

Findings of Fact

1. On May 13, 2004, U.S. Department of Interior, Bureau of Land Management filed a transfer application to change the character of use and place of use to instream use, the character of use for storage rights, and surface water point of diversion (POD) to ground water appropriation (POA) under Certificates 16309, 32813, 32818, 32820, 32945, 32946, 43264, 49851, and 49853. The Department assigned the application number T-9726.
2. On May 13, 2004, U.S. Department of Interior, Bureau of Land Management also filed an allocation of conserved application under Certificates 32813, 32818, 32820. The Department assigned the application number CW-36.
3. On May 13, 2004, U.S. Department of Interior, Bureau of Land Management requested that the Department cancel portions of Certificates 16309, 32813, 32818, 32820, 32945, 32946, 49853, 43265 and 49852.

DESCRIPTION OF THE WATER RIGHTS PROPOSED TO BE MODIFIED

4. The portions of the first right to be transferred, to instream use, are as follows:
Certificate: 16309 in the name of J. C. JONES (confirmed by Rogue River Decree)
Use: IRRIGATION of 13.0 ACRES
Priority Date: 1869
Rate: 0.217 CUBIC FOOT PER SECOND
Source: WILLIAMS CREEK, tributary to APPLGATE RIVER
Authorized Point of Diversion, as identified in Special Order Volume 11, page 413A is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	13	NW NW	135 FEET SOUTH AND 135 FEET EAST FROM THE SW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	GLot	Acres	Tract
38 S	5 W	WM	12	2	12.0	1
38 S	5 W	WM	12	1	1.0	1

5. An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 16309 as follows:
Use: IRRIGATION of 2.0 ACRES
Priority Date: 1869
Rate: 0.033 CUBIC FOOT PER SECOND
Source: WILLIAMS CREEK, tributary to APPLGATE RIVER

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	GLot	Acres	Tract
38 S	5 W	WM	12	2	2.0	1

6. The portions of the second right to be transferred, from a surface water point of diversion to a ground water point of appropriation with the new point of appropriation to be used in place of the old point of diversion, are as follows:

Certificate: 32813 in the name of ELERY STONE (confirmed by Rogue River Decree)

Use: IRRIGATION of 36.1 ACRES

Priority Date: OCTOBER, 1898

Rate: 0.722 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional identification
38 S	4 W	WM	6	SW SW	3.1	Part of the Thomas Nickerson homestead
38 S	5 W	WM	1	NE SE	4.7	Lying south of the Applegate River
38 S	5 W	WM	1	NW SE	12.7	Lying south of the Applegate River
38 S	5 W	WM	1	SW SE*	0.5	
38 S	5 W	WM	1	SE SE*	15.1	

*The certificate combines the acreage for these parcels, however the applicant has identified the acreage in the section by quarter-quarter.

7. The portions of the second right involved in the allocation of conserved water project are the same as those lands identified in Finding of Fact #6.
8. Two affidavits for partial cancellation were received from the applicant for T-9726 for a portion of Certificate 32813 described as follows:

Use: IRRIGATION of 44.8 ACRES

Priority Date: OCTOBER, 1898

Rate: 0.898 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional identification
38 S	4 W	WM	6	SW SW	8.4	Part of the Thomas Nickerson homestead
38 S	5 W	WM	1	NE SE	4.9	Lying south of the Applegate River
38 S	5 W	WM	1	NW SE	9.6	Lying south of the Applegate River
38 S	5 W	WM	1	SW SE*	2.2	
38 S	5 W	WM	1	SE SE*	19.7	

*The certificate combines the acreage for these parcels, however the applicant has identified the acreage in the section by quarter-quarter.

- The portions of the third right to be transferred, from a surface water point of diversion to a ground water point of appropriation with the new point of appropriation to be used in place of the old point of diversion are as follows:

Certificate: 32818 in the name of GEORGE FIELDS (confirmed by Rogue River decree)

Use: IRRIGATION of 32.7 ACRES

Priority Date: OCTOBER, 1898

Rate: 0.654 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION AND DOMESTIC

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	3.8
38 S	5 W	WM	12	SE NE	28.9

- The portions of the third right involved in the allocation of conserved water project are the same as those lands identified in Finding of Fact #9.

