

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

In the Matter of Proposed Allocation of)
Conserved Water Application)
CW-59, Deschutes County)
)

NOTICE OF DETERMINATION and
PROPOSED FINAL ORDER
APPROVING ALLOCATION OF
CONSERVED WATER CW-59

ORS 537.455 to 537.500 as amended by 2003 HB 2456, 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.

Applicant

CENTRAL OREGON IRRIGATION DISTRICT
1055 S.W. LAKE COURT
REDMOND OR 97756
stevej@coid.org

Agent

Deschutes River Conservancy
700 NW Hill St.
Bend, OR 97701
andy@deschutesriver.org

Findings of Fact

1. On November 12, 2008 the Deschutes River Conservancy (DRC), acting as the agent of Central Oregon Irrigation District (COID), filed an Allocation of Conserved Water Application. The Department assigned the application number CW-59.
2. The application originally requested that 50 percent of the conserved water be protected instream. However, on March 24, 2009 the DRC requested the Department to amend application CW-59 to protect 100 percent of the conserved water instream.
3. The application requests an Allocation of Conserved Water under Certificate 83571 in the name of COID.
4. COID adopted an allocation of conserved water policy pursuant to OAR 690-018-0025, on May 10, 2005.
5. 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.

NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW OR RECONSIDERATION

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

6. On June 15, 2005 COID submitted information to the Department, indicating that the Central Oregon Canal has a capacity sufficient to carry 760 cubic feet per second (cfs) of water, to the lands served by the canal. A diversion structure and ditch or a pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present. COID does not, as a normal practice, divert the maximum rate allowed under Certificate 83571. However, COID has the capacity to divert the full rate to the lands.
7. Water Right Certificate 83571, issued in the name of Central Oregon Irrigation District with priority dates of October 31, 1900 for approximately 978.297 cfs and December 2, 1907 for the balance of approximately, 392.080 cfs, allowed by the decree, if all lands were served by the main canal system. However, this right may be further modified by any cancellations, transfers or other allocation of conserved water projects, completed pursuant to ORS 537 and ORS 540.
8. The number of acres served by Certificate 83571 is approximately:

Allowed by Certificate 83571	Inchoate	Type of Use
42,919.893	519.617	Irrigation
147.110	63.700	Equivalent Acres for Pond Maintenance
87.100	0.000	Equivalent Acres for Industrial
2.800	0.000	Equivalent Acres for Dust Abatement
781.957	23.500	Equivalent Acres for Municipal
7.000	58.370	Equivalent Acres for Quasi-Municipal
0.000	16.000	Equivalent Acres for Mining
		Domestic Use and Livestock
43,945.86	681.187	TOTAL

9. The water right evidenced by Certificate 83571 has had many transfers and other modifications which may, have reduced the rate and duty associated with the water right. The applicant describes the starting point for the water right from the Central Oregon Canal (POD #1) as 776.126 cfs and 249,102.13 AF with an October 31, 1900 and December 2, 1907 priority date for the balance allowed by the Decree. This is consistent with the total diversion allowed from the Central Oregon Canal as listed on Certificate 83571 for all uses, including inchoate rights from the Central Oregon Canal.
10. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 83571 will cause a corresponding change to the rate, duty and total number of acres served by this right.
11. This conservation project will eliminate 0.88 cfs of seepage loss from the C-1 Lateral by using 22-inch HDPE pipe to replace approximately 1,680 feet of open, unlined ditch. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
12. The point of diversion associated with the allocation of conserved water project is as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	CENTAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

13. Public notice was published on November 25, 2008 in the Department's weekly notice and on December 2, 9 and 16, 2008 in The Bulletin as required under OAR 690-018-0050.
14. Pursuant ORS 537.485, the applicant requests that the priority dates of the conserved water be the same as the originating rights.
15. Pursuant OAR 690-018-0020(4) the maximum rate of water conserved by this project is 0.88 cfs. The rate, duty and priority dates for the conserved water are as follows:

Time Period	Priority Date	Rate (cfs)	Duty (AF)
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.360	43.56
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.480	28.56
Season 3: May 15 - September 14	October 31, 1900	0.628	153.21
	December 2, 1907	0.252	61.48
Duty Summary:	October 31, 1900		225.33
	December 2, 1907		61.48
	Total:		286.81

16. The proposed allocation of conserved water will not harm existing rights, as described below:

The application indicates that 100 percent of the conserved water will be allocated to instream use.

