



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 4, 2015

Applicants

Central Oregon Irrigation District
1055 SW Lake Court
Redmond, OR 97756
lesliec@coid.org

North Unit Irrigation District
2024 NW Beech Street
Madras, OR 97741
mbritton@norunitid.com

Representative

Deschutes River Conservancy
700 NW Hill Street
Bend, OR 97701
zach@deschutesriver.org
brett@deschutesriver.org

SUBJECT: Allocation of Conserved Water Application CW-81

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-81.

If no protest is filed within 60 days of the mailing, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position to the Water Resources Commission.

Please do not hesitate to contact me at 503-986-0881 or teri.k.hranac@wr.d.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Allocation of Conserved Water
Transfer and Conservation Section

cc: CW-81
S-88048

David Filippi, *Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204 (e-mail: defilippi@stoel.com)*
Kirk Maag, *Stoel Rives LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204 (e-mail: kbmaag@stoel.com)*
Jeremy Giffin, District #11 Watermaster (via e-mail)
Kyle Gorman, Regional Manager (via e-mail)



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

In the Matter of Allocation of Conserved Water Application CW-81, Deschutes and Jefferson Counties) PRELIMINARY DETERMINATION OF APPROVAL ON COMPLETION AND FINALIZATION OF ALLOCATION OF CONSERVED WATER CW-81

Applicants

Central Oregon Irrigation District
1015 SW Lake Court
Redmond, OR 97756

Representative

Deschutes River Conservancy
700 NW Hill Street
Bend, OR 97701

North Unit Irrigation District
2024 NW Beech Street
Madras, OR 97741

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.

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).

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

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

If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. ORS 537.465.

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. 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. The statutes and rules outlined above require the Department to review the application and any comments received to make its findings and determinations.

Findings of Fact

1. On October 22, 2013, Central Oregon Irrigation District (COID) and North Unit Irrigation District (NUID), collectively called the "Districts," filed an Allocation of Conserved Water Application. The Department designated the application number CW-81.
2. The Districts request an Allocation of Conserved Water under Certificate 83571 issued to COID and Certificate 88876 issued to NUID.
3. The first step in the conservation project involves piping approximately 4,800 feet of COID's I-Lateral under Certificate 83571. This piping project is expected to eliminate 1,300 acre-feet (AF) of seepage losses of Deschutes River water from the I-Lateral.

The second step in the conservation project will likely result in the conservation of 2,064.4 AF of Crooked River water under Certificate 88876. Approximately 520 acres of NUID lands will receive the 1,300 AF of Deschutes River water saved by piping 4,800 feet of the I-Lateral. The 520 acres of NUID lands currently receive 3.97 AF per acre of Crooked River water. NUID proposes to dedicate 100% of the conserved Crooked River water to the state as a new instream water right.

4. Canal or lateral piping with HDPE pipe is a proven water conservation technique.
5. The first right to be modified is Certificate 83571, in the name of Central Oregon Irrigation District, with the source listed as the Deschutes River, a tributary of the Columbia River. Certificate 83571, has priority dates of October 31, 1900, for 978.297 cubic feet per second (cfs), and December 2, 1907, for the balance of approximately 392.0890 cfs allowed by the decree, if all lands were served by the main canal system. However, Certificate 83571 may be further modified by any cancellations, transfers, and other allocation of conserved water projects, completed pursuant to ORS 537 and ORS 540.

The number of acres served by Certificate 83571 is as follows:

Type of Use	Inchoate	Allowed by Certificate 83571
Irrigation	519.617	42,919.893
Equivalent Acres for Pond Maintenance	63.700	147.110
Equivalent Acres for Industrial	0.000	87.100
Equivalent Acres for Dust Abatement	0.000	2.800
Equivalent Acres for Municipal	23.500	781.957
Equivalent Acres for Quasi-Municipal	58.370	7.000
Equivalent Acres for Mining	16.000	0.000
Domestic Use and Livestock	--	--
TOTAL ACRES/EQUIVALENT	681.187	43,945.86

Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 83571 will cause a corresponding change to the total number of acres served by this right.

