



KARNOPP  
PETERSEN LLP  
ATTORNEYS AT LAW

April 9, 2013

Teri Hranac  
Allocations of Conserved Water  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

RE: CWA-76 – Amended Application

Dear Ms. Hranac:

I represent the Confederated Tribes of the Warm Springs, the authorized agent for Dee Irrigation District on its Application for Allocation of Conserved Water (CW-76). Enclosed is an Amended Application for Allocation and Use of Conserved Water, along with an Affidavit of Partial Cancellation of Water Right Certificate 39049.

The original application was filed by Dee Irrigation District as a part of its conserved water project on the West Fork of the Hood River. The project proposes to conserve water under Certificates 39048 and 39049. In addition, Dee Irrigation District has elected to cancel the appropriation from Deer Creek under Certificate 39049 in the amount of 6.92 cubic feet per second.

During consultations with you and Kody Thurgood, Dee Irrigation District was informed that it must include a portion of its annual volume (duty) in its conserved water calculation. The original Application did not include an allocation of any of its annual duty. This Amended Application provides in Paragraph B of Part 6 that 0.75 acre feet of water will be conserved and dedicated to instream flow in the West Fork.

Dee Irrigation District requests that its Affidavit of Partial Cancellation on Certificate 39049 be processed concurrent with its Amended Application, and that the cancellation of the Deer Creek portion of Certificate 39049 not become effective until finalization of the project under OAR 690-018-0062.

Thank you for your assistance in this matter. If you have further questions or comments, please feel free to give me a call at (503) 363-2121.

Sincerely,

A. Reed Marbut  
1107 Pawnee Cir. SE  
Salem OR, 97306

Enclosures

cc: Douglass A. Hart, Dee ID  
Joe McCanna, CTWS

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State of Oregon  
 Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301-1266  
 (503) 986-0900

# Application for Allocation and Use of Conserved Water

*If your application is found to be incomplete, inaccurate or does not include the required fees, we will return it to you. If any requested information does not apply to your application, insert "n/a." If you need additional space to answer any of the questions, attach a separate sheet of writing paper and reference the section number and question. A summary of review criteria and procedures that are generally applicable to these applications is available at [www.wrd.state.or.us/OWRD/PUBS/forms.shtml](http://www.wrd.state.or.us/OWRD/PUBS/forms.shtml).*

## 1. APPLICANT INFORMATION

APPLICANT/BUSINESS NAME <b>Dee Irrigation District</b>			PHONE NO. <b>541-354-3125</b>	ADDITIONAL CONTACT NO. <b>541-806-3248</b>
ADDRESS <b>4835 O'Leary Road</b>			FAX NO. <b>541-354-3125</b>	
CITY <b>Hood River</b>	STATE <b>OR.</b>	ZIP <b>97031</b>	E-MAIL** <b>dah1947@live.com</b>	

## 2. AGENT INFORMATION

The agent is authorized to represent the applicant in all matters relating to this application.

AGENT/BUSINESS NAME <b>Confederated Tribes of Warm Springs</b>			PHONE NO. <b>541-352-9326</b>	ADDITIONAL CONTACT NO.
ADDRESS <b>6030 Dee Hwy.</b>			FAX NO. <b>541-352-9365</b>	
CITY <b>Parkdale</b>	STATE <b>OR</b>	ZIP <b>97041</b>	E-MAIL** <b>jmccanna@hrecn.net</b>	

**\*\* BY PROVIDING AN E-MAIL ADDRESS, CONSENT IS GIVEN TO RECEIVE ALL CORRESPONDENCE FROM THE DEPARTMENT ELECTRONICALLY. COPIES OF THE FINAL ORDER DOCUMENTS WILL ALSO BE MAILED.**

## 3. IRRIGATION & WATER CONTROL DISTRICTS

Is the project within the boundaries of an irrigation district or water control district?

Yes  No

If yes, include Exhibit E and list the name and mailing address of the district:

Dee Irrigation District, 4835 O'Leary Road, Hood River, OR. 97031

Did an irrigation district organized under ORS Chapter 545 or a water control district organized under ORS Chapter 553 file this allocation of conserved water?

