

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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-82,) PROPOSING APPROVAL OF
Deschutes County) ALLOCATION OF CONSERVED WATER
) CW-82

Applicant

Pine Meadow Ranch, Inc.
Attn: Cris Converse
PO Box 969
Sisters, OR 97759

Agent

Deschutes River Conservancy
Attn: Zachary Tillman
700 NW Hill Street
Bend, OR 97701

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 protest this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.
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If an application for the allocation of conserved water is approved, the Department shall issue orders covering the changes in the original water rights and once the conservation project is finalized new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

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 18, 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 December 16, 2013, Pine Meadow Ranch, Inc. filed an Application for an Allocation of Conserved Water. The Department assigned the application number CW-82.
2. The Allocation of Conserved Water Application CW-82 proposes a total rate reduction of approximately 1.0 cubic foot per second (cfs) under Certificates 75141, 293, and 44043.
3. The conservation measure to be taken consists of moving the point of diversion for approximately 1.25 miles downstream eliminating approximately 1 mile of unlined open ditch losses. In addition, the project will eliminate the need for the 5' concrete dam at the current point of diversion. The dam is a fish passage barrier, and its removal will reopen approximately 13 miles of upstream habitat.
4. The conserved water description is as follows:

Conserved Water Description							
Certificate	Certificate				Needed		Conserved Water
	Priority	Acres	Rate		Rate		Rate
			Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS
75141	1885	80.0	1.60	1/50	1.11	1/72	0.49
293	1886	57.0	1.14	1/50	0.79	1/72	0.35
44043	1886	27.0	0.54	1/50	0.38	1/71	0.16
Totals		164.0	3.28		2.28		1.00

5. The portion of the first right to be modified by CW-82 is as follows:

Certificate: 75141 in the name of ROSS B. HAMMOND (confirmed by Squaw Creek [Whychus Creek] Decree)
Use: DOMESTIC AND IRRIGATION of 80.0 ACRES
Priority Date: 1885
Rate: 1.60 CUBIC FEET PER SECOND
Limit/Duty: 1/50 Cubic Foot per Second per Acre
Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion: Not Listed

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NW SE	40.0
15 S	10 E	WM	8	SW SE	40.0

6. The second right to be modified by CW-82 is as follows:

Certificate: 293 in the name of FRANK PAUL (confirmed by Squaw Creek [Whychus Creek] Decree)

Use: IRRIGATION of 57.0 ACRES

Priority Date: 1886

Rate: 1.14 CUBIC FEET PER SECOND

Limit/Duty: 1/50 CUBIC FOOT PER SECOND per ACRE

Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion: Not listed

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NE SE	26.0
15 S	10 E	WM	8	SE SE	31.0

7. Certificates 75141 and 293 do not describe a location for the authorized point of diversion. However, information is available from the Whychus [Squaw] Creek Decree, the Watermaster, and the map submitted with the application indicating the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
15 S	10 E	WM	17	NE SE	LATITUDE: 44.268085 LONGITUDE: 121.558340

8. The portion of the third right to be modified by CW-82 is as follows:

Certificate: 44043 in the name of ESTATE OF ROSS HAMMOND; ATTN: R. K. RORABECK, TRUST DEPT, BANK OF CALIFORNIA (confirmed by Squaw Creek [Whychus Creek] Decree)

Use: IRRIGATION of 27.0 ACRES

Priority Date: 1886

Rate: 0.54 CUBIC FOOT PER SECOND

Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	17	NE SE	600 FEET SOUTH AND 1170 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NE SE	14.0
15 S	10 E	WM	8	SE SE	9.0
15 S	10 E	WM	9	NW SW	4.0

9. The location of the authorized point of diversion under Certificate 44043 is the same location as the authorized point of diversion for Certificates 75141 and 293. The authorized point of diversion for Certificate 44043 may also be described as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
15 S	10 E	WM	17	NE SE	LATITUDE: 44.268085 LONGITUDE: 121.558340

10. Conserved Water Application CW-82 proposes to move the authorized point of diversion approximately 1.25 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
15 S	10 E	WM	9	SW SW	LATITUDE: 44.280227 LONGITUDE 121.553322

11. Certificates 75141, 293, and 44043, the Whychus [Squaw] Creek Decree do not list a season of use. However, the Deschutes River Decree lists the irrigation season as April 1 to November 1. Whychus Creek is a tributary to the Deschutes River, therefore, it is appropriate to utilize the season of use from the Deschutes River Decree of April 1 to November 1.