Certificate 83571 limits the diversion rate for canal diversions by season of use. However, Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season and diversion rates are as follows:

QUANTITY FOR CANAL DIVERSIONS FROM SOURCE		
Season	Period of Use	Rate
Season 1	April 1 through April 30 and October 1 through October 31	1/80
Season 2	May 1 through May 14 and September 15 through September 30	1/60
Season 3	May 15 through September 14	1/32.4

- Certificate 83571 lists 13 authorized points of diversion. Two of the authorized points of diversion are canal diversions, Central Oregon Canal (POD 1), and COID North Canal (POD 11).
- The authorized canal diversion under Certificate 83571 associated with this conserved water project (POD 1) is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
18 S	11 E	WM	13	SW NE	CENTRAL OREGON CANAL: 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

- Certificate 83571 lists the following quantities of water associated with authorized POD 1:

POD ID	Season 1	Season 2	Season 3	ANNUAL VOLUME
1	314.333 cfs	419.107 cfs	776.126 cfs	249,102.13 AF

However, Certificate 83571 has been modified by cancellations, transfers, and other allocation of conserved water projects affecting POD 1 which were completed pursuant to ORS 537 and ORS 540 as listed below:

Certificate 83571 – POD 1 Starting Points		Acres	Rates (cfs)		776.126 cfs		Volume (AF)	
		25,246.610	314.333	419.107	554.068	222.058	249,102.13	
Order Date	Spec. Order Vol-Page	Acres	Season 1	Season 2	Season 3 1900	Season 3 1907	Volume	Description
10/5/2007	73-403	6.000	0.075	0.100	0.132	0.053	59.20	T-10299
12/26/2007	73-848	20.315	0.253	0.337	0.446	0.179	200.44	T-10299
2/26/2008	74-270	6.310	0.080	0.110	0.140	0.060	62.26	T-10466
12/26/2007	73-891	1.160	0.014	0.019	0.026	0.010	11.45	Cancellation
4/2/2008	74-643	0.280	0.003	0.005	0.006	0.003	2.77	Cancellation
4/2/2008	74-646	1.700	0.021	0.028	0.037	0.015	16.81	Cancellation
4/2/2008	74-649	2.220	0.028	0.037	0.049	0.019	21.95	Cancellation
12/29/2008	76-949	0.500	0.006	0.008	0.011	0.004	4.93	T-10508
1/30/2009	77-126	0.250	0.003	0.004	0.006	0.002	2.47	Cancellation
7/15/2009	78-420	0.400	0.005	0.007	0.008	0.004	3.95	Sat. Proof
8/31/2009	78-784		0.360	0.480	0.628	0.252	286.81	CW-59
8/19/2010	81-723	0.350	0.004	0.006	0.008	0.003	3.45	Sat. Proof
10/20/2010	82-1151	0.400	0.005	0.007	0.008	0.004	3.94	Sat. Proof
11/30/2010	83-136	4.000	0.050	0.066	0.088	0.035	39.42	T-9936
4/26/2011	83-1087	0.690	0.009	0.011	0.015	0.006	6.80	Cancellation
5/4/2011	84-91	0.125	0.002	0.002	0.003	0.001	1.23	Cancellation
5/4/2011	84-94	0.330	0.004	0.005	0.007	0.003	3.25	Cancellation
5/4/2011	84-97	0.319	0.004	0.005	0.070	0.003	3.14	Cancellation
5/25/2011	84-307	0.125	0.002	0.002	0.003	0.001	1.23	Cancellation
12/14/2011	85-808	0.250	0.003	0.004	0.006	0.002	2.46	Cancellation
5/3/2012	87-358	0.400	0.005	0.007	0.008	0.004	3.94	Cancellation
POD 1 Adjusted Totals		25,200.486	313.397	417.857	552.363	221.395	248,360.23	
				773.758 cfs				

9. Based on the cancellations, transfers, and other allocation of conserved water projects listed in Finding of Fact #8 above, the starting points for POD 1 under Certificate 83571 are as follows:

Acres	Season 1 (cfs)	Season 2 (cfs)	Season 3 1900 (cfs)	Season 3 1907 (cfs)	Volume (AF)
25,200.486	313.397	417.857	552.363	221.395	248,360.23
		773.758			

10. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 83571, which are not listed in Finding of Fact #8 will cause a corresponding change to the rate, duty, and total number of acres served by Certificate 83571.
11. Based on the above adjusted starting point for Certificate 83571, conserved water application CW-81 proposes to conserve the following quantities of water:

Certificate	Season	Before Project		After Project		Conserved Water	
		Rate (CFS)	Volume (AF) AF/ac Max. Duty	Rate (CFS)	Volume (AF) AF/ac Max. Duty	Rate (CFS)	Max. Duty (AF)
83571	1	313.397	9.86 248,360.23	311.757	9.80 247,060.23	1.640	1,300.00
	2	417.857		415.671		2.186	
	3(1900)	552.363		549.478		2.885	
	3(1907)	221.395		220.231		1.164	
83571 combined totals		773.758		769.709		4.049	

12. The portion of the second right to be modified is as follows:

Certificate: 88876 in the name of NORTH UNIT IRRIGATION DISTRICT (perfected under Permit S-33954)

Use: IRRIGATION of 520.00 ACRES

Priority Date: SEPTEMBER 18, 1968

Rate: 12.08 CUBIC FEET PER SECOND, together with all other rights perfected under Permit S-33954 shall not exceed 130.39 cfs.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.97 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further subject to the terms and conditions of a stipulation between North Unit Irrigation District and the Oregon State Game Commission which has been recorded in the Miscellaneous Records of the Water Resources Director.

Source: CROOKED RIVER, tributary of the DESCHUTES RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION					SUPPLEMENTAL INFORMATION	
Twp	Rng	Sec	Q-Q	Acres	Tax Map ID	Landowner
9 S	13 E	15	NW SE	13.90	913150000600	Paul Moore Acres, Inc.
9 S	13 E	26	NE NE	0.50	913260000101	Scott Samsel
9 S	13 E	26	NE NE	2.30	913260000101	Robert & Barbara Mammen
9 S	14 E	27	SW SW	16.50	914270000700	Martin Rev. Trust
9 S	14 E	27	SE SW	0.30	914270000700	Martin Rev. Trust
9 S	14 E	30	NE SW	10.80	914300000500	H Bryce & Joy Vibbert
9 S	14 E	30	SE SW	25.90	914300000500	H Bryce & Joy Vibbert
9 S	14 E	31	SW SE	2.30	914310000101	Michael & Kelly Mazour
9 S	14 E	31	SE SE	29.30	914310000101	Michael & Kelly Mazour
10 S	13 E	5	SW SE	4.80	1013050000700	Jack & Denise Skipper Trust
10 S	13 E	22	SW SW	38.80	1013220000700	Clowers Trust
10 S	14 E	18	SE NW	1.60	1014180000500	Yvonne Frost
10 S	14 E	18	NE SE	5.30	1014180001000	Volbeda LLC
10 S	14 E	18	NW SE	0.50	1014180000700	Volbeda LLC
10 S	14 E	18	SE SE	5.00	1014180001000	Volbeda LLC
10 S	14 E	21	NW NW	7.20	1014210000202	Vern & Dena Forristall
10 S	14 E	21	SW NW	2.40	1014210000400	Robert & Andrea Simmons
10 S	14 E	31	NE SW	1.90	101431C002300	Daniel & Ronia Commingore
10 S	14 E	31	NW SW	0.20	101431C002300	Daniel & Ronia Commingore
10 S	14 E	32	NW NW	0.20	1014320000604	Amy Marie Dowers
10 S	14 E	32	NW NW	2.80	1014320000602	Amy Marie Dowers
10 S	14 E	33	NW NW	1.20	1014330000400	Clymore Trusts
11 S	13 E	3	SW NE	8.50	1113030000112	Satterlie Family Trust
11 S	13 E	10	NE NE	0.70	1103100000100	James Hamm
11 S	13 E	14	SE NW	0.60	111314BD01900	KB Management LLC