- An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 32818 described as follows:

Use: IRRIGATION of 11.8 ACRES AND THE ASSOCIATED DOMESTIC RIGHT WITH THESE ACRES AND THE ASSOCIATED DOMESTIC RIGHT WITH THE ACRES DESCRIBED IN FINDING OF FACT #9

Priority Date: OCTOBER, 1898

Rate: 0.236 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION AND DOMESTIC

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	1.2
38 S	5 W	WM	12	SE NE	10.6

12. The portions of the fourth right to be transferred, from a surface water point of diversion to a ground water point of appropriation with the new point of appropriation to be used in place of the old point of diversion. are as follows:

Certificate: 32820 in the name of ARTHUR J. & ALMA S. FARRA (confirmed by Rogue River Decree)

Use: IRRIGATION of 21.7 ACRES

Priority Date: OCTOBER, 1898

Rate: 0.433 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION AND DOMESTIC

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	21.7

13. The portions of the fourth right involved in the allocation of conserved water project are the same as those lands identified in Finding of Fact #12.

14. An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 32820 described as follows:

Use: IRRIGATION of 8.3 ACRES AND THE ASSOCIATED DOMESTIC RIGHT WITH THESE ACRES AND THE ASSOCIATED DOMESTIC RIGHT WITH THE ACRES DESCRIBED IN FINDING OF FACT #12

Priority Date: OCTOBER, 1898

Rate: 0.165 CUBIC FOOT PER SECOND

Source: APPLGATE RIVER, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

Authorized Place of Use:

IRRIGATION AND DOMESTIC

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	8.3

15. The portions of the fifth right to be transferred, to instream use, are as follows:

Certificate: 32945 in the name of O.B. AND MARIAN JOHNSON (confirmed by Rogue River Decree)

Use: IRRIGATION of 10.7 ACRES

Priority Date: DECEMBER, 1908

Rate: 0.212 CUBIC FOOT PER SECOND

Source: WILLIAMS CREEK, tributary to APPLEGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	5 W	WM	13	NW NW

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Additional identification
38 S	5 W	WM	12	SW NE	2	6.8	North of the highway
38 S	5 W	WM	12	NE SE		3.9	North of the highway

16. An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 32945 described as follows:

Use: IRRIGATION of 8.5 ACRES

Priority Date: DECEMBER, 1908

Rate: 0.168 CUBIC FOOT PER SECOND

Source: WILLIAMS CREEK tributary to APPLEGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
38 S	5 W	WM	13	NW NW

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	12	SW NE	2	5.7
38 S	5 W	WM	12	NE SE		2.8

17. The portions of the sixth right to be transferred to instream use are as follows:

Certificate: 32946 in the name of LYNN STONE and CHAS. L. FIELD, SUCCESSORS IN INTEREST TO O. B. AND MARIAN JOHNSON (confirmed by Rogue River Decree)

Use: IRRIGATION of 5.5 ACRES

Priority Date: DECEMBER, 1908

Rate: 0.11 CUBIC FOOT PER SECOND

Source: WILLIAMS CREEK, tributary to APPLEGATE RIVER

Authorized Point of Diversion, as identified in Special Order Volume 11, page 413A is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	13	NW NW	135 FEET SOUTH AND 135 FEET EAST FROM THE SW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	12	NW NE	1	5.5

18. An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 32946 described as follows:

Use: IRRIGATION of 0.5 ACRES

Priority Date: DECEMBER, 1908

Rate: 0.01 CUBIC FOOT PER SECOND

Source: WILLIAMS CREEK tributary to APPLGATE RIVER

Authorized Point of Diversion, as identified in Special Order Volume 11, page 413A is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	13	NW NW	135 FEET SOUTH AND 135 FEET EAST FROM THE SW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	12	NW NE	1	0.5

19. The seventh right to be transferred, from storage for supplemental irrigation to storage for multipurpose use, is as follows:

Certificate: 43264 in the name of ESTATE OF ELERY STONE (perfected under Permit R-5734)