Yes  No

If yes, when was the District's OAR 690-018-0025 allocation of conserved water policy adopted? May 15, 2012. See Exhibit F.

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**4. CURRENT WATER RIGHT INFORMATION**

*A separate page providing the information in Section 4 must be completed for each certificate, permit, decree, or other right involved in the proposed allocation of conserved water.*

Water Right Subject to Transfer (check and complete **one** of the following):

<input checked="" type="checkbox"/> Certificated Right	<u>39048 and 39049</u> Certificate Number	<u>165 and 18546</u> Permit Number or Decree Name
<input type="checkbox"/> Adjudicated, Un-certificated Right	_____ Name of Decree	_____ Page Number
<input type="checkbox"/> Permit for which Proof has been Approved	_____ Permit Number	_____ Date Claim of Beneficial Use Submitted
<input type="checkbox"/> Transferred Right for which Proof has been Filed	_____ Previous Transfer Number	_____ Date Claim of Beneficial Use Submitted

Name on Permit, Certificate, or Decree: Dee Irrigation District  
County: Hood River

Provide the following information about the water right of record:

1. Priority Date: Cert. 39048 9/13/1909 - Cert. 39049 3/7/1931
2. Source of Water: Cert. 39048 West Fork Hood River - Cert. 39049 Unnamed Creek, Camp Creek and Deer Creek
3. Type of Use: Irrigation

Does the application have a water right involving more than one water right holder?

Yes  No

If yes, are all water right holders applying for this allocation of conserved water?

Yes  No. If no, see Exhibit J.

A) What is the maximum rate and annual duty (volume) of water that may be diverted as stated on the water right of record? *(If the water right is only limited by rate, do not list a duty, and conversely, if the water is only limited by duty, do not list a rate.)*

1. Rate\* (cfs): Cert. 39048 (9.22 cfs) - Cert. 39049 (8.30 cfs - after cancelation of 6.92 cfs from Deer Creek)

*Note: 1 miner's inch = 1/40 cfs; 1 cfs = 448.8 gpm*

2. Duty\* (acre feet): Cert. 39048 (3.0 af/acre) - Cert. 39049 (3.0 af/acre)

*Note: 1 cfs = 1.983471 ac-ft/day*

\* If there are multiple **Priority Dates** on the water right, list the rate and duty by priority date.

B) What is the maximum amount of water that can be diverted using the pre-project facilities? *(If the water right is only limited by rate, do not list a duty, and conversely, if the water is only limited by duty, do not list a rate.)*

1. Rate (cfs): 31.01 cfs - See Attachment A.
2. Duty (acre feet): 3.0 af/acre X 737.3 acres = 2,211.90 af/year

C) Describe the pre-project water delivery system. Include information on the diversion structure, pumps, and conveyance facilities (including canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use). *Provide sufficient detail to confirm that the applicant is ready, willing, and able to exercise the right.*

See Attachment B.

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**5. CONSERVATION MEASURES**

A) Describe the type of project, check all that apply:

- On-Farm efficiency project
- Distribution project, such as a ditch piping or lining project
- Other, \_\_\_\_\_

B) Describe the proposed changes to the physical system, operations and application methods that will result in the conservation of water. If these proposed changes will change the point of diversion, see point of diversion requirement for Exhibit B. *Provide sufficient detail for public noticing the project.*

The four mile long Dee Irrigation District open main canal will be piped for water conservation purposes. A 36" high density polyethylene pipe will be installed within the existing open canal alignment and the existing pipe segments will be inspected for leaks and reinstalled. Pipe installation will conserve water lost to leakage and evaporation. The Deer Creek diversion will be decommissioned and fish passage will be restored at the diversion site. Fish passage will also be restored at the Unnamed and Camp Creek diversions.

C) Place of Use\*: N/A

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_ Quarter/Quarter \_\_\_\_\_ Total No. Acres \_\_\_\_\_

\* Not required for a distribution project that does not propose to affect the on-farm rate or duty. If the entire water right is being affected, just state "entire right affected."