IRRIGATION					SUPPLEMENTAL INFORMATION	
Twp	Rng	Sec	Q-Q	Acres	Tax Map ID	Landowner
11 S	13 E	14	SE NW	2.80	111314BD00500	KB Management LLC
11 S	13 E	15	NW SE	11.90	1113150000101	Gordon & Jeris Clark
11 S	13 E	21	NW SE	0.80	1113210000600	Robert & Roberta Vanek
11 S	13 E	23	NW SW	0.40	111323CB00500	Jerry & Monica Miller
11 S	13 E	33	NE NW	0.30	1113330000101	Avila Trusts
11 S	14 E	6	NE NW	0.50	111406BA00200	Patty Lou Zachary
11 S	14 E	31	NE NW	39.00	1114310000300	Roy W Nance
11 S	14 E	31	SE NW	27.50	1114310000300	Roy W Nance
12 S	12 E	12	SW NW	0.40	121212BC00107	Carl & Kimberly Stanley
12 S	12 E	12	SW NW	0.10	121212BC00101	Feldman, Vicki & Ricki
12 S	12 E	13	SW SW	0.70	1212130000601	Ed & Sharon Macy Rev. Trust
12 S	12 E	25	SW NE	7.90	1212250000100	Daniel & Kimberlie Hollinger
12 S	12 E	25	SE NE	11.10	1212250000100	Daniel & Kimberlie Hollinger
12 S	12 E	34	NW SW	32.30	1212340000400	Kathleen T Jones Rev. Trust
12 S	13 E	6	NE NW	0.60	1213060000202	Sarah Miller
12 S	13 E	6	NW NW	2.90	1213060000202	Sarah Miller
12 S	13 E	9	NW SW	15.60	1213090001500	Coleman Ranch, Inc.
12 S	13 E	9	SW SW	15.40	1213090001500	Coleman Ranch, Inc.
12 S	13 E	10	NE NE	2.60	1213100000200	Whitaker, et al.
12 S	13 E	16	NW NE	19.90	1213160000300	G Thayne & N Kaye Corwin
12 S	13 E	16	SW NE	3.80	1213160000200	Douglas & Pamela Middlestetter
12 S	13 E	16	NE NW	39.40	1213160000300	G Thayne & N Kaye Corwin
12 S	13 E	18	NW NE	1.40	1213180000300	Duane E Benson Trust
12 S	13 E	19	NE NE	0.50	1213190000202	Thomas Gates
13 S	12 E	2	SE NW	19.00	1312020000500	Karen Child
13 S	12 E	10	NE NE	13.50	1312100000100	Schmidt Family Rev. Trust
13 S	12 E	10	SE NE	7.50	1312100000100	Schmidt Family Rev. Trust
13 S	12 E	12	SW NW	18.50	1312120000300	Karen Iverson Rev. Living Trust
13 S	12 E	12	NE SW	9.00	1312120000400	McKinney Rev. Living Trust
13 S	12 E	12	NW SW	1.50	1312120000400	McKinney Rev. Living Trust
13 S	12 E	12	SW SW	0.70	1312120000400	McKinney Rev. Living Trust
13 S	13 E	16	SW SE	10.00	1313160000105	Jerry & Linda Jones
13 S	13 E	32	NE NE	8.10	1313320000102	Deanne & Norman Bain, Jr.
13 S	13 E	32	SW NE	0.10	1313320000102	Deanne & Norman Bain, Jr.
13 S	13 E	32	SE NE	10.80	1313320000102	Deanne & Norman Bain, Jr.
Total				520.00		

13. Conserved water application CW-81 proposes to conserve the following quantities of water under Certificate 88876:

Certificate	Season	Before Project			After Project			Conserved Water	
		Rate (CFS)	Volume (AF)		Rate (CFS)	Volume (AF)		Rate (CFS)	Max. Duty (AF)
			AF/ac	Max. Duty		AF/ac	Max. Duty		
88876	N/A	129.52*	3.97	22,096.65	117.44**	3.96	20,032.25	12.08	2,064.40

* Pre-project, the maximum combined diversion rate for all water rights perfected under Permit S-33954 is 130.39 cfs.

** Post-project, the maximum combined diversion rate for all water rights perfected under Permit S-33954 is 118.31 cfs.

14. On November 12, 2013, NUID adopted an Allocation of Conserved Water Policy which conforms to the requirements of OAR 690-018-0025.

