

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

In the Matter of Allocation of Conserved Water Application CW-78, Deschutes County)
) FINAL ORDER OF APPROVAL ON
) COMPLETION AND FINALIZATION
) OF ALLOCATION OF CONSERVED
) WATER CW-78

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

Agent:
Deschutes River Conservancy
700 NW Hill Street
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.

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).

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.

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,

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.

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 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 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 June 4, 2013, Three Sisters Irrigation District filed an Allocation of Conserved Water Application. The Department designated the application number CW-78.
2. Three Sisters Irrigation District requested an allocation of conserved water under Certificate 74135 issued in the name of Squaw Creek Irrigation District. On June 1, 2004, Squaw Creek Irrigation District changed its name to Three Sisters Irrigation District (TSID). TSID maintains the water delivery system for the benefit of the landowners in the area.
3. Three Sisters Irrigation District proposes to conserve water by replacing approximately 5,300 feet of open ditch on its main canal with 42" and 48" 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 565 acre feet of water.
4. Canal or lateral piping with HDPE pipe is a proven water conservation technique.
5. The entirety of the right to be modified is:

Certificate: 74135, in the name of TSID. This right was confirmed by the Whychus [Squaw] Creek Decree.

Priority Date, Quantity and Acres:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	1.58	79.05
1887	3.00	150.00
1889	4.03	201.50
1893	0.79	39.50
1895	114.33*	5716.75
1899	2.18	108.80

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1900	1.08	54.00
1901	0.45	22.30
1903	7.21	360.60
1904	17.41	870.60
Totals	153.02	7,651.10

* - Cert 74135 states 114.34

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

Source: Whychus [Squaw] Creek, a tributary of the Deschutes River.

Authorized Place of Use: Entirety of Certificate

6. The acreage under Certificate 74135 has been modified by cancellations completed pursuant to ORS 540 as listed below:

Priority Date	Acres (equivalent)	Acres Abandoned T-6854	Remaining Acres (equivalent)
1869	48.00		48.00
1885	79.05		79.05
1887	150.00		150.00
1889	201.50		201.50
1893	39.50		39.50
1895	5716.75		5716.75
1899	108.80		108.80
1900	54.00		54.00
1901	22.30		22.30
1903	360.60	-16.60	344.00
1904	870.60	-167.40	703.20
Totals	7,651.10	-184.00	7467.10

7. The rate associated with Certificate 74135 has been affected by transfers, cancellations, and allocations of conserved water. The approximate starting point for Certificate 74135 is as follows:

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	CW-71	CW-83	New Starting Point
1869	0.96														0.96
1885	1.58		-0.28												1.30
1887	3.00														3.00
1889	4.03												-0.09		3.94
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	-0.36	-0.43	94.71
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											-0.51		6.37
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	-0.96	-0.43	126.96

The starting point for Certificate 74135 is based on all previously approved Allocation of Conserved Water projects being completed and finalized. If projects are completed and finalized in a different order, or if there are other intervening transfers, cancellations, allocations of conserved water, or other modifications to the right, then the actual quantity of water available under Certificate 74135 may change.

8. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 74135, which are not listed in Finding of Fact #7 will cause a corresponding change to the rate, duty, and total number of acres served by Certificate 74135.
9. Based on the above adjusted starting point for Certificate 74135, conserved water application CW-78 proposes to conserve 1.33 cfs under the 1895 priority date as follows:

Before Project		After Project		Conserved Water	
Rate		Rate (CFS)		Rate (CFS)	Duty
Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS	Maximum AF
126.96	0.02	125.63	0.02	1.33	563.55

10. 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.
11. Diversion structures, canals, and ditches sufficient to deliver the full quantity of water allowed under the existing right were present within the five-year period prior to submission of Allocation of Conserved Water application CW-78.
12. The Applicant requests the priority date for any conserved water be the same as the originating right.
13. The Applicant funded 50% of the conservation project.
14. Allocation of Conserved Water Project CW-78 is complete and resulted in 1.33 cfs and 563.55 acre-feet of conserved water under Certificate 74135 with an 1895 priority. Pursuant to OAR 690-018-0012(1), TSID requests that 100% of the conserved water under Certificate 74135 be dedicated to the state as a new instream water right.

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	1.33	100 %	0	0%	1.33	563.55

15. On March 28, 2013, TSID's representative provided notice of the proposed conservation project to the Land Use and Planning Department of Deschutes County and the City of Sisters Planning Department as required by OAR 690-018-0040(22).
16. Three Sisters Irrigation District submitted a completed land use form signed by Deschutes County demonstrating the proposed use is consistent with local comprehensive land use requirements.

17. On July 8, 2013, the Department's District 11 Watermaster reviewed Allocation of Conserved Water Application CW-78 and determined that the conservation project would result in conserved water which could be allocated without harm to other rights provided the following condition is placed on the exiting right and the proposed instream water right:

The existing or another suitable measuring device must be maintained and monitored on TSID's main canal in such a manner to render a reliable measurement.