**6. CONSERVED WATER**

A) What amount of water will be needed for the existing, authorized use after implementing conservation measures? *(If the water right is only limited by rate, do not list a duty, and conversely, if the water is only limited by duty, do not list a rate.)*

1. Rate\* (cfs): Cert. 39048 (7.72 cfs) - Cert. 39049 (6.8 cfs - after cancellation of 6.92 cfs from Deer Creek)

2. Duty\* (acre feet): 2.25 af/acre

\* If there are multiple **Priority Dates** on the water right, list the rate and duty by priority date.

B) What amount of water will be conserved as a result of the implementation of the conservation measures? Subtract 6A from the smaller of 4A or 4B under "irrigation system" above.

1. Rate\* (cfs): Cert. 39048 (1.5 cfs) - Cert. 39049 (1.5 cfs)

2. Duty\* (acre feet): 0.75

\* If there are multiple **Priority Dates** on the water right, list the rate and duty by priority date.

C) What portions of the conserved water will be allocated to the state and applicant?

1. Portion going to the state (list by percent, rate and duty):

100 Percent                      3.0 Rate (cfs)                      552.98 Duty (AF)

2. Portion going to the applicant (list by percent, rate and duty):

\_\_\_\_\_ Percent                      \_\_\_\_\_ Rate (cfs)                      \_\_\_\_\_ Duty (AF)

D) The priority for the conserved water is requested to be:

- The same as the original right, or
- One minute junior to the original right.

E) If all or part of the applicants' portion of the conserved water is to be used for an out-of-stream use at an identified location:

1. Name and address of the person using the water: \_\_\_\_\_
2. Description of the type of beneficial use of the water: \_\_\_\_\_
3. Legal description of the place of use: \_\_\_\_\_

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F) If all or part of the applicants' portion of the conserved water is to be leased\*, dedicated or temporarily reserved instream, a statement identifying the quantity of water to be managed as an instream water right: \_\_\_\_\_

*\* Water can be temporarily protected instream without filing an OAR 690-077 Instream Lease application.*

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**7. LOCATION OF PROPOSED USE**

A) For new out-of-stream uses, describe the boundaries of the expected area within which the diversion structures and places of use of the applicants' conserved water right would be located. This is land other than that to which this water right is appurtenant. See Exhibit B.

N/A. All conserved water will be used instream.

B) For instream uses, to the extent possible, identify the stream reach(es) for which the state's portion of the conserved water should be managed under an instream water right. Be as explicit as possible, by giving river miles, or other identifying information that might be included in the instream certificate.

The conserved water will be managed under an instream water right from the DID point of diversion on the West Fork (approximately River Mile 6.2) to the mouth of the West Fork at its confluence of the East Fork of the Hood River (River Mile 0).

C) Describe the proposed benefit to instream uses.

for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

other, please describe: \_\_\_\_\_

**8. MITIGATION**

A) Describe any expected effects on other water rights from the proposed allocation of conserved water. Identify what currently happens to the water that is proposed to be conserved.

There are no other water rights with points of diversions between the DID point of diversion and the mouth of the West Fork; therefore, no other water rights will be effected by the proposed allocation of conserved water. The water that is proposed to be conserved currently leaks or evaporates from the existing canal and is either consumed by vegetation along the canal route, seeps into the ground or returns to the West Fork some miles downstream from the DID point of diversion.

B) Describe any mitigation or other measures that are planned to avoid harm to other water rights.

N/A

**9. FUNDING**

If more than 25% of the conserved water is proposed to be allocated to the applicant then provide Exhibit C and identify what portion of project funds (expressed as a percentage) come from federal or state public sources that are not subject to repayment. 100%

Does the Oregon Watershed Enhancement Board (OWEB) have a contractual interest in this project?

Yes  No

If yes, what is the OWEB project number? 212-4001

**10. PROJECT SCHEDULE**

If project is not yet complete:

Proposed date construction has/will begin: August 1, 2012

Proposed date construction will be completed and notice of project completion will be filed: October 1, 2013

Proposed date the project will be finalized: October 1, 2018

If project is already complete:

Date it was implemented: \_\_\_\_\_ (Provide Exhibit K)

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The applicant requests:

- That the allocation be finalized, or
- Additional time be granted to prove that the project worked to the applicant's satisfaction before finalizing the allocation of conserved water. Indicate the amount of time desired 5 (up to five years after completion of the project may be allocated).