15. On May 1, 2005, COID adopted an Allocation of Conserved Water Policy which conforms to the requirements of OAR 690-018-0025. COID's policy was affirmed and renewed on November 9, 2010.
16. Diversion structures, canals and ditches sufficient to deliver the full quantity of water allowed under the existing rights were present within the five-year period prior to submission of Allocation of Conserved Water application CW-81.
17. The Districts have the capacity to divert the full quantity of water available under the subject rights. Department staff has also determined the subject rights could be applied to the authorized beneficial uses at the maximum rates and volumes allowed without return flows.
18. On September 21, 2012, the Districts' representative provided notice of the proposed conservation project to the Land Use and Planning Departments of Crook, Deschutes, and Jefferson Counties as required by OAR 690-018-0040(22).
19. The Districts submitted a land use form completed and signed by Deschutes County demonstrating the proposed use is consistent with local comprehensive land use requirements.
20. Notice of the proposed conservation project was published in the Department's weekly notice on October 29, 2013, and in *The Bulletin* newspaper on November 2 and 9, 2013, as required under OAR 690-018-0050.
21. The canal piping portion of the project will eliminate the following quantities of seepage loss of Deschutes River water from the I-Lateral under COID's Certificate 83571:

Certificate	Season	Before Project			After Project			Conserved Water	
		Rate (CFS)	Volume (AF)		Rate (CFS)	Volume (AF)		Rate (CFS)	Max. Duty (AF)
			AF/ac	Max. Duty		AF/ac	Max. Duty		
83571	1	313.397	9.86	248,360.23	311.757	9.80	247,060.23	1.640	1,300.00
	2	417.857			415.671			2.186	
	3(1900)	552.363			549.478			2.885	
	3(1907)	221.395			220.231			1.164	
83571 combined totals		773.758			769.709			4.049	

22. Pursuant to OAR 690-018-0020(4), application of the Deschutes River water to lands currently served by Crooked River water will reduce demand on the Crooked River and result in the following quantities of conserved water from the Crooked River:

Certificate	Before Project		After Project		Conserved Water	
	Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)	Rate (CFS)	Volume (AF)
88876	129.52*	22,096.65	117.44**	20,032.25	12.08	2,064.40

*Pre-project, the maximum combined diversion rate for all water rights perfected under Permit S-33954 is 130.39 cfs.

**Post-project, the maximum combined diversion rate for all water rights perfected under Permit S-33954 is 118.31 cfs.

23. The Deschutes River (COID) water saved by canal piping will be applied to 520.0 acres of land, which currently receive Crooked River (NUID) water. The rate and quantity of water shall be as follows:

Originating Certificate	Priority	Season	Rate (CFS)	AF/AC	Max. New Acres	Max. Duty (AF)
83571	10/31/1900	1	1.640	2.5	520.0	1,300.00
	10/31/1900	2	2.186			
	10/31/1900	3	2.885			
	12/2/1907	3	1.164			
Combined Total			4.049			

24. Allocation of Conserved Water Project CW-81 is complete and resulted in 2,064.40 acre-feet of conserved water under Certificate 88876. Pursuant to OAR 690-018-0012(1), NUID requests that 100% of the conserved water under Certificate 88876 be dedicated to the state as a new instream water right.
25. Pursuant to ORS 537.485, the Districts request that the priority dates of the conserved water be the same as the originating rights.
26. On October 28, 2013, the Department's District 11 Watermaster reviewed Allocation of Conserved Water Application CW-81 and determined that the conservation project would result in conserved water which could be allocated without harm to other rights provided the proposed conditions and limitations listed in Finding of Fact #27 were included.
27. NUID proposed the following conditions and limitations to mitigate for potential harm to existing water rights.
 - a. The North Unit Irrigation District (NUID) Water Accounting agreement dated July 12, 1996, as amended by CW-75, requires NUID to pump 10.585% of the total irrigation demand from the Crooked River. The Agreement shall be amended and pro-rated according to the quantities of water used after completion of this project. Upon approval and finalization of this project, NUID shall be required to pump 9.61% of the total irrigation demand from the Crooked River.
 - b. North Unit Irrigation District and the Deschutes River Conservancy have agreed that the new instream right created by this Allocation of Conserved Water project will be in addition to historic minimum stream flows in the Crooked River as defined in the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81. The quantity of water that must be by-passed will be determined by the Department's District 11 Watermaster office. Prior to March 31 of each year, the District 11 Watermaster shall determine the quantity of water that must be by-passed in accordance with the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81.
28. The proposed allocation of conserved water project, as conditioned above, will not harm existing water rights; therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate effects on other water rights.
29. In consultation with the Oregon Department of Fish and Wildlife (ODFW), Department of Environmental Quality (DEQ), and Oregon Parks and Recreation Department (OPRD), the Department has determined that the greatest benefit to the Deschutes River system as a whole will be achieved by protecting the new instream right from the NUID point of diversion to the mouth of the Crooked River at its confluence with the Deschutes River. The new

