

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

In the Matter of Allocation of Conserved)
Water Application CW-76,)
Hood River County)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
ALLOCATION OF CONSERVED WATER
CW-76; and PARTIAL CANCELLATION
OF CERTIFICATE 39049

Applicant
Dee Irrigation District
6030 O’Leary Road
Hood River, OR 97031

Agent
Confederated Tribes of Warm Springs
6030 Dee Highway
Parkdale, OR 97041

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. A portion of the water conserved is allocated to the state to be converted to an instream water right or to revert to the public for appropriation by other water users. ORS 537.470(3).

An application for an allocation of conserved water shall include:(a) A description of the proposed conservation 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.

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).

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination to the Water Resources Commission within 60 days of the mailing of this determination.

If an application for the allocation of conserved water is approved, the Department shall issue orders covering the changes in the original water right(s) and once the conservation project is completed new certificates preserving the previously established priority of right(s) shall be issued to cover the unaffected portion of the water right(s) and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

Any irrigation district organized under ORS Chapter 545 or a water control district organized under ORS chapter 553 shall, after providing public notice and holding a public meeting, adopt an allocation of conserved water policy in accordance with OAR 690-018-0025.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

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 018, 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.

Findings of Fact

1. On July 23, 2012, Dee Irrigation District filed an Application for an Allocation of Conserved Water. The Department assigned the application number CW-76.
2. The Allocation of Conserved Water Application CW-76, as originally submitted, proposed a total rate reduction of approximately 13.22 cubic feet per second (cfs), but did not propose a reduction in the duty.
3. On April 9, 2013, the applicant submitted an amended application proposing to reduce the rate on Certificate 39048 by 1.5 cfs and proposing to reduce the rate on Certificate 39049 by 1.5 cfs. The applicant also proposes to reduce the annual duty on 737.3 acres of land from 3.0 acre-feet per acre to 2.25 acre-feet per acre.

Conserved Water Description											
Certificate	Certificate				Needed				Conserved Water		
	Rate		Duty		Rate		Duty		Rate	Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	Maximum AF	AF/AC
39048	9.22	1/80	2211.90	3.0	7.72	1/80	1658.90	2.25	1.50	553.0	0.75
39049	15.22	1/40	2211.90	3.0	13.72	1/40	1658.90	2.25	1.50	553.0	0.75
Total	24.44		2211.90	3.0	21.44		1658.90	2.25	3.00	553.0	0.75

4. The conservation measure to be taken consists of piping the four-mile long Dee Irrigation District open main canal with a 36” high-density polyethylene pipe, which will conserve water lost to leakage and evaporation. In addition, the Deer Creek diversion will be decommissioned and fish passage will be restored at the diversion site.

5. The entirety of the first right to be modified by CW-76 is as follows:

Certificate: 39048 in the name of DEE IRRIGATION DISTRICT (perfected under Permit S-165)

Use: IRRIGATION of 737.3 ACRES

Priority Date: SEPTEMBER 13, 1909

Rate: 9.22 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WEST FORK OF HOOD RIVER, tributary to HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	29	SE NE	2100 FEET SOUTH AND 5190 FEET WEST FROM NE CORNER OF SECTION 28

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	1	SE NE		4.2
1 N	9 E	WM	1	NE SE		10.8
1 N	9 E	WM	1	NW SE		3.6
1 N	9 E	WM	1	SW SE		11.8
1 N	9 E	WM	1	SE SE		20.8
1 N	9 E	WM	12	NE NE		32.0
1 N	9 E	WM	12	NW NE		28.8
1 N	9 E	WM	12	SW NE		34.0
1 N	9 E	WM	12	SE NE		29.4
1 N	9 E	WM	12	SE NW		11.0
1 N	9 E	WM	12	NE SW		29.4
1 N	9 E	WM	12	SW SW		5.4
1 N	9 E	WM	12	SE SW		34.0
1 N	9 E	WM	12	NE SE		28.4
1 N	9 E	WM	12	NW SE		33.4
1 N	9 E	WM	12	SW SE		35.2
1 N	9 E	WM	12	SE SE		38.8
1 N	9 E	WM	13	NE NE		24.6
1 N	9 E	WM	13	NW NE		32.2
1 N	9 E	WM	13	SW NE		35.7
1 N	9 E	WM	13	SE NE		18.5
1 N	9 E	WM	13	NE NW		36.4
1 N	9 E	WM	13	NW NW		14.8
1 N	9 E	WM	13	SW NW		25.0
1 N	9 E	WM	13	SE NW		38.2
1 N	9 E	WM	13	NE SW		35.5
1 N	9 E	WM	13	NW SW		27.0
1 N	9 E	WM	13	SW SW		0.7

