

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

In the Matter of Allocation of Conserved Water Application CW-103, Deschutes County)
) FINAL ORDER ON COMPLETION
) AND FINALIZATION OF
) ALLOCATION OF CONSERVED
) WATER CW-103

Applicant:
Three Sisters Irrigation District
PO Box 2230
Sisters, OR 97759

Agent:
Deschutes River Conservancy
700 NW Hill Street, Suite 1
Bend, OR 97703

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.

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 not subject to repayment. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the proposed 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.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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 a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. ORS 537.465.

If an application for the allocation of conserved water is approved, the Department shall issue orders describing 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 describing the unaffected portion of the water rights and separate new certificates documenting 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. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights. The statutes and rules outlined above require the Department to review the application and any comments received to make its findings and determinations.

Findings of Fact

1. On May 8, 2018, Three Sisters Irrigation District filed an Allocation of Conserved Water Application. The Department designated the application number CW-103.
2. The conservation project involved replacing approximately 4,000 feet of open ditch on its main canal with buried high density polyethylene (HDPE) pipe. Replacement of the existing open and leaky portions of the delivery system will eliminate seepage and evaporation losses conserving approximately 636.7 acre feet of water per year.
3. Canal or lateral piping with HDPE pipe is a proven water conservation technique.
4. An Order Approving Allocation of Conserved Water CW-103 (Approval Order) was signed on August 30, 2018, and mailed on August 31, 2018. The order is recorded at Special Order Volume 109, Pages 284-296.
5. The Approval Order established the quantities of water conserved and allocated as follows:

CONSERVED WATER DESCRIPTION						
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	1.50	100 %	0	0%	1.50	636.7

6. The Approval Order established the reduced rates for the existing uses under Certificate 74135 as follows:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	0.54	27.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	88.21	5716.75
1899	2.03	108.80
1900	0.00	0.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	118.95	7361.10

Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 74135, which are not listed in the Approval Order, will cause a corresponding change to the rate, duty and total number of acres served by Certificate 74135.

7. The Approval order established the priority date for any conserved water to be the same as the originating right.
8. The Approval Order established a deadline of August 31, 2018, for the Notice of Completion to be filed. The Approval Order established a deadline of October 1, 2018, for the Request for Finalization form to be submitted.
9. On October 4, 2018, the Applicants submitted a Notice of Completion Form and a Request for Finalization.

Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order Approving Allocation of Conserved Water CW-103, recorded at Special Order Volume 109, Pages 284-296, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-103, 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 project is complete and no additional time is needed for finalization.
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 rates for the existing uses under Certificate 74135 are 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	0.54	27.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	88.21	5716.75
1899	2.03	108.80
1900	0.00	0.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	118.95	7361.10

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 24.5:

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 the confluence with the Deschutes River at RM 0.0, then into the Deschutes River to Lake Billy Chinook as follows:

Whychus Creek, tributary to the Deschutes River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 1: At the Authorized POD at approximately RM 24.5 to the confluence of Whychus Creek with the Deschutes River (RM 0.0)	1.50

Deschutes River, tributary to the Columbia River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 2: From the confluence of Whychus Creek with the Deschutes River (RM 0.0) to Lake Billy Chinook at RM 120	1.50

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from the point of diversion to the mouth of Whychus Creek and whether the described instream flows below the point of diversion may be adjusted. If adjusted, instream flows from immediately below the point of diversion to the mouth of Whychus Creek and into the Deschutes River to Lake Billy Chinook may not exceed the quantities specified at the point of diversion.

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 during the months of April through October for the portion of the reach extending from approximately T15S, R10E, Section 21 (approximately RM 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20)] and during the period July 10 through October 15 for the portion of the reach extending from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek. In other portions of the identified reach, the quantities protected instream may be additive to other existing water rights established under ORS 537.348 and 537.470 and may replace a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes.

Dated at Salem, Oregon this 19th day of October, 2018.



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

Mailing date: OCT 22 2018