Use: RIGHT TO STORE WATER FOR SUPPLEMENTAL IRRIGATION

Priority Date: OCTOBER 1, 1970

Limit/Duty: 4.5 ACRE FEET

Source: WASTE WATER, tributary to APPLGATE RIVER

The reservoir is located in:

Twp	Rng	Mer	Sec	Q-Q
38 S	5 W	WM	1	SE SE

20. The eighth right to be transferred, from storage for irrigation to storage for multipurpose use, is as follows:

Certificate: 49851 in the name of FIELDS & STONE CORPORATION (perfected under Permit R-3882)

Use: RIGHT TO STORE WATER FOR IRRIGATION

Priority Date: OCTOBER 24, 1963

Limit/Duty: 6.0 ACRE FEET, BEING 2.0 ACRE FEET IN RESERVOIR NO. 1, 2.0 ACRE FEET IN RESERVOIR NO. 2, AND 2.0 ACRE FEET IN RESERVOIR NO. 3

Source: WASTE AND SEEPAGE, tributary to WILLIAMS CREEK AND APPLGATE RIVER

The reservoirs are located in:

Twp	Rng	Mer	Sec	Q-Q	Additional identification
38 S	4 W	WM	7	NW SW	RESERVOIR NO. 3
38 S	5 W	WM	12	SE NE and NE SE	RESERVOIR NO. 2
38 S	5 W	WM	12	NE SE	RESERVOIR NO. 1

21. The portions of the ninth right to be transferred, to instream use, are as follows:

Certificate: 49853 in the name of FIELDS AND STONE CORPORATION (perfected under Permit S-27151)

Use: IRRIGATION of 13.8 ACRES

Priority Date: JANUARY 19, 1961

Rate: 0.343 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 4.5 acre feet per acre per year; provided further that the right to the use of water is limited to the period when the flow of the Rogue River is more than 735 cfs at its mouth

Source: WILLIAMS CREEK, tributary to APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
38 S	5 W	WM	12	NW NE	41	1030 FEET SOUTH AND 2500 FEET WEST FROM THE NE CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	12	NW NE	1	12.2
38 S	5 W	WM	12	SW NE	2	1.6

22. An affidavit for partial cancellation was received from the applicant for T-9726 for a portion of Certificate 49853 described as follows:

Use: IRRIGATION of 1.9 ACRES

Priority Date: JANUARY 19, 1961

Rate: 0.047 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 4.5 acre feet per acre per year; provided further that the right to the use of water is limited to the period when the flow of the Rogue River is more than 735 cfs at its mouth

Source: WILLIAMS CREEK tributary to APPLGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
38 S	5 W	WM	12	NW NE	41	1030 FEET SOUTH AND 2500 FEET WEST FROM THE NE CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	12	NW NE	1	1.7
38 S	5 W	WM	12	SW NE	2	0.2

23. Two affidavits for partial cancellation were received from the applicant for T-9726 for a portion of Certificate 43265 described as follows:

Use: SUPPLEMENTAL IRRIGATION of 25.7 ACRES

Priority Date: OCTOBER 1, 1970

Rate: 0.323 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 ACRE FEET PER ACRE

Source: WASTE WATER AND STONE RESERVOIR CONSTRUCTED UNDER APPLICATION NO. R-47599, PERMIT NO. R-5734, tributary to APPLIGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	540 FEET NORTH AND 50 FEET WEST FROM THE SE CORNER OF SECTION 1

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW SW	7.5
38 S	5 W	WM	1	NE SE	1.6
38 S	5 W	WM	1	NW SE	6.9
38 S	5 W	WM	1	SW SE	1.5
38 S	5 W	WM	1	SE SE	8.2

24. Two affidavits for partial cancellation were received from the applicant for T-9726 for a portion of Certificate 49852 described as follows:

Use: SUPPLEMENTAL IRRIGATION of 30.1 ACRES

Priority Date: OCTOBER 24, 1963

Rate: 0.376 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 ACRE FEET PER ACRE