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	13	SE SW		0.9
1 N	9 E	WM	13	NE SE		9.4
1 N	9 E	WM	13	NW SE		16.6
1 N	9 E	WM	14	NE SE		3.8
1 N	9 E	WM	14	SW SE		0.6
1 N	10 E	WM	7	NW NW	1	0.8
1 N	10 E	WM	7	SW NW	2	8.8
1 N	10 E	WM	7	NW SW	3	8.0
1 N	10 E	WM	7	SW SW	4	7.0
1 N	10 E	WM	18	NW NW	1	1.8
Total						737.3

6. The entirety of the second right to be modified by CW-76 is as follows:

Certificate: 39049 in the name of DEE IRRIGATION DISTRICT (perfected under Permit S-18546)

Use: SUPPLEMENTAL IRRIGATION of 737.3 ACRES

Priority Date: MARCH 7, 1931

Rate: 15.22 CUBIC FEET PER SECOND, being 5.40 cfs from Unnamed Creek (aka No Name Creek), 2.90 cfs from springs (0.5 cfs from south channel, 0.5 cfs from middle channel, and 1.9 cfs from north channel of Camp Creek), and 6.92 cfs from Deer Creek)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the acre-foot limitation allowed herein.

Source: UNNAMED CREEK, SPRINGS (CAMP CREEK), and DEER CREEK, tributaries to the WEST FORK OF HOOD RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	22	SE NE	DEER CREEK: 2150 FEET SOUTH AND 750 FEET WEST FROM THE NE CORNER OF SECTION 22
1 N	9 E	WM	28	NW NE	CAMP CREEK: 500 FEET SOUTH AND 2470 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 390 FEET SOUTH AND 2440 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 160 FEET SOUTH AND 2180 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	SW NW	NO NAME CREEK: 2050 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF SECTION 28

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 N	9 E	WM	1	SE NE		4.2
1 N	9 E	WM	1	NE SE		10.8
1 N	9 E	WM	1	NW SE		3.6
1 N	9 E	WM	1	SW SE		11.8
1 N	9 E	WM	1	SE SE		20.8
1 N	9 E	WM	12	NE NE		32.0
1 N	9 E	WM	12	NW NE		28.8
1 N	9 E	WM	12	SW NE		34.0
1 N	9 E	WM	12	SE NE		29.4
1 N	9 E	WM	12	SE NW		11.0
1 N	9 E	WM	12	NE SW		29.4
1 N	9 E	WM	12	SW SW		5.4
1 N	9 E	WM	12	SE SW		34.0
1 N	9 E	WM	12	NE SE		28.4
1 N	9 E	WM	12	NW SE		33.4
1 N	9 E	WM	12	SW SE		35.2
1 N	9 E	WM	12	SE SE		38.8
1 N	9 E	WM	13	NE NE		24.6
1 N	9 E	WM	13	NW NE		32.2
1 N	9 E	WM	13	SW NE		35.7
1 N	9 E	WM	13	SE NE		18.5
1 N	9 E	WM	13	NE NW		36.4
1 N	9 E	WM	13	NW NW		14.8
1 N	9 E	WM	13	SW NW		25.0
1 N	9 E	WM	13	SE NW		38.2
1 N	9 E	WM	13	NE SW		35.5
1 N	9 E	WM	13	NW SW		27.0
1 N	9 E	WM	13	SW SW		0.7
1 N	9 E	WM	13	SE SW		0.9
1 N	9 E	WM	13	NE SE		9.4
1 N	9 E	WM	13	NW SE		16.6
1 N	9 E	WM	14	NE SE		3.8
1 N	9 E	WM	14	SW SE		0.6
1 N	10 E	WM	7	NW NW	1	0.8
1 N	10 E	WM	7	SW NW	2	8.8
1 N	10 E	WM	7	NW SW	3	8.0
1 N	10 E	WM	7	SW SW	4	7.0
1 N	10 E	WM	18	NW NW	1	1.8
Total						737.3

