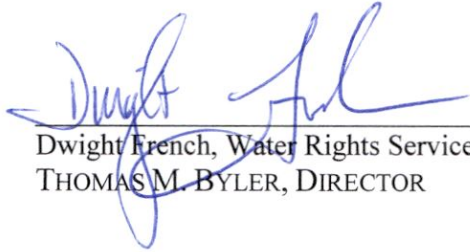
To the mouth of the West Fork of Hood River at River Mile 0.0 at its confluence with Hood River.

9. Within the specified stream reaches, the amount of water to which these rights are entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which these rights are entitled downstream from the original point of diversion within the specified stream reach.



10. The instream rights established by this Allocation of Conserved Water shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 or shall be in addition to instream water rights established pursuant to ORS 537.3451, 537.346, 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon this 11<sup>th</sup> day of October, 2018.



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

Mailing date: OCT 12 2018