The proposed allocation will not harm existing out-of-stream or instream water rights in the Upper Deschutes (above Bend) or Middle Deschutes River (above Lake Billy Chinook) because the diversions will be reduced and the downstream return flows are not available until Lake Billy Chinook.

Some of the water which was previously diverted and which will no longer be diverted would have returned to the Lower Deschutes River outside of the irrigation season and would have slightly increased winter time flows in the Lower Deschutes River. However, the diversion of water is not required and the return flows are, therefore, not required.

Out-of-stream rights in the Lower Deschutes River, below Lake Billy Chinook are not harmed since there is always sufficient flow for these rights.

17. The application includes land use information forms completed and signed by Deschutes County demonstrating that the application is compatible with the local comprehensive land use plan.

18. Since no harm to other water rights will occur, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.
19. After this allocation of conserved water, the water right held by the applicant, not including cancellations, transfers, and other allocations of conserved water that have modified Certificate 83571 will allow use of the following quantities of water:

Time Period	Rate and Duty Per acre	Priority Date	Before Project	Conserved Water	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	313.902 CFS 37,979.55 AF	0.360 CFS 43.56 AF	313.542 CFS 37,935.99 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	418.529 CFS 24,904.20 AF	0.480 CFS 28.56 AF	418.049 CFS 24,875.64 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	553.313 CFS 134,990.08 AF	0.628 CFS 153.21 AF	552.685 CFS 134,836.87 AF
		December 2, 1907	221.744 CFS 54,098.20 AF	0.252 CFS 61.48 AF	221.492 CFS 54,036.72 AF
Duty Summary:		October 31, 1900	197,873.75 AF	225.33	197,648.50 AF
		December 2, 1907	54,098.20 AF	61.48	54,036.72 AF
Total Duty:			251,971.95 AF	286.81	251,685.22 AF

* includes a 45% transmission loss allowed for diversions through the district's main canal system. For lands not served from the district main canal system, but by direct pumping from the Deschutes River, the 45% transmission loss is not allowed.

20. In consultation with the Oregon Department of Parks and Recreation, the Oregon Department of Fish and Wildlife and the Department of Environmental Quality, the Department has determined that conserved water is needed to support instream uses in the Deschutes River.
21. COID funded 100 percent of the project with non-reimbursable funds. The applicant is requesting that 100 percent of the conserved water be allocated to the State for an instream water right.
22. The amounts of water to be allocated to the state for an instream water right are:

Time Period	Priority Date	Instream Water Right
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.360 CFS 43.56 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.480 CFS 28.56 AF
Season 3: May 15 - September 14	October 31, 1900	0.628 CFS 153.21 AF
	December 2, 1907	0.252 CFS 61.48 AF

23. The stream reach for state's instream water right is from the previously authorized point of diversion, being the COID North Canal (POD #1, as described in Finding of Fact #12) at approximately RM 170 Madras Guage at River Mile 120 (near Lake Billy Chinook).
24. The applicants have completed the project and request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.
25. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Review Criteria

Pursuant to OAR 690-018-0050, in reviewing the application for allocation of conserved water the Department has determined the following:

- A. The proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the original rights by 0.88 cfs as established in Findings of Fact 2, 11 and 15.
- B. Consistent with Findings of Fact 13 and 16, the proposed allocation will not harm other water rights.
- C. The application is compatible with the local comprehensive land use plan as established in Finding of Fact 17.
- D. As no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for affects on other water rights.
- E. The new rates and duties are described in Finding of Fact #19.
- F. Consistant with Finding of Fact #20, the State's portion of the conserved water is needed to improve aquatic resources and their habitat in the Deschutes River between the POD (as described in Finding of Fact #12) and the Madras Guage at River Mile 120 (near Lake Billy Chinook).
- G. The applicants requested that 100% of the conserved water be allocated to an instream water right to be held in trust by the Water Resources Department for the people of Oregon and that the priority date of the conserved water right is the same as the originating right.
- H. The State's portion of the conserved water shall be allocated to instream water rights for the support of aquatic life and shall provide for the protection of flows in the Deschutes River from the authorized point of diversion for COID at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	CENTAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