Source: DRAIN DITCH AND THREE RESERVOIRS CONSTRUCTED UNDER PERMIT NO. R-3882, tributary to WILLIAMS CREEK AND APPLIGATE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	4 W	WM	7	NW SW	RESERVOIR NO. 3: 2650 FEET SOUTH AND 10 FEET EAST FROM THE NE CORNER OF SECTION 12
38 S	5 W	WM	12	SE NE	RESERVOIR NO. 2: 2630 FEET SOUTH AND 70 FEET WEST FROM THE NE CORNER OF SECTION 12
38 S	5 W	WM	12	NE SE	RESERVOIR NO. 1: 2900 FEET SOUTH AND 1220 FEET WEST FROM THE NE CORNER OF SECTION 12
38 S	5 W	WM	12	NE SE	DRAIN DITCH: 3140 FEET SOUTH AND 1300 FEET WEST FROM THE NE CORNER OF SECTION 12
38 S	5 W	WM	12	NW SE	DRAIN DITCH: 3270 FEET SOUTH AND 1340 FEET WEST FROM THE NE CORNER OF SECTION 12

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	1	SE SE		0.6
38 S	5 W	WM	12	NE NE		7.2
38 S	5 W	WM	12	NW NE	1	2.2
38 S	5 W	WM	12	SW NE	2	7.9
38 S	5 W	WM	12	SE NE		9.9
38 S	5 W	WM	12	NE SE		2.3

25. Based on available evidence presented by the applicant, 2.8 of the acres described on the original map and certificate for Certificate 49852 were in error and should not have been included on Certificate 49852. The rate associated with these acres, described below is 0.035 cfs.

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	2.8

POINT OF DIVERSION TO POINT OF APPROPRIATION TRANSFERS

26. Application T-9726 proposes to change the surface water point of diversion to a ground water appropriation for the portion of Certificates 32813, 32818, and 32820 described in Findings of Fact # 6, 9 and 12. The proposed point of appropriation is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM THE SE CORNER OF SECTION 1

INSTREAM TRANSFERS

27. Application T-9726 proposes to change the character of use and place of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values for the portions of Certificates 16309, 32945, 32946, and 49853 described in Findings of Fact # 4, 15, 17, and 21. The proposed instream use is as follows:

Williams Creek, tributary to Applegate River, in the Rogue Basin

Instream Reach: From the respective PODs as described in Findings of Fact # 4, 15, 17, and 21 to the mouth of Williams Creek, at River Mile 0.0.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
16309	1869	0.217	April 1 through October 31
32945	December, 1908	0.212	April 1 through October 31
32946	December, 1908	0.110	April 1 through October 31
49853	January 19, 1961	0.343	April 1 through June 29
<i>Total</i>		<i>0.882</i>	

28. There are existing instream water rights, Certificates 59774 and 72669, with respective priority dates of November 3, 1983 and December 7, 1990, for the same reach as that proposed for the new instream water right.
29. The applicant proposes to replace a portion of the existing instream water rights, evidenced by Certificates 59774 and 72669, with earlier priority dates.
30. The protection of flows within the proposed reaches is appropriate, considering:
 - a) The instream water right begins at the recorded points of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d) There are no known return flows resulting from the exercise of the existing water right within the reach of the proposed instream water right. Any return flows would likely re-enter the river downstream of the reach of the instream water right.
31. The existing instream water rights in the reach are sufficient to protect the monthly quantities of water necessary for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values and the rights proposed for transfer will allow replacement of a portion of the existing water rights with an earlier priority date.

CHARACTER OF USE CHANGE FOR STORED WATER TRANSFERS

32. Application T-9726 proposes to change the character of use of Certificate 43264, described in Finding of Fact #19, from storage for supplemental irrigation to storage for multipurpose use.
33. Application T-9726 proposes to change the character of use of Certificate 49851, described in Finding of Fact #20, from storage for irrigation to storage for multipurpose use.

ALL TRANSFERS

34. Notice of the application for transfer was published on May 24, 2004, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. On

October 16, 2006, the Department issued a preliminary determination proposing to approve Transfer Application T-9726 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published in the Department's weekly notice on October 24, 2006, and in the Grants Pass Daily Courier on October 23 and 30, and November 6, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No comments or protests were filed in response to the Department's weekly notice or to the newspaper notice.

35. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
36. A diversion structure, ditch, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
37. The proposed change would not result in enlargement of the rights.
38. The proposed change would not result in injury to other water rights.