12. The water to be conserved from Whychus Creek is as follows:

Conserved Water Description		
Certificate	Priority	Maximum CFS
75141	1885	0.49
293	1886	0.35
44043	1886	0.16

13. The applicant submitted letters in support of the conservation project from Oregon Department of Fish and Wildlife (ODFW), Upper Deschutes Watershed Council, U.S. Department of Agriculture – Deschutes National Forest (DNF), U.S. Department of Interior – Fish and Wildlife Service (USF&W).
14. 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).
15. 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, other ecological values, and recreation.

16. The Applicant requested that the priority date for any conserved water be the same as the priority dates for the original rights, being 1885 for Certificate 75141, and 1886 for Certificates 293 and 44043.
17. The Applicant proposes construction will be completed and the notice of project completion will be filed by April 1, 2014. The Applicant also proposes the date the project will be finalized is on or before June 1, 2014. OAR-690-018-0040(11).
18. The applicant submitted a land use form completed and signed by Deschutes County demonstrating the proposed use is consistent with local comprehensive land use requirements. OAR 690-018-0040(22).
19. The application meets the requirements of OAR 690-018-0040.
20. Notice of the proposed conservation project was published in the Department's weekly notice on December 17, 2013, and in *The Bulletin* newspaper on December 21 and 28, 2013, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

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

21. As evidenced by Findings of Fact #2 and #4, 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).
22. On January 15, 2014, the District #11 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).
23. 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).
24. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates for the existing uses involved in this conserved water project under Certificates 75141, 293, and 44043 are as follows:

Certificate	Priority	Acres	Rate	
			Maximum CFS	CFS/AC
75141	1885	80.0	1.11	1/72
293	1886	57.0	0.79	1/72
44043	1886	27.0	0.38	1/71
<i>Totals</i>		164.0	2.28	

25. In consultation with the Oregon Department of Fish and Wildlife (ODFW), the Department has determined the water allocated to the state is necessary to support instream flows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. The proposed instream right is located in an

ODFW flow restoration priority watershed and is also in a reintroduction area for spring Chinook and summer steelhead. OAR 690-018-0050(4)(f).

26. 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. Finding of Fact #15.
27. The Applicant requested the Department protect the new instream water rights created from the conserved water under Certificates 75141, 293, and 44043 from the authorized point of diversion on Whychus Creek at approximately river mile 23.7 to the mouth at river mile 0.0. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
28. To prevent enlargement, the period of use for water to be protected instream must be adjusted to the irrigation season of April 1 to November 1. Finding of Fact #11.
29. The instream right shall allow the use and protection of flows from April 1 to November 1. 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).
30. 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 reach. OAR 690-077-0015(8).
31. The combination of instream rights for the proposed reach does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
32. Instream Water Right Certificates 73223 and 73224 established pursuant to ORS 537.336 (state agency process), with priority dates of October 11, 1990, exist for portions of the stream reach where the new instream water rights are proposed. Certificate 73223 provides for a stream reach from Indian Ford Creek at river mile 19.5 to the mouth of Whychus [Squaw] Creek, to provide the required stream flow for migration, spawning, egg incubation, fry emergency, and juvenile rearing. Certificate 73224 provides for a stream reach from South Fork Whychus [Squaw] Creek at river mile 35.0 to Indian Ford Creek at river mile 19.5, to provide the required stream flow for migration, spawning, egg incubation, fry emergency, and juvenile rearing.
33. By replacing a portion of Certificates 73223 and 73224, 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.
34. 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).

