

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

In the Matter of Proposed Allocation of	)	FINAL ORDER APPROVING and
Conserved Water Application CW-33,	)	FINALIZING ALLOCATION OF
Deschutes County	)	CONSERVED WATER

**Authority**

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**

THREE SISTERS IRRIGATION DISTRICT  
P.O. BOX 2230  
SISTERS OR 97759

**Agent**

DESCHUTES RIVER CONSERVANCY  
P.O. BOX 1560  
BEND OR 97701

**Findings of Fact**

1. On September 29, 2003 the Oregon Water Trust in conjunction with Squaw Creek Irrigation District filed an application for allocation of conserved water. The Department assigned the application number CW-33. Shortly thereafter, the project was placed on administrative hold due to funding issues.
2. On June 1, 2004 Squaw Creek Irrigation District, the named holder of water right Certificate 74135, 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. On April 12, 2005 the DRC and TSID amended the application by eliminating references to duty, changing and clarifying the priority date of the conserved water and clarifying that the maximum on-farm rate will remain unchanged. However, the application remained on administrative hold.
4. On October 12, 2005 the Oregon Water Trust assigned its interest in CW-33 to the Deschutes River Conservancy (DRC).
5. In January 2006, Squaw Creek was renamed Whychus Creek.

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.

6. On April 18, 2008 the DRC notified the Department that the funding issues had been resolved and requested that the Department continue processing CW-33.
7. The right allows the use of the waters of Whychus Creek a tributary to the Deschutes River for irrigation, pond maintenance, industrial use and stock water as follows:

<b>Priority Date</b>	<b>Maximum CFS</b>
1869	0.96
1885	1.58
1887	3.00
1889	4.03
1893	0.79
1895	109.54
1899	2.06
1900	1.08
1901	0.45
1903	7.21
1904	16.29
<b>TOTAL:</b>	<b>146.99</b>

\* The maximum per acre rate of the acres affected by this allocation of conserved water, described above, was reduced on a portion of the acres (approximately 2002.65 equivalent acres) to 1/58.88 cfs per acre by CW-44, CW-49, CW-50, and CW-51. The acres limited to 1/58.88 cfs per acre are identified in Special Order Volume 72, pp. 733-747, and specifically in Order #3, pp. 740-745.

8. This conservation project will eliminate 2.0 cfs of seepage loss from the Cloverdale Ditch by using 24-inch HDPE pipe to replace approximately 14,880 feet of open, unlined ditch. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
9. On April 29, 2008 the Department provided public notice as required under OAR 690-018-0050. On April 29, May 6, and May 13, 2008 the *Bend Bulletin* published a public notice inviting public comments on the application. No comments were received in response to either notice.
10. On November 28, 2008 a Notice of Determination and Proposed Final Order was issued by the Department proposing to approve this allocation of conserved water application. No protests were received.
11. The application includes land use information forms completed and signed by the Deschutes County Planner, which demonstrate that the applicant has obtained the required land use approvals.
12. Pursuant OAR 690-018-0020(4), the quantity of water conserved under the project is 2.0 cfs with a priority date of 1895.
13. Pursuant OAR 690-018-0012(1), the applicants propose that 100% of the conserved water be allocated to the State for an instream water right.

14. Pursuant OAR 690-018-0040(10), the applicants request that the priority dates of the conserved water be the same as the originating rights.
15. After the allocation of conserved water, the water right held by the district and the State's instream water right will allow use of the following quantities of water:

<b>CERTIFICATE 74135</b>					
Priority Date	Acres (equivalent)	Before Project Maximum District Rate (cfs)	Conserved Water (cfs)	After Project District Maximum Rate (cfs)	Instream Water Right (cfs)
1869	48.00	0.96		0.96	
1885	79.05	1.58		1.58	
1887	150.00	3.00		3.00	
1889	201.50	4.03		4.03	
1893	39.50	0.79		0.79	
1895	5,716.75	109.54	2.00	107.54	2.00
1899	108.80	2.06		2.06	
1900	54.00	1.08		1.08	
1901	22.30	0.45		0.45	
1903	360.60	7.21		7.21	
1904	870.60	16.29		16.29	
<b>TOTAL:</b>		<b>146.99</b>	<b>2.00</b>	<b>144.99</b>	<b>2.00</b>

16. The conservation measures were implemented on April 1, 2001.
17. TSID is located in an area that is underlain by highly permeable, fractured basalts. The canal seepage that is conserved by the project, likely would have entered the regional ground water system that discharges into, or near Lake Billy Chinook. The ground water flows in the area are generally parallel to Whychus Creek. As a result, the canal seepage could not return to Whychus Creek and did not become available to other water users in Whychus Creek.
18. Instream water rights have been established in Whychus Creek through the application process established pursuant to OAR 537.341 and through water right transfers. The instream rights established through the application process are confirmed under Certificates 73223 and 73224 with priority dates of October 11, 1990.
19. The Oregon Department of Fish and Wildlife has indicated that additional streamflows are needed in Whychus Creek to provide for the conservation, maintenance and enhancement of aquatic and fish life and fish habitat. The Department of Environmental Quality has indicated that additional instream water in Whychus Creek is needed to help decrease instream temperatures for the benefit of instream aquatic life. The Oregon Parks and Recreation Department has also indicated that additional instream water in Whychus Creek is needed.