PARTIAL CANCELLATION OF WATER RIGHTS

39. The applicant for T-9726 has authorized the cancellation of a portion Certificates 16309, 32813, 32818, 32820, 32945, 32946, 49853, 43265, and 49852, as described in Finding of Facts # 5, 8, 11, 14, 16, 18, 22, 23, and 24.
40. The final proof map and Certificate 49852 describe the NE ¼ NE ¼ of Section 12, Township 38 South, Range 5 West, W.M. as having 36.0 acres of water rights. All but 0.5 of the possible acres with water rights belong to the applicant. This 0.5 acre shall retain water rights, and as described in Finding of Fact #25, the applicant has indicated that 2.8 acres of the described water rights do not exist in this quarter-quarter section. Therefore, since the applicant has indicated that these 2.8 acres do not exist, these acres shall be cancelled.

ALLOCATIONS OF CONSERVED WATER

41. The allocation of conserved water application, CW-36, involving Certificates 32813, 32818, and 32820, as described in Finding of Fact # 7, 10 and 13, involves transferring the point of diversion to a point of appropriation. The project proposes to pump from a groundwater gallery into an underground PVC pipe distribution system into surface polyhose to micro sprinklers for each orchard tree.
42. Public notice was published in the Department's weekly notice on October 24, 2006 and in the Grants Pass Daily Courier on October 23 and 30, and November 6, 2006, as required under OAR 690-018-0050. No comments or protests were received in response to the notice.

43. Pursuant ORS 537.485, the applicant's request that the priority dates of the conserved water be the same as the originating rights.
44. The proposed allocation of conserved water project will result in a reduced diversion for the uses allowed under the original rights as described in Finding of Fact #48.
45. The proposed allocation of conserved water will not harm existing rights.
46. Since the water to be diverted, conveyed, and/or used is only on federal lands, no land use information forms are required.
47. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.
48. On January 5, 2006, via e-mail the applicant modified the amount of water proposed to be conserved. After the allocation of conserved water, the water right held by the applicant will allow use of the following quantities of water:

Certificate	Priority Date	Before Project Maximum (cfs)	Conserved Water (cfs)	After Project Maximum (cfs)
32813	October, 1898	0.722	0.520	0.202
32818	October, 1898	0.654	0.471	0.183
32820	October, 1898	0.433	0.311	0.122
<i>Total</i>	October, 1898	<i>1.809</i>	<i>1.302</i>	<i>0.507</i>

49. The original application proposed a split of the conserved water to be approximately 50 percent to the state and 50 percent to the applicant. However, since 75 percent or more of the project is federally funded, on December 22, 2005, the applicant modified the original application to comply with ORS 537.470(3) and OAR 690-018-0012(1) so that 75 percent of the conserved water will go to the state for an instream water right and 25 percent to the applicant. This distribution of water is shown below:

Certificate	Priority Date	Total Conserved Water (cfs)	State's Portion of Conserved Water (cfs)	Applicant's Portion of Conserved Water (cfs)
32813	October, 1898	0.520	0.390	0.130
32818	October, 1898	0.471	0.354	0.117
32820	October, 1898	0.311	0.233	0.078
<i>Total</i>	October, 1898	<i>1.302</i>	<i>0.977</i>	<i>0.325</i>

50. The new rate for the existing lands after the modification as a result of the allocation of conserved water shall be:

Certificate	Rate Per Acre (cfs)
32813	1/179
32818	1/179
32820	1/178

51. The applicant's portion of the conserved water, being 0.325 cfs, shall be allocated to the Bureau of Land Management and may be applied as 0.252 cfs to lands for irrigation, 0.067 cfs for maintenance of Stone Reservoir located in SE ¼ SE ¼, Section 1, Township

38 South, Range 5 West, W.M., and 0.006 cfs for road construction and prescribed fire activities on Bureau of Land Management Medford District lands. The place of use for the lands to be irrigated are summarized below:

Twp	Rng	Mer	Sec	Q-Q	GLot	Total Acres
38 S	5 W	WM	12	NW NE	1	18.7
38 S	5 W	WM	12	SW NE	2	20.4
38 S	5 W	WM	12	NE SE		3.9
38 S	5 W	WM	1	SE SE		1.0
<i>Total</i>						<i>44.0</i>

The maximum per acre rate for these lands shall not exceed 1/175 cfs per acre.

