

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

In the Matter of Allocation of Conserved     )  
Water Application CW-69,                         )  
Deschutes and Jefferson Counties            )     **SUPERSEDING PROPOSED FINAL  
ORDER APPROVING ALLOCATION  
OF 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 18, implements the statutes and provides the Department’s procedures and criteria for evaluating allocation of conserved water applications.

**Applicants**

THE HURTLY LATERAL LAND OWNERS  
See Finding of Fact #2

**Agent**

DESCHUTES RIVER CONSERVANCY  
700 NW HILL  
BEND, OR 97701

**Back Ground**

On June 28, 2011 the Department issued an order which proposed to approve Allocation of Conserved Water Application CW-69. On August 25, 2011 Three Sisters Irrigation District (TSID) notified the Department that the order proposing to approve Allocation of Conserved Water Application CW-69 erroneously listed TSID as the applicant. TSID approved and supported Allocation of Conserved Water Project CW-69 but the Landowners of the Hurtley Lateral are the Applicants. On August 26, 2011 Water for Life filed a protest against the order proposing to approve CW-69.

**Findings of Fact**

1. On March 25, 2011 the Hurtley Land Owners (*See Finding of Fact #2*), filed an Application for an Allocation of Conserved Water. The Department assigned the application number CW-69.

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file protest this Notice Of Determination and Proposed Final order to the Water Resources Commission within 60 days of the mailing of this determination.

2. The Landowner Applicants of the Hurtley Lateral are as follows:

<b>Landowner Applicants</b>		
Ralph Affatati Po Box 598 Sisters, OR 97759	Ed and Barbara Carollo Po Box 297 Sisters, OR 97759	Brian Conner 69278 Lake Dr Sisters, OR 97759
Susan Conner 17270 Plainview Rd Bend, OR 97701	Doug Duey 1101 W Marine Dr Astoria, OR 97103	Kristine Falco 69320 Sisters View Sisters, OR 97759
John Gloeckner 17280 Emerald Valley Rd Sisters, OR 97759	Jerry and Sharon Hakes 69340 Hinkle Butte Dr Sisters, OR 97759	Donna Harris 69373 Sisters View Dr Sisters, OR 97759
David Hurtley Po Box 1511 Sisters, OR 97759	Carl and Shelly Johnson 69372 Lake Dr Sisters, OR 97759	Mark and Sheila Kelley 479 Laurel Ave San Anselmo, OR 94960
Sandy Kennedy 17235 Emerald Valley Rd Sisters, OR 97759	Phillip Krohn 935 Grace Ave Oakland, OR 94608	Gary and Angie Larson Po Box 1624 Sisters, OR 97759
Kara Lin Mickaelson 69294 Lariat Sisters, OR 97759	David and Christine Nelson 2467 SW Sherwood Dr Portland, OR 97201	Peter Small 69270 Enewetail Sisters, OR 97759
Ken and Rae Swearingen 69375 Sisters View Dr Sisters, OR 97759	Barbara Temple 69240 Enewetake Ln Sisters, OR 97759	Melissa Ward 69333 Lake Dr Po Box 1998 Sisters, OR 97759

3. The Applicants request an Allocation of Conserved Water under Certificate 74135 in the name of Squaw Creek Irrigation District. 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. TSID authorized and supports Allocation of Conserved Water Application CW-69.

4. On July 5, 2005 TSID adopted an Allocation of Conserved Water policy pursuant to OAR 690-018-0025. On July 6, 2010 TSID reviewed and renewed the District's Allocation of Conserved Water Policy.

5. On March 30, 2011 the Departments' Watermaster performed an onsite review of the proposed Allocation of Conserved Water Project and determined the project would perform as expected.
6. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate the right is subject to forfeiture under ORS 540.610.
7. A diversion structure, canal and ditches sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submission of Allocation of Conserved Water application CW-69
8. The rate associated with Certificate 74135 has been affect by transfers, cancellations and allocations of conserved water. The approximate starting point for the certificate is as follows:

<b>Priority Date</b>	<b>Acres (equivalent) Listed on Cert.</b>	<b>Abandoned Acres by T-6854</b>	<b>Acres (equivalent)</b>
1869	48.0		48.0
1885	79.1		79.1
1887	150.0		150.0
1889	201.5		201.5
1893	39.5		39.5
1895	5716.8		5716.8
1899	108.8		108.8
1900	54.0		54.0
1901	22.3		22.3
1903	360.6	(16.6)	344.0
1904	870.6	(167.4)	703.2
<b>Totals:</b>	<b>7,651.1</b>	<b>(184.0)</b>	<b>7,467.1</b>