instream right will improve water quality, reduce water temperature, and provide additional benefits for fish, wildlife and other aquatic resources.

30. The DEQ indicated that temperatures in the Crooked River are elevated above state water quality standards during summer months due to low flows below the NUID point of diversion and that additional flows would improve temperature related water quality problems.
31. The combination of instream rights for the proposed reach on Crooked River does not exceed the amount needed to provide increased public benefits and is consistent with OAR 690-077-0015(4), (5), and (6).
32. Pursuant to OAR 690-077-0015(8) the stream reach for the instream right on the Crooked River shall be from NUID's authorized point of diversion located at approximately River Mile 27.5:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

to the mouth of Crooked River at River Mile 0.0, and shall be measured at OWRD Gauging Station #14087300.

33. The proposed instream right is not a measurable portion of the Deschutes River as required by OAR 690-077-0015(8). Therefore, the proposed instream right cannot be extended from the Crooked River into the Deschutes River.
34. The right will be protected instream from April 1 through October 31. To avoid enlargement, the rates to be protected instream have been determined by the following calculation: (volume ÷ 1.983471 (cfs equivalent) ÷ 214 days (irrigation season) = new rate). The rate for the instream water right shall be as follows:

Originating Certificate	Priority Date	Rate (CFS)	Volume (AF)
88876	9/18/1968	4.86	2,064.4

35. Pursuant to OAR 690-018-0062, the Districts indicated that the project is complete and requested that the project be finalized.
36. On March 4, 2014, the Department issued a Draft Preliminary Determination and mailed a copy to the Applicants and the Applicants' agent. The attorney representing NUID, provided comments to the Draft Preliminary Determination.

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

Pursuant to ORS 537.465 and OAR 690-018-0050, the Department has reviewed the application and considered any comments received and has determined:

37. Allocation of Conserved Water Application CW-81 contains all the information required by OAR 690-018-0040.

38. As established in Findings of Fact #21 and #22, the proposed Allocation of Conserved Water project will result in a reduced diversion for the uses allowed under the original rights. OAR 690-018-0050(4)(a)
39. Consistent with Findings of Fact #26 and #28, the proposed Allocation of Conserved Water will not harm existing water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the effects on other water rights. OAR 690-018-0050(4)(b) and (d).
40. As established in Findings of Fact #18 and #19, CW-81 is consistent with the requirements established in OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans). OAR 690-018-0050(4)(c).
41. Because the conserved water was developed from delivery system efficiencies, the rate and volume for POD 1 under Certificate 83571 must be modified. The new rate and volume, including transmission losses, for POD 1 are as follows:

Certificate	Priority	Season	Rate (CFS)	Volume (AF)	
				AF/ac	Max. Duty
83571 POD 1	10/31/1900	1	311.757	9.80	247,060.23
	10/31/1900	2	415.671		
	10/31/1900	3	549.478		
	12/2/1907	3	220.231		
POD 1 Combined Season Total			769.709		

(Finding of Fact #21), OAR 690-018-0050(4)(e).