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## 11. ACKNOWLEDGMENT OF FORFEITURE

Complete this if the Certified Water Right Examiner's map shows less acreage has been irrigated over the past five years than allowed under the right.

I am aware that N/A acre(s) have not been irrigated for the last five years and I am abandoning that portion of the water right and make no further claim for the water. I ask that this N/A acre(s) portion of the right be permanently canceled.

## 12. EXHIBITS

Check each of the following attachments included with this application. All attachments are required unless otherwise noted. The application will be returned if all required attachments are not included.

### Exhibit (Form) A – Evidence of Use Affidavits

- Provide if 1) it is an on-farm efficiency project, or 2) specific acreage is being affected by the project. Consult with Department staff regarding the evidence needed for distribution projects. At least one Evidence of Use Affidavit documenting that the right has been used during the last five years or that the right is not subject to forfeiture under ORS 540.610 is attached. The affidavit provided must be the original, not a copy. The form is available at [http://www.wrd.state.or.us/OWRD/PUBS/docs/forms/Evidence\\_of\\_Use\\_Form\\_3\\_01\\_10.pdf](http://www.wrd.state.or.us/OWRD/PUBS/docs/forms/Evidence_of_Use_Form_3_01_10.pdf).

### Exhibit B – Map

- Provide if the entire water right is not part of the conservation project and/or new lands shall receive water. Consult with Department staff if there is any question regarding the need for submittal. See OAR 690-018-0040(17) and 690-018-0062(3)(a).

### Exhibit C - Project Funding Description

- Provide if more than 25% of water goes to applicant. See OAR 690-018-0040(18).

### Exhibit D – Identification and Resolution of Water Right Conflicts

- Provide if construction has begun or been completed and if more than 25% of the project costs have been expended prior to filing this application. See OAR 690-018-0040(19).

### Exhibit E – Letter of Approval from the Irrigation District

- Provide if project is located within boundaries of an irrigation district and the district is not the applicant. See OAR 690-018-0040(20).

### Exhibit F – District Conserved Water Policy

- Provide if applicant is an Irrigation District or Water Control District. See OAR 690-018-0040(21) & 690-018-0025.

### Exhibit G - Land Use Information Form

- See OAR 690-018-0040(22). The land use form is available at: [http://www.wrd.state.or.us/OWRD/PUBS/docs/forms/Land\\_Use\\_Form\\_3\\_01\\_10.pdf](http://www.wrd.state.or.us/OWRD/PUBS/docs/forms/Land_Use_Form_3_01_10.pdf)

### Exhibit H - Ownership & Lien Information

- Provide if application involves:
- on-farm efficiency project, and/or
  - distribution project affecting specified lands. Provide a report of ownership and lien information or a current recorded deed to the subject lands.

### Exhibit I – Support Letters from ODFW, DEQ and OPRD

- Letters from ODFW, DEQ, and OPRD indicating that they have been consulted and indicating that at least one of the agencies attests that conserved water is needed to support instream uses. See OAR 690-018-0050(4)(f).

### Exhibit J –Water Right Clarification & Notification of Affected Persons

- Provide if the application involves water rights for
- lands under multiple ownerships and not all of the water right holders are applicants, and the project is not being submitted by a District as a distribution project and/or
  - which the current final proof survey maps for lands involved in the application do not adequately describe the location of the place of use or the associated priority dates of the associated water rights
- Consult with Department staff if there is any question regarding the need for submittal.

### Exhibit K –Evidence that the Project was Implemented Within 5 Years.

- Provide if project was completed before application submittal. See OAR 690-018-0040(12)(a).

### Fees:

- Amount enclosed: \$ 575  
See OAR 690-018-0040(25) and the Department's Fee Schedule at [www.wrd.state.or.us/OWRD/PUBS/forms.sht/ml#fees](http://www.wrd.state.or.us/OWRD/PUBS/forms.sht/ml#fees) or call (503) 986-0900.