Priority Date	Max Rate (CFS)	Change in Maximum Rate (CFS) (Listed by date of approval)									Approximate Starting Point for CW-69
		CW-30	CW-34	CW-44	CW-49	CW-50	CW-51	CW-33	CW-56	CW-66	
1869	0.96										0.96
1885	1.58	(0.28)									1.30
1887	3.00										3.00
1889	4.03										4.03
1893	0.79										0.79
1895	114.33		(1.50)	(1.20)	(1.20)	(1.20)	(1.20)	(2.00)	(1.20)	(4.00)*	100.83
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	6.99										6.88
1904	14.06			(0.28)	(0.28)	(0.28)	(0.28)		(0.28)		12.66
<b>Totals:</b>	<b>149.34</b>	<b>(0.61)</b>	<b>(1.50)</b>	<b>(1.51)</b>	<b>(1.51)</b>	<b>(1.51)</b>	<b>(1.51)</b>	<b>(2.00)</b>	<b>(1.51)</b>	<b>(4.00)</b>	<b>133.68</b>

9. The starting point for Allocation of Conserved Water CW-69, established in Finding of Fact #8, is based on the finalization of prior allocation of conserved water projects filed under Water Right Certificate 74135, being finalized except Increment III of Allocation of Conserved Water Project CW-66. 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 Water Right Certificate 74135 may change.
  
10. The proposed Allocation of Conserved Water Project involves replacing approximately 6,450 feet of old, dilapidated, leaky pipe with 6,450 feet of new, 4 to 10" High Density Polyethylene (HPDE) pipe. The portion of TSID's delivery system to be re-piped is known as the Hurlley Lateral, and has the ability to serve 102.1 acres owned by 26 landowners. However, only 21 landowners as set forth in Finding of Fact #2, have chosen to participate in this project which involves 85.6 acres. The replacement of old, dilapidated, leaky pipe with new HPDE pipelines is a proven technology for conserving water.
  
11. Notice of the proposed conservation project was published in the Department's weekly notice on April 12, 2011 and in *The Bulletin* on April 12, 19, and 26, 2011 as required under OAR 690-018-0050. No comments were filed in response to the notice.
  
12. Pursuant ORS 537.485, the Applicant requests that 100% of the conserved water be protected under the 1895 priority of Water Right Certificate 74135.

13. The proposed Allocation of Conserved Water project has been completed and resulted in the conservation of 0.419 CFS. The quantity of water allowed for diversion under Certificate 74135 will be reduced by 0.419 CFS under the 1895 priority date.
14. The proposed instream right is not a measurable portion of the Deschutes River as defined by OAR 690-077-0015. Therefore the proposed instream right cannot be extended from Whychus Creek, the source stream, into the Deschutes River.
15. The return flows from the proposed project begin to enter the Deschutes River at approximately River Mile 130.8. No return flows, from the proposed project, will re-enter Whychus Creek.
16. The proposed allocation of conserved water will not harm existing rights because the instream reach is limited to Whychus Creek, and there are no return flows to Whychus Creek. The return flows begin to enter the Deschutes River at approximately River Mile 130.8.
17. On March 24, 2011 the Applicants provided notice of the proposed conservation project to the Land Use and Planning Departments of Jefferson County, Deschutes County and the City of Bend as required by OAR 690-018-0040(22).
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 completion of the allocation of conserved water project, the water right held by the Applicant will allow use of the following quantities of water under the 1895 priority:

Certificate	Before Project Maximum Rate (cfs)	Quantity Conserved (cfs)	After Project Maximum Rate (cfs)
74135	100.83	0.419	100.421

**\*Non-1895 priority dates will not be affected by this project.**

20. In consultation with the Oregon Department of Fish and Wildlife, Department of Environmental Quality, and Oregon Parks and Recreation Department, the Department has determined that conserved water is needed to support instream uses in Whychus Creek to provide for the conservation, maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values.
21. Pursuant to OAR 690-018-0012(1), the Applicant proposes that 100% of the conserved water be allocated to the State for an instream water right. The Applicant further requests that 100% of the conserved water be allocated from the 1895 priority of Water Right Certificate 74135.
22. The Applicant requested the Department to protect the new instream water right from the authorized point of diversion as described in Finding of Fact #19, to the mouth of Whychus Creek.
23. The stream reach for the State's instream water right is from the previously authorized point of diversion located at:

**Authorized Point of Diversion\*:**

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

\*RM 23.5.

to the mouth of Whychus Creek at River Mile 0.0.