52. In consultation with the Oregon Department of Fish and Wildlife, the Department has determined that conserved water is needed to support instream uses in the Applegate River to provide for the conservation, maintenance and enhancement of aquatic and fish life and fish habitat.

53. The amounts of water to be allocated to the state for an instream water right are:

Certificate	Priority Date	State's Portion of Conserved Water (cfs)
32813	October, 1898	0.390
32818	October, 1898	0.354
32820	October, 1898	0.233
<i>Total</i>	October, 1898	<i>0.977</i>

54. The stream reach for state's instream water right is to be from the previously authorized point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

(as described in Finding of Fact #6, 9, and 12) to the mouth of the Applegate River, at River Mile 0.0. The instream use shall allow the use and protection of flows from April 1 through October 31.

55. The applicants have completed the allocation of conserved water project and request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.

56. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Conclusions of Law

The proposed changes in character of use and place of use to instream use, character of use for storage rights, and surface water point of diversion to a ground water point of appropriation in application T-9726 are consistent with the requirements of ORS 537.705, 540.505 to 540.580, OAR 690-380-5000, and OAR 690-077-0075.

The project described in the application CW-36 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 18. The project will conserve water and can be allocated without harming other water rights.

Pursuant to ORS 540.621, the portions of developed rights described in Findings of Facts# 5, 8, 11, 14, 16, 18, 22, 23, and 24 have been abandoned and should be canceled.

Now, therefore, it is ORDERED:

1. The changes in place of use and character of use to instream use, character of use for storage rights, and surface water point of diversion to a ground water point of appropriation proposed in application T-9726, and the changes proposed in allocation of conserved water application CW-36, and the partial cancellation of Certificates 16309, 32813, 32818, 32820, 32945, 32946, 49853, 43265, and 49852 proposed in application T-9726 are approved and effective upon issuance of this order.
2. Certificates 16309, 32813, 32818, 32820, 32945, 32946, 43264, 49851, 49853, 43265, and 49852 shall be cancelled.
3. A new instream water right certificate shall be issued for the portion of Certificate 16309 being transferred to instream use under T-9726. The new certificate for instream water rights shall be issued which replaces a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The right is subject to all other conditions and limitations contained in Certificate 16309 and any related decree, including that the quantity of water being protected instream, shall not exceed the quantity of water that is available at the original point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	12	NW NE	1600 FEET NORTH AND 2260 FEET WEST FROM THE E ¼ CORNER OF SECTION 12

The instream water right being created shall be for:

Williams Creek, tributary to Applegate River in the Rogue Basin

Instream Reach: From the POD described in Finding of Fact # 4 to the mouth of Williams Creek, at River Mile 0.0.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
16309	1869	0.217	April 1 through October 31

4. A remaining right certificate shall be issued for the portion of the right under Certificate 16309 that is not affected by these transfers or cancellations. The portion of the right remaining is:

Twp	Rng	Mer	Sec	Q-Q	Acres	Survey Coordinates
38 S	5 W	WM	12	NE SE	2.0	TRACT NO. 2

with a rate of 0.05 cfs and a priority date of 1875.

5. The change from a surface water point of diversion to a ground water point of appropriation for the portion of Certificate 32813 being transferred under T-9726 is approved. The point of appropriation is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM THE SE CORNER OF SECTION 1

6. The lands involved in the portion of Certificate 32813 being transferred under T-9726, and which are involved in CW-36 are:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW SW	3.1
38 S	5 W	WM	1	NE SE	4.7
38 S	5 W	WM	1	NW SE	12.7
38 S	5 W	WM	1	SW SE	0.5
38 S	5 W	WM	1	SE SE	15.1

These lands shall have the following rates:

Certificate	Priority Date	After Project Maximum Rate (cfs)	Maximum Rate Per Acre (cfs)
32813	October, 1898	0.202	1/179

7. A remaining right certificate shall be issued for the portion of the right under Certificate 32813 that is not affected by these transfers, allocations of conserved water, or cancellations. The portion of the right remaining is:

Twp	Rng	Mer	Sec	Q-Q	Acres	Survey Coordinates
38 S	5 W	WM	1	SW NE	2.0	LYING SOUTH OF THE APPLGATE RIVER

with a rate of 0.04 cfs and a priority date of October, 1898.