7. The water to be conserved is as follows:

Conserved Water Description				
Certificate	Maximum CFS	Maximum AF	AF/AC	Source
39048	1.50	276.50	0.75	West Fork of Hood River
39049	1.50	276.50	0.75	No Name Creek
Total	3.00	553.00	0.75	

8. Some of the project funds are from federal or state public sources that are not subject to repayment. The Oregon Watershed Enhancement Board (OWEB) has a contractual interest in the project (212-4001).
9. The Applicant requested that 100 percent of the conserved water be allocated to the State for instream use for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
10. The Applicant requested that the priority date for any conserved water be the same as the priority dates for the original rights, being September 13, 1909, for Certificate 39048 and March 7, 1931, for Certificate 39049.
11. The Applicant proposes that construction will be completed and the notice of project completion will be filed by October 1, 2013. The Applicant also proposes that the date the project will be finalized is on or before October 1, 2018. OAR-690-018-0040(11).
12. The application, as amended, meets the requirements of OAR 690-018-0040.
13. Notice of the proposed conservation project was published in the Department's weekly notice on August 21, 2012, and in the East Oregonian newspaper on August 23 and 30, 2012, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
14. The Applicant is an irrigation district organized under ORS Chapter 545. The Applicant has provided a copy of Dee Irrigation District's Allocation of Conserved Water Policy adopted on May 15, 2012. The district's Allocation of Conserved Water Policy satisfies the requirements of OAR 690-018-0025.

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

15. As evidenced by Finding of Fact #3, the proposed allocation of conserved water will result in a reduced diversion of the uses allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a).
16. On October 22, 2012, the District #3 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would not harm other water rights; therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).
17. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c).

18. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses under Certificates 39048 and 39049 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
39048	7.72	1/80	1658.90	2.25
39049*	13.72	1/40	1658.90	2.25

* Being 3.90 cfs from No Name Creek, 2.90 cfs from Springs/Camp Creek, and 6.92 cfs from Deer Creek.

19. The Applicant submitted a copy of a letter from the Oregon Department of Fish and Wildlife supporting the conservation project as an attachment to its application. The ODFW letter states that summer low flow periods in the West Fork of Hood River have an adverse effect on fish production and water quality downstream from the Dee Diversion. ODFW concluded that the additional flows from the conservation project will benefit water quality and fish habitat. OAR 690-018-0050(4)(f).
20. As required by OAR 690-018-0050(4)(f), the Department has determined that the conserved water is needed to support instream uses in the West Fork of Hood River and No Name Creek to provide for the conservation, maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values. Finding of Fact #9.
21. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the applicant does not need to be adjusted because the applicant proposes 100% of the conserved water to be dedicated to instream uses. Findings of Fact #8 and #9.
22. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 39048 from the authorized point of diversion on the West Fork of Hood River to the mouth at river mile 0.0.
23. The Applicant requested the Department to protect the new instream water right created from the conserved water under Certificate 39049 from the point of diversion on No Name Creek to the mouth, and into the West Fork of Hood River and to the mouth. An instream reach is generally from the point of diversion to the mouth of the source stream (No Name Creek), but may be protected further if measurable in the receiving stream (West Fork of Hood River). The conserved water from No Name Creek is measurable in the West Fork of Hood River. OAR 690-077-015(8).
24. The new instream water rights created will be protected as follows:
- Certificate 39048: West Fork of Hood River: from the authorized point of diversion as described in Finding of Fact #5, to the mouth of the West Fork of Hood River at river mile 0.0.
- Certificate 39049: No Name Creek: from the authorized point of diversion described in Finding of Fact #6 to the mouth and into the West Fork of Hood

River at approximately river mile 6.0, to the mouth of West Fork of Hood River at river mile 0.0.

OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

25. To prevent enlargement, the period of use for water to be protected instream must be adjusted so the annual volume limitation of 553.0 acre-feet is not exceeded. By adjusting the season of use, the full rates of conserved water may be protected for a period of 93 days beginning June 30 and ending September 30, without enlarging the rights.
26. The instream right shall allow the use and protection of flows from June 30 through September 30. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
27. The protection of flows within the proposed reaches are appropriate, considering:
 - a) The instream water rights begin at the recorded points of diversion;
 - b) There are no known areas of natural loss of streamflow to the river beds downstream from the points of diversion; and
 - c) There are no known return flows from other water rights within the proposed reaches.OAR 690-077-0015(8).
28. The combination of instream rights for the proposed reaches on No Name Creek and the West Fork of Hood River do not exceed the amount needed to provide increased public benefits, and do not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
29. Instream Water Right Certificate 75619 established pursuant to ORS 537.336 (state agency process), with a priority date of December 6, 1991, exists for a portion of the stream reach where the new instream water rights are proposed. Certificate 75619 provides for a stream reach from Lake Branch at river mile 5.6 to the mouth of West Fork of Hood River at river mile 0.0, to provide the required stream flow for migration, spawning, egg incubation, fry emergency, and juvenile rearing. By replacing a portion of Certificate 75619, the instream rights will provide protection for streamflows previously identified as necessary for conservation, maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values under earlier priority dates.
30. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water rights 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 other ecological values. OAR 690-077-0015(11).
31. There are no areas for which the conserved water is proposed to be used for out-of-stream uses. OAR 690-018-0050(4)(h).

32. As requested in the amended application, the deadline for filing the Notice of Completion is on or before October 1, 2013. The deadline for filing the Request for Finalization of the conservation project is on or before October 1, 2018. OAR 690-018-0050(4)(i).
33. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

Partial Cancellation of a Water Right Certificate Upon Finalization of Conservation Project

34. On April 9, 2013, an affidavit was received from Dee Irrigation District certifying that the portion of Certificate 39049 appropriated from Deer Creek will be cancelled. The cancellation affects only one source and its associated rate under Certificate 39049. The portion of the right to be cancelled upon finalization of the conservation project is as follows:

Certificate: 39049 in the name of DEE IRRIGATION DISTRICT (perfected under Permit S-18546)
Use: SUPPLEMENTAL IRRIGATION of 737.3 ACRES
Priority Date: MARCH 7, 1931
Rate: 6.92 CUBIC FEET PER SECOND
Source: DEER CREEK, tributary to the WEST FORK OF HOOD RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	22	SE NE	DEER CREEK: 2150 FEET SOUTH AND 750 FEET WEST FROM NE CORNER OF SECTION 22

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-76, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. If protests are not filed pursuant to OAR 690-018-0050(6), the conserved water application will be approved, and upon finalization of the conservation project, Certificate 39049 will be partially cancelled.

1. The proposed changes will result in a reduced diversion for the uses allowed under the original water rights. Findings of Fact #3 and #18.
2. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #16.
3. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #17.

If Allocation of Conserved Water Application CW-76 is approved, the Order Approving will include the following:

1. *The changes proposed in CW-76 are approved.*

2. *The quantities of water conserved and allocated 100% to the State are as follows:*

Conserved Water Description				
<i>Originating Certificate</i>	<i>Maximum CFS</i>	<i>Maximum AF</i>	<i>AF/AC</i>	<i>Source</i>
39048	1.50	276.50	0.75	West Fork of Hood River
39049	1.50	276.50	0.75	No Name Creek
Total	3.00	553.00	0.75	

Findings of Fact #7 and #9.

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 Certificates 39048, 39049 and any related decree.*
4. *Water Right Certificate 39048 is cancelled. Upon finalization of the project, a superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #5) under Certificate 39048 at the reduced rate and duty as follows:*

Use: *IRRIGATION of 737.3 ACRES*
Priority Date: *SEPTEMBER 13, 1909*
Rate: *7.72 CUBIC FEET PER SECOND*
Limit/Duty: *The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH (1/80) of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.25 acre-feet per acre for each acre irrigated during the irrigation season of each year.*
Source: *WEST FORK OF HOOD RIVER, tributary to HOOD RIVER*

Authorized Point of Diversion:

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
1 N	9 E	WM	29	SE NE	2100 FEET SOUTH AND 5190 FEET WEST FROM NE CORNER OF SECTION 28

Finding of Fact #18.