24. The instream use shall allow the use and protection of flows from April 1 through October 31, and at other times when TSID is diverting water.
25. The Applicant indicated that the project has been completed and requests that the project be finalized pursuant to OAR 690-018-0062.
26. 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. Allocation of Conserved Water Application CW-69 contains all the information required by OAR 690-018-0040.
- B. The proposed Allocation of Conserved Water project will result in a reduced diversion, for the uses allowed under the original rights by approximately 0.419 cfs, as established in Findings of Fact #13 and #19.
- C. Consistent with Finding of Fact #16 and #18, the proposed Allocation of Conserved Water will not harm other water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the affects on other water rights.
- D. As established by Finding of Fact #17, the conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045.
- E. The new rate for the affected portion of Water Right Certificate 74135 is described in Finding of Fact #19.
- F. In consultation with the Departments of Fish and Wildlife, Environmental Quality and Parks and Recreation, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #20).
- G. The Applicant requests that 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 that the priority date of the conserved water right is the same as the originating right. (Finding of Fact #12).

H. The State's portion of the conserved water shall have an 1895 priority and shall be allocated as an instream water right for maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values and shall provide for the protection of flows in Whychus Creek from the authorized point of diversion for TSID at:

**Authorized Point of Diversion:**

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

\*RM 23.5.

to the mouth of Whychus Creek at River Mile 0.0 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. (Findings of Fact #19 through #24).

I. Consistent with Finding of Fact #26, no other conditions or limitations are needed to prevent injury or mitigate for harm to existing water rights.

**Determination and Proposed Action**

The June 28, 2011 order proposing to approve Allocation of Conserved Water Application CW-69 is hereby withdrawn and superseded.

The project described in Allocation of Conserved Water Application CW-69, 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, which can be allocated without harming other water rights.

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

1. *The changes proposed in CW-69 are approved.*
2. *Modify Certificate 74135. 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. The Applicant requests that 100% of the water conserved by this project be allocated to the State for instream use. Therefore, approval of this Allocation of Conserved Water project reduces the amount of water lawfully available under the remaining portion of Certificate 74135 as described below:*

<b><i>Certificate</i></b>	<b><i>Before Project Maximum Rate (cfs)</i></b>	<b><i>Quantity Conserved (cfs)</i></b>	<b><i>After Project Maximum Rate (cfs)</i></b>
74135	133.68	0.419	133.261
<b><i>Total Remaining on Certificate 74135 under 1895 priority:</i></b>			<b><i>100.411</i></b>

*The acreage, rate, duty and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other prior modification to Certificate 74135. The associated priority date and rate of the remaining right shall be approximately:*

<b><i>Priority</i></b>	<b><i>Acres (equivalent)</i></b>	<b><i>Maximum CFS</i></b>
1869	48.0	0.960
1885	79.1	1.300
1887	150.0	3.000
1889	201.5	4.030
1893	39.5	0.790
1895	5716.8	100.411
1899	108.8	2.030
1900	54.0	0.750
1901	22.3	0.450
1903	344.0	6.880
1904	703.2	12.660
<b><i>TOTAL:</i></b>	<b><i>7,467.1</i></b>	<b><i>133.261</i></b>

*The on-farm, maximum per acre rate, will not be affected by this conservation project.*

*The place of use shall be those lands described under Certificate 74135, as modified by any transfers completed pursuant to ORS 540.580 or other prior modifications.*

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



3. A new instream certificate 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 (approximately River Mile 23.5) for Certificate 74135 at:

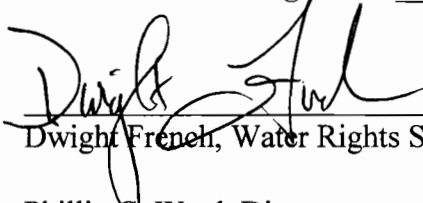
**Authorized Point of Diversion:**

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

to the mouth of Whychus Creek at River Mile 0.0.

The instream water rights shall be for 0.488 cfs with a 1895 priority date, 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 through October 31, and at other times when TSID or its successor, divert water.

Dated at Salem, Oregon this 11 day of June, 2012.



Dwight French, Water Rights Services Administrator for

Phillip C. Ward, Director

Date of Mailing: **JUN 11 2012**

This Notice of Determination and Proposed Final Order was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrdd.state.or.us