8. The change from a surface water point of diversion to a ground water point of appropriation for the portion of Certificate 32818 being transferred under T-9726 is approved. The point of appropriation is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM THE SE CORNER OF SECTION 1

9. The lands involved in the portion of Certificate 32818 being transferred under T-9726, and which are involved in CW-36 are:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	3.8
38 S	5 W	WM	12	SE NE	28.9

These lands shall have the following rates:

Certificate	Priority Date	After Project Maximum Rate (cfs)	Maximum Rate Per Acre (cfs)
32813	October, 1898	0.183	1/179

10. A remaining right certificate shall be issued for the portion of the right under Certificate 32818 that is not affected by these transfers, allocations of conserved water, or cancellations. The portion of the right remaining is:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	7	SW NW	2.0

commencing at the SW corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 7; thence North 14 rods; thence East 22-6/7 rods; thence South 14 rods; thence West 22-6/7 rods to the place of beginning, being within Jackson County, with a rate of 0.04 cfs and a priority date of October, 1898.

11. The change from a surface water point of diversion to a ground water point of appropriation for the portion of Certificate 32820 being transferred under T-9726 is approved. The point of appropriation is:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM THE SE CORNER OF SECTION 1

12. The lands involved in the portion of Certificate 32820 being transferred under T-9726, and which are involved in CW-36 are:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	21.7

These lands shall have the following rates:

Certificate	Priority Date	After Project Maximum Rate (cfs)	Maximum Rate Per Acre (cfs)
32820	October, 1898	0.122	1/178

13. A remaining right certificate shall be issued for the portion of the right under Certificate 32820 that is not affected by these transfers, allocations of conserved water, or cancellations. The portion of the right remaining is:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	12	NE NE	3.6

with a rate of 0.072 cfs and a priority date of October, 1898.

14. A new instream water right certificate shall be issued for the portion of Certificate 32945 being transferred under T-9726. The new certificate for instream water rights shall be issued which replaces a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The right is subject to all other conditions and limitations contained in Certificate 32945 and any related decree. The instream water right being created shall be for:

Williams Creek, tributary to Applegate River in the Rogue Basin

Instream Reach: From the POD described in Finding of Fact # 15 to the mouth of Williams Creek, at River Mile 0.0.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
32945	December, 1908	0.212	April 1 through October 31

15. A new instream certificate shall be issued for the portion of Certificate 32946 being transferred under T-9726. The new certificate for instream water rights shall be issued which replaces a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The right is subject to all other conditions and limitations contained in Certificate 32946 and any related decree including that the quantity of water being protected instream shall not exceed the quantity of water that is available at the original point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	12	NW NE	1600 FEET NORTH AND 2260 FEET WEST FROM THE E ¼ CORNER OF SECTION 12

The instream water right being created shall be for:

Williams Creek, tributary to Applegate River in the Rogue Basin

Instream Reach: From the POD described in Finding of Fact # 17 to the mouth of Williams Creek, at River Mile 0.0.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
32946	December, 1908	0.11	April 1 through October 31

16. A new storage certificate shall be issued superceding Certificate 43264, which was transferred under T-9726. The new certificate shall be for multiple purpose use. The right is subject to all other conditions and limitations contained in Certificate 43264 and any related decree.
17. A new storage certificate shall be issued superceding Certificate 49851, which was transferred under T-9726. The new certificate shall be for multiple purpose use. The right is subject to all other conditions and limitations contained in Certificate 49851 and any related decree.

18. A new instream certificate shall be issued for the portion of Certificate 49853 being transferred under T-9726. The new certificate for instream water rights shall be issued which replaces a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 49853 and any related decree. The instream water right being created shall be for:

Williams Creek, tributary to Applegate River in the Rogue Basin

Instream Reach: From the POD described in Finding of Fact # 21 to the mouth of Williams Creek, at River Mile 0.0.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
49853	January 19, 1961	0.343	April 1 through June 29

19. A remaining right certificate shall be issued for the portion of the right under Certificate 43265 that is not affected by the cancellations. The portion of the right remaining is 26.0 acres, described below, with a rate of 0.327 cfs and a priority date of October 1, 1970.