## 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 2.0 cfs as established in Findings of Fact 8 and 12.
- B. Consistent with Findings of Fact 9, 10 and 17, 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 11.
- 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. Consistent with Finding of Fact 7, the original water right does not have a duty. This allocation of conserved water does not impose a duty. Consistent with Findings of Fact 7 and 15, the new maximum rate shall be 1/50 cfs per acre, unless they involve lands whose per acre rate has been affected by another order of the Department. The acres affected by CW-44, CW-49, CW-50, and CW-51, as described in described in Special Order Volume 72, pp. 733-747, and specifically in Order #3, pp. 740-745 are limited to 1/58.88 cfs per acre. The maximum rate is further limited to:

Priority Date	Acres (equivalent)	Rate (cfs)
1869	48.00	0.96
1885	79.05	1.58
1887	150.00	3.00
1889	201.50	4.03
1893	39.50	0.79
1895	5,716.75	107.54
1899	108.80	2.06
1900	54.00	1.08
1901	22.30	0.45
1903	360.60	7.21
1904	870.60	16.29
<b>TOTAL:</b>	<b>7651.10</b>	<b>144.99</b>

- F. The State's portion of the conserved water is needed to improve aquatic resources and their habitat in Whychus Creek between the TSID diversion at approximately river-mile 23.5, to the mouth of Whychus Creek.
- 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 Whychus Creek from the authorized point of diversion for TSID at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

(Approximately river mile 23.5) to the mouth of Whychus Creek. The instream water right shall be for 2.0 cfs, with an 1895 priority date 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 TSID is diverting water.

- I. Consistent with in Finding of Fact 16, the applicant completed the conservation project, within five years prior to the date of filing the application and has requested finalization of the allocation of the conserved water.
- J. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

### Conclusion of Law

The project described in the application CW-33 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.

### Now, therefore, it is ORDERED:

- Certificate 74135 is hereby modified. A new superseding certificate shall be issued to TSID for the remaining portion of Certificate 74135 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 74135 by 2.0 cfs under the 1895 priority date. The associated priority date and rate of the remaining right shall be approximately:

Priority Date	Acres (equivalent)	Rate (cfs)
1869	48.00	0.96
1885	79.05	1.58
1887	150.00	3.00

Priority Date	Acres (equivalent)	Rate (cfs)
1889	201.50	4.03
1893	39.50	0.79
1895	5,716.75	107.54
1899	108.80	2.06
1900	54.00	1.08
1901	22.30	0.45
1903	360.60	7.21
1904	870.60	16.29
<b>TOTAL:</b>	<b>7651.10</b>	<b>144.99</b>

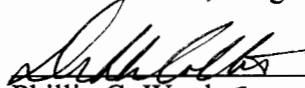
The maximum per acre rate associated with these rights is 1/50 cfs per acre, unless they involve acres whose per acre rate has been affected by another order of the Department. The acres affected by CW-44, CW-49, CW-50, and CW-51, as described in described in Special Order Volume 72, pp. 733-747, and specifically in Order #3, pp. 740-745 are limited to 1/58.88 cfs per acre. There is no duty limitation imposed by Certificate 74135. The place of use shall be those lands described under Certificate 74135, as modified by any transfers completed pursuant to ORS 540.580. The acreage, rate, duty, authorized uses and priority dates are subject to modification by any approved transfers, cancellations, corrections, allocations of conserved water or other prior modification to Certificate 74135. All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new instream water right certificate, Certificate 85151, shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in Whychus Creek from the authorized point of diversion for TSID at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

(Approximately river mile 23.5) to the mouth of Whychus Creek. The instream water right shall be for 2.0 cfs, with an 1895 priority 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. The rights shall allow for the use and protection of flows from April 1 to October 31, and at other times when TSID is diverting water.

Dated at Salem, Oregon this 11<sup>th</sup> day of June 2009.

  
 Phillip C. Ward *PCW*  
 Director

Mailing Date: JUN 22 2009