5. *Water Right Certificate 39049 is cancelled. Upon finalization of the project, a superseding Certificate will be issued at the reduced rate and duty for the existing use under Certificate 39049 after the partial cancellation, at the place of use described in Finding of Fact #6, as follows:*

Use: *SUPPLEMENTAL IRRIGATION of 737.3 ACRES*
Priority Date: *MARCH 7, 1931*
Rate: *6.80 CUBIC FEET PER SECOND, being 3.90 cfs from No Name Creek, and 2.90 cfs from springs (0.50 cfs from south channel, 0.50 cfs from middle channel, and 1.90 cfs from north channel of Camp Creek)*
Limit/Duty: *The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH (1/40) of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.25 acre-feet per acre for each acre irrigated during the*

irrigation season of each year; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the acre-foot limitation allowed herein.

Source: NO NAME CREEK and SPRINGS (CAMP CREEK), tributaries to the WEST FORK OF HOOD RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	9 E	WM	28	NW NE	CAMP CREEK: 500 FEET SOUTH AND 2470 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 390 FEET SOUTH AND 2440 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	NW NE	CAMP CREEK: 160 FEET SOUTH AND 2180 FEET WEST FROM THE NE CORNER OF SECTION 28
1 N	9 E	WM	28	SW NW	NO NAME CREEK: 2050 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF SECTION 28

Finding of Fact #18.

6. *Water use measurement conditions:*

- a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each of the following locations:*
 - 1. *In the section of canal below the diversion of West Fork of Hood River and above No Name Creek diversion. Currently OWRD gaging station (Gage ID #14116195) fulfills this requirement. However, if OWRD discontinues this gaging station or determines the data collected at this station is not the best method of accurately measuring flow, a different type of measuring device may be required.*
 - 2. *In the new pipeline (near the end) before any turnouts to Dee Irrigation District patrons, as determined by the Watermaster.*
- b. *The water user shall maintain the meters or measuring devices in good working order.*
- c. *The water user 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.*

7. *The deadline for filing a Notice of Completion of the conservation measures is on or before October 1, 2013. Finding of Fact #32.*

8. *The deadline for filing Request for Finalization of the conservation project is on or before October 1, 2018. Finding of Fact #32.*

9. *The entire quantity of conserved water will be dedicated instream as follows:*

Originating Certificate	Priority Date	Source	Period	Rate (cfs)	Volume (acre-feet)
39048	9/13/1909	West Fork Hood River	6/30 through 9/30	1.50	276.50
39049	3/7/1931	No Name Creek	6/30 through 9/30	1.50	276.50
Totals				3.00	553.00

Certificate 39048: West Fork of Hood River: From the authorized point of diversion located at approximately river mile 6.2:

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
<i>1 N</i>	<i>9 E</i>	<i>WM</i>	<i>29</i>	<i>SE NE</i>	<i>2100 FEET SOUTH AND 5190 FEET WEST FROM NE CORNER OF SECTION 28</i>

to the mouth of the West Fork of Hood River at river mile 0.0.

Certificate 39049 - No Name Creek: From the authorized point of diversion:

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
<i>1 N</i>	<i>9 E</i>	<i>WM</i>	<i>28</i>	<i>SW NW</i>	<i>NO NAME CREEK: 2050 FEET SOUTH AND 4280 FEET WEST FROM THE NE CORNER OF SECTION 28</i>

to the mouth and into the West Fork of Hood River, at approximately river mile 6.0, to the mouth of the West Fork of Hood River at river mile 0.0.

Findings of Fact #21 and #25.

10. *The total monthly quantities of water to be protected under the proposed instream rights will provide for a beneficial purpose and do not exceed the estimated average natural flow. Finding of Fact #28.*
11. *The instream rights established by this allocation of conserved water shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes. Findings of Fact #29 and #30.*

Dated at Salem, Oregon this 28 day of May, 2013.


 Dwight French, Water Rights Services Administrator for
 PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have any questions about the information in this document, you may reach me at 503-986-0881 or teri.k.hranac@wrds.state.or.us.

NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415. The commission shall notify the applicant and any other person requesting notice, of the action the commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).