35. 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).
36. As requested in the application, the deadline for filing the Notice of Completion is on or before April 1, 2014. The deadline for filing the Request for Finalization of the conservation project is on or before June 1, 2014. OAR 690-018-0050(4)(i).
37. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. Finding of Fact #22, OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-82, 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.

1. The proposed changes will result in a reduced diversion for the uses allowed under the original water rights. Findings of Fact #2, 4, and 20.
2. The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #22 and #37.
3. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #23.

If Allocation of Conserved Water Application CW-82 is approved, the Order Approving will include the following:

1. *The changes proposed in CW-82 are approved.*
2. *The quantities of water conserved and allocated 100% to the State are as follows:*

Conserved Water Description		
<i>Certificate</i>	<i>Priority</i>	<i>Maximum CFS</i>
75141	1885	0.49
293	1886	0.35
44043	1886	0.16

Finding of Fact #12.

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 75141, 293, 44043, and any related decree.*
4. *Water Right Certificate 75141 is cancelled. The reduced rate for the existing use under Certificate 75141 is as follows:*

Use: DOMESTIC and IRRIGATION of 80.0 ACRES
Priority Date: 1885
Rate: 1.11 CUBIC FEET PER SECOND
Limit/Duty: 1/72 Cubic Foot per Second per Acre
Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER
Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NW SE	40.0
15 S	10 E	WM	8	SW SE	40.0

Finding of Fact #24.

5. Water Right Certificate 293 is cancelled. The reduced rate for the existing use under Certificate 293 is as follows:

Use: IRRIGATION of 57.0 ACRES
Priority Date: 1886
Rate: 0.79 CUBIC FOOT PER SECOND
Limit/Duty: 1/72 CUBIC FOOT PER SECOND per ACRE
Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER
Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NE SE	26.0
15 S	10 E	WM	8	SE SE	31.0

Finding of Fact #24.

6. Water Right Certificate 44043 is cancelled. A new certificate will be issued for that portion of the right not affected by this Allocation of Conserved Water application. The reduced rate for the existing use under Certificate 44043 is as follows:

Use: IRRIGATION of 27.0 ACRES
Priority Date: 1886
Rate: 0.38 CUBIC FOOT PER SECOND
Limit/Duty: 1/71 CUBIC FOOT PER SECOND per ACRE
Source: WHYCHUS [SQUAW] CREEK, tributary to the DESCHUTES RIVER
Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	8	NE SE	14.0
15 S	10 E	WM	8	SE SE	9.0
15 S	10 E	WM	9	NW SW	4.0

Finding of Fact #24.

7. 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 new point of diversion.

- 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.*
8. *The deadline for filing a Notice of Completion of the conservation measures is on or before April 1, 2014. Finding of Fact #36.*
 9. *The deadline for filing Request for Finalization of the conservation project is on or before June 1, 2014. Finding of Fact #36.*
 10. *Completion of the changes and full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. Claims of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the Applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*
 11. *After satisfactory proofs of beneficial use are received, new certificates confirming the change in point of diversion and the reduced rates of the rights will be issued.*
 12. *The entire quantity of conserved water will be dedicated instream as follows:*

Originating Certificate	Priority Date	Period of Use	Rate (cfs)
75141	1885	April 1 to November 1	0.49
293	1886	April 1 to November 1	0.35
44043	1886	April 1 to November 1	0.16
Totals			1.00


From the authorized point of diversion located at approximately river mile 23.7:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
15 S	10 E	WM	17	NE SE	LATITUDE: 44.268085 LONGITUDE: 121.558340

To the mouth of the Whychus Creek at river mile 0.0. Finding of Fact #27.

13. *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 #33 and #34.*

Dated at Salem, Oregon this 23 day of January, 2014.



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

Mailing Date: JAN 24 2014

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).