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**13. SIGNATURE**

I understand that prior to Department approval of the allocation of conserved water, I may be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following paper: Hood River News

I (we) affirm that the information contained in this application is true and accurate.

Douglas A. Hart - District MANAGER      Douglas A. Hart      3/19/13  
Applicant Signature      Name (print)      Date

Joe McCanna - STWS Habitat Coord.      Joe McCanna      3.1.13  
Agent Signature      Name (print)      Date

**Before submitting your application, be sure you have:**

- Answered each question completely.
- Included the required attachments.
- Provided original signatures for all water right holders or other parties with an interest in the right.
- Included a check payable to the Oregon Water Resources Department for the appropriate amount.

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**AFFIDAVIT FOR THE PARTIAL CANCELLATION OF A  
WATER RIGHT CERTIFICATE**

State of Oregon )  
 ) ss  
 County of Hood River )

I/We (or authorized agent),  
Doug Hart - Manager of Dee Irrigation District, residing at  
4835 O'Leary Road, Hood River, OR 97031,  
 telephone (541) 354-3125, being first duly sworn depose and say:

- I/We are the legal owner(s) of the property described as tax lot number (See Attached Certificate 39049), within the        1/4        1/4, Section       , Township        N/S, Range        E/W, of the Willamette Meridian, in Hood River County, Oregon, as shown on the attached map and described in the attached deed and legal description and made part of this affidavit;
- A portion of water right certificate number 39049 issued to Dee Irrigation District, with a date of priority of March 7, 1931 for use of 6.92 cubic foot per second of water from Deer Creek (source) for the purpose of Irrigation (use) is appurtenant to my/our property;
- The appurtenant water right is/is not located within the boundaries of an irrigation, drainage, water improvement, or water control district, or federal reclamation project (*if the right is located within a district or reclamation project, name it here*)  
Dee Irrigation District )

4. If the water right is issued in the name of an irrigation district then the affiant must have the concurrence of the district to the cancellation of the portion of the water right. (*Signature of district manager on the line below documents consent of the district.*)

Douglas A. Hart Douglas A. Hart 04/01/13  
 Signature of district manager Printed Name Date

5. I/We have abandoned any and all interest in the portion of this water right shown on the attached map and described as follows:

The right to the use of 6.92 cubic foot per second from Deer Creek  
 for Irrigation, and irrigation of NA (rate only cancellation) acres located:

(use) (if applicable)  
       1/4        1/4        Acres  
       1/4        1/4        Acres  
       1/4        1/4        Acres  
 Section         
 Township        N/S, Range        E/W, WM; and

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6. I/We request the portion of the water right described above be canceled.

\_\_\_\_\_  
Signature of legal owner as listed on deed, or authorized agent

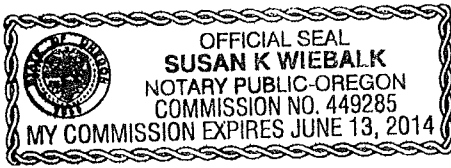
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of legal co-owner as listed on deed  
(if applicable)

\_\_\_\_\_  
Date

Subscribed and Sworn to Before Me this 1ST day of April, 2003.

Susan K Wiebalk  
Notary Public for Oregon



My Commission Expires 6/13/14

**PLEASE ATTACH A LEGIBLE COPY OF : 1) A DEED WHICH LISTS LAND OWNERS AND INCLUDES A LEGAL DESCRIPTION OF AFFECTED LANDS, AND 2) AN ADJUDICATION MAP, WATER RIGHT FINAL PROOF MAP, OR A TAX LOT MAP WITH THE PORTION OF THE ABANDONED RIGHT CLEARLY DRAWN AND IDENTIFIED. IF ACTING AS AN AUTHORIZED AGENT, INCLUDE COPY OF POWER OF ATTORNEY OR OTHER DOCUMENTS GRANTING AUTHORITY TO ACT ON BEHALF OF LEGAL OWNER(S) AS LISTED ON THE DEED.**

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