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	4 W	WM	6	SW SW	3.1
38 S	5 W	WM	1	SW NE	1.20
38 S	5 W	WM	1	NE SE	4.7
38 S	5 W	WM	1	NW SE	12.7
38 S	5 W	WM	1	SW SE	0.5
38 S	5 W	WM	1	SE SE	3.8

20. A remaining right certificate shall be issued for the portion of the right under Certificate 49852 that is not affected by the cancellations, described in Finding of Facts # 24 and 25. The portion of the right remaining is 100.1 acres, described below, with a rate of 1.249 cfs and a priority date of October 24, 1963.

SUPPLEMENTAL IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
38 S	5 W	WM	1	SE SE		2.2
38 S	5 W	WM	12	NE NE		26.0
38 S	5 W	WM	12	NW NE	1	18.7
38 S	5 W	WM	12	SW NE	2	20.4
38 S	5 W	WM	12	SE NE		28.9
38 S	5 W	WM	12	NE SE		3.9

21. Except for the instream transfers and the character of use change associated with the reservoirs, the approved changes associated with T-9726 shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
22. The former place of use associated with T-9726 for the water rights transferred to instream use, described under Findings of Fact # 4, 15, 17, and 21, shall no longer receive water as part of these rights.
23. Prior to diverting water at the new point of appropriation, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
24. Associated with CW-36, the applicant may use up to 0.252 cfs of conserved water for irrigation of the following lands:

Twp	Rng	Mer	Sec	Q-Q	GLot	Total Acres
38 S	5 W	WM	12	NW NE	1	18.7
38 S	5 W	WM	12	SW NE	2	20.4
38 S	5 W	WM	12	NE SE		3.9
38 S	5 W	WM	1	SE SE		1.0
<i>Total</i>						<i>44.0</i>

The maximum per acre rate for these lands shall not exceed 1/175 cfs/acre. The priority date of the water associated with this use shall be OCTOBER, 1898. The point of appropriation for these lands shall be:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM SE CORNER OF SECTION 1

All other conditions and limitations of the originating rights shall be included on the right superceding Certificates 32813, 32818, and 32820. When satisfactory proof of the completed changes is received, new certificates confirming the rights will be issued.

25. Associated with CW-36, the applicant may use up to 0.067 cfs of conserved water for maintenance of Stone Reservoir located in SE ¼ SE ¼, Section 1, Township 38 South, Range 5 West, W.M. The priority date of the water associated with this use shall be OCTOBER, 1898. The point of appropriation shall be:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM SE CORNER OF SECTION 1

All other conditions and limitations of the originating rights shall be included on the right superceding Certificates 32813, 32818, and 32820. If the applicant notifies the Department that the respective right has been fully exercised and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.

26. Associated with CW-36, the applicant may use up to 0.006 cfs of conserved water for road construction and prescribed fire activities on Bureau of Land Management Medford District lands. The priority date of the water associated with this use shall be OCTOBER, 1898. The point of appropriation shall be:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	5 W	WM	1	SE SE	810 FEET NORTH AND 570 FEET WEST FROM SE CORNER OF SECTION 1

Prior to water being used for road construction and prescribed fire activities, the applicant must specify where the water is to be used, and approval must be obtained from the Department.

All other conditions and limitations of the right superceding Certificates 32813, 32818, and 32820 shall be included. If the applicant notifies the Department that the respective right has been fully exercised and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.


27. Associated with CW-36, a new certificate for instream water rights shall be issued which replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right that shall be issued is for 0.977 cfs with a priority date of October, 1898. The stream reach for state's instream water right is to be from the previously authorized point of diversion, being:

Twp	Rng	Mer	Sec	Q-Q
38 S	4 W	WM	17	SW SE

to the mouth of the Applegate River, at River Mile 0.0.

The instream use shall allow the use and protection of flows from April 1 through October 31.

Dated at Salem, Oregon this 18th day of December 2006.


Phillip C. Ward, Director

Mailing date: DEC 20 2006