(Approximately river mile 170) to the Madras Gauge (Approximately river mile 120). The instream water right shall be for 0.88 cfs, with priority dates of October 31, 1900 and December 2, 1907 and shall replace a portion of the instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The rights shall allow for the use and protection of flows from April 1 through October 31, and at other times when COID is diverting water.

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

Determination and Proposed Action

The project described in the application CW-59 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 018. Water will be conserved that can be allocated without harming other water rights.

If approved, the change and subsequent use of water shall be subject to the following conditions:

The changes proposed in CW-59, as modified by the applicant, are approved.

- 1. *Certificate 83571 shall be modified and a new superseding certificate shall be issued to Central Oregon Irrigation District for the remaining portion of Certificate 83571 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of Certificate 83571 as described below:*

<i>Time Period</i>	<i>Priority Date</i>	<i>Conserved Water</i>
Season 1: <i>April 1 - 30 and October 1 - 31</i>	<i>October 31, 1900</i>	<i>0.360 CFS 43.56 AF</i>
Season 2: <i>May 1 - 14 and September 15 - 30</i>	<i>October 31, 1900</i>	<i>0.480 CFS 28.56 AF</i>
Season 3: <i>May 15 - September 14</i>	<i>October 31, 1900</i>	<i>0.628 CFS 153.21 AF</i>
	<i>December 2, 1907</i>	<i>0.252 CFS 61.48 AF</i>
Duty Summary:	<i>October 31, 1900</i>	<i>225.33 AF</i>
	<i>December 2, 1907</i>	<i>61.48 AF</i>
Total Duty:		286.81 AF

The associated priority date and rate and duty of the remaining right (At POD #1) shall be approximately:

Time Period	Rate and Duty Per acre	Priority Date	After Project
Season 1: April 1 - 30 and October 1 - 31	1/80 cfs 9.91 AF for irrigation season*	October 31, 1900	313.542 CFS 37,935.99 AF
Season 2: May 1 - 14 and September 15 - 30	1/60 cfs 9.91 AF for irrigation season*	October 31, 1900	418.049 CFS 24,875.64 AF
Season 3: May 15 - September 14	1/32.4 cfs 9.91 AF for irrigation season*	October 31, 1900	552.685 CFS 134,836.87 AF
		December 2, 1907	221.492 CFS 54,036.72 AF
Duty Summary:		October 31, 1900	197,648.50 AF
		December 2, 1907	54,036.72 AF
Total Duty (POD #1):			251685.22 AF

* includes a 45% transmission loss allowed for diversions through the district's main canal system.

The place of use shall be those lands described under Certificate 83571, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications to the certificate.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

- The Department shall issue a new instream certificate for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Deschutes River from the authorized point of diversion at approximately RM 170 for Certificate 83571 at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	CENTAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

to the Madras Guage at approximately RM 120.

The instream water right shall be as described below:

Time Period	Priority Date	Conserved Water
Season 1: April 1 - 30 and October 1 - 31	October 31, 1900	0.360 CFS 43.56 AF
Season 2: May 1 - 14 and September 15 - 30	October 31, 1900	0.480 CFS 28.56 AF
Season 3: May 15 - September 14	October 31, 1900	0.628 CFS 153.21 AF
	December 2, 1907	0.252 CFS 61.48 AF
Duty Summary:	October 31, 1900	225.33 AF
	December 2, 1907	61.48 AF

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

Dated at Salem, Oregon this 29th day of June, 2009.



Phillip C. Ward *12*
Director

Date of Mailing: JUL 1 6 2009