18. The proposed allocation of conserved water project, as conditioned above, will not harm existing water rights; therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate effects on other water rights.
19. In consultation with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Parks and Recreation Department (OPRD), 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).
20. On March 10, 2015, TSID submitted a Notice of Completion and a Request for Finalization. The project is complete and no additional time is required.
21. Notice of the proposed conservation project was published in the Department's weekly notice on June 25, 2013, and in *The Bulletin* newspaper on June 23 and 30, 2013, as required under OAR 690-018-0050. No comments were received to the notices.
22. On March 18, 2015, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water Application CW-78 and mailed a copy to the applicant. No protests were filed.

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

23. Allocation of Conserved Water Application CW-78 contains all the information required by OAR 690-018-0040.
24. As established in Findings of Fact #9, the proposed Allocation of Conserved Water project will result in a reduced diversion for the uses allowed under the original rights. OAR 690-018-0050(4)(a)
25. Consistent with Findings of Fact #17 and #18, the proposed Allocation of Conserved Water will not harm existing water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the effects on other water rights. OAR 690-018-0050(4)(b) and (d).

26. As established in Finding of Fact #16, CW-78 is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans). OAR 690-018-0050(4)(c).
27. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate for the existing use involved in this conserved water project under Certificate 74135 is 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	93.38	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	125.63	7467.10

(Findings of Fact #9).

28. In consultation with ODFW and OPRD, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #19), OAR 690-018-0050(4)(f).
29. Consistent with ORS 537.470(3), TSID requested 100% of the conserved water be allocated for an instream water right to be held in trust by the Water Resources Department for the people of Oregon and the priority date of the instream right to be the same as the originating right. (Findings of Fact #14), OAR 690-018-0050(4)(g).
30. Three Sisters Irrigation District requested the Department protect the new instream water right created from the conserved water under Certificate 74135 from the authorized point of diversion on Whychus Creek at approximately river mile 23.5 to the mouth at river mile 0.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
31. Consistent with OAR 690-077-0015(8) and (10), the State's portion of the conserved water shall have a priority date of 1895, and shall be allocated as an instream water right for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and recreation. The instream water right shall provide for the protection of flows in Whychus Creek from the authorized point of diversion located 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 the mouth of Whychus Creek at the confluence with the Deschutes River at River Mile 0.0. (Findings of Fact #14 and #19).

32. The instream right shall allow the use and protection of flows from April 1 through October 31, or 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. (Finding of Fact #7), OAR 690-077-0015(10).

Originating Certificate	Priority Date	Period of Use	Rate (CFS)
74135	1895	April 1 through October 31	1.33

33. The protection of flows within the proposed reaches are 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 the reach of the instream water right.
- OAR 690-077-0015(8).

34. The combination of instream rights for the proposed reach 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).

35. 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 emergence, 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.

36. 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).

- 37. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), from the authorized point of diversion to River Mile 19.5 on Whychus Creek are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights for this reach, from the authorized point of diversion to River Mile 19.5, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.
- 38. By adding to other instream water rights established pursuant to ORS 537.341 (state agency process), ORS 537.346 (minimum streamflow conversion), ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located from River Mile 19.5 to the mouth of Whychus Creek, any new instream water right 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 ecological values, and recreation. OAR 690-077-0015(11).
- 39. There are no areas for which the conserved water is proposed to be used for out-of-stream uses. (Finding of Fact #14), OAR 690-018-0050(4)(h).
- 40. The project is complete. A Request for Finalization of the project has been submitted. No additional time is requested. (Finding of Fact #20), OAR 690-018-0050(4)(i).
- 41. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Findings of Fact #17 and #18), OAR 690-018-0050(4)(j).

Conclusions of Law

- 1. The project described in Allocation of Conserved Water Application CW-78, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.
- 2. The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #9 and #27.

3. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #25.
4. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #16.

Now, therefore, it is ORDERED:

1. The changes proposed in CW-78 are approved.
2. The quantity of water conserved and allocated 100% to the State is as follows:

Conserved Water Description		
Certificate	Priority	Maximum CFS
74135	1895	1.33

Finding of Fact #14.

3. 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.
4. Water Right Certificate 74135 is modified. A superseding certificate shall be issued to TSID upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. The reduced rate for the existing uses under Certificate 74135 is 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	1.30	79.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	93.38	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	125.63	7467.10

Finding of Fact #27.

5. 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.

6. 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 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

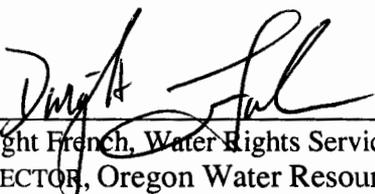
to the mouth of the Whychus Creek at River Mile 0.0. Finding of Fact #31.

Priority Date	Instream Period	Rate Instream
1895	April 1 through October 31	1.33 cfs

The instream right created shall replace a portion of any instream water right established pursuant to ORS 537.341 and 537.346 from the authorized point of diversion to River Mile 19.5. Finding of Fact #37.

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 from River Mile 19.5 to the mouth of Whychus Creek. Finding of Fact #38.

Dated at Salem, Oregon this 21 day of May, 2015.



 Dwight French, Water Rights Services Administrator for
 DIRECTOR, Oregon Water Resources Department

Mailing Date: MAY 22 2015