42. The new rate and duty of conserved Deschutes River water for out-of-stream use to be applied to 520.0 acres of land is as follows:

Originating Certificate	Priority	Season	Rate (CFS)	AF/AC	Max. New Acres	Max. Duty
83571	10/31/1900	1	1.640	2.5	520.0	1,300.00
	10/31/1900	2	2.186	2.5	520.0	
	10/31/1900	3	2.885	2.5	520.0	
	12/2/1907	3	1.164	2.5	520.0	
Combined Total			4.049			

(Finding of Fact #23), OAR 690-018-0050(4)(e).

43. In consultation with ODFW, DEQ and OPRD, the Department has determined that the conserved water is needed to support instream uses. (Findings of Fact #29, #30 and #31), OAR 690-018-0050(4)(f).
44. Consistent with ORS 537.470(3), the Districts requests that 100% of the conserved water from the Crooked River be allocated for an instream water right to be held in trust by the Water Resources Department for the people of Oregon and the priority date of the instream right will be the same as the originating right. (Finding of Fact #25), OAR 690-018-0050(4)(g).

45. Consistent with OAR 690-077-0015(8) and (10), the State's portion of the conserved water shall have a priority date of September 18, 1968, 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 pollution abatement. The instream water right shall provide for the protection of flows in the Crooked River from the authorized point of diversion at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

to the mouth of Crooked River at River Mile 0.0 and shall be measured at OWRD Gauging Station #14087300. (Findings of Fact #29 and #30).

46. The instream right created shall replace a portion of any 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. The right shall allow for instream use and protection of flows from April 1 through October 31. (Findings of Fact #31 and #34), OAR 690-018-0050(4)(h).
47. The instream right to be created by Allocation of Conserved Water Project CW-81 is consistent with the criteria for establishment of an instream right as outlined in OAR 690-077-0015. (Findings of Fact #29 through #34).
48. Pursuant to OAR 690-018-0062 the Applicant notified the Department that the Allocation of Conserved Water Project is complete and requested finalization of the project. (Finding of Fact #35). OAR 690-018-0050(4)(i).
49. The following conditions and limitations affecting Certificates 72281, 72282, 88876, and 88877 proposed by NUID mitigate for potential harm to existing rights and are acceptable to the Department:

The North Unit Irrigation District (NUID) Water Accounting agreement dated July 12, 1996, as amended by CW-75, requires NUID to pump 10.585% of the total irrigation demand from the Crooked River. The Agreement shall be amended and pro-rated according to the quantities of water used after completion of this project. Upon approval and finalization of this project, NUID shall be required to pump 9.61% of the total irrigation demand from the Crooked River.

North Unit Irrigation District and the Deschutes River Conservancy have agreed that the new instream right created by this Allocation of Conserved Water project will be in addition to historic minimum stream flows in the Crooked River as defined in the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81. The quantity of water that must be by-passed will be determined by the Department's District 11 Watermaster office. Prior to March 31 of each year, the District 11 Watermaster shall determine the quantity of water that must be by-passed in accordance with the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81.

(Finding of Fact #27), OAR 690-018-0050(4)(j).

Determination and Proposed Action

1. The project described in Allocation of Conserved Water Application CW-81, is consistent with the criteria in ORS 537.455 to 537.500 and OAR Chapter 690, Division 018.
2. Pursuant to OAR 690-018-0050(4), the conservation project will conserve water and, as described in Finding of Fact #49, can be allocated without harming existing water rights.
3. Consistent with ORS 537.470(3), the State's portion of the conserved water is necessary to support instream flow purposes in accordance with ORS 537.332 to 537.360.

If Allocation of Conserved Water Application is approved, the Order will include the following:

1. The changes proposed in Allocation of Conserved Water CW-81 are approved.
2. The project is complete and is finalized.
3. The right to the use of water is restricted to beneficial use at the unmodified places of use described in Certificates 83571 and 88876, and is subject to all other conditions and limitations contained in Certificates 83571 and 88876, and any related decree.
4. Water Right Certificate 88876 is cancelled. A new superseding certificate will be issued for that portion of the right not affected by Allocation of Conserved Water CW-81 at the following rate and duty:

Originating Certificate	Acres Equivalent	Rate (CFS)	Volume (AF)
88876	5,052.90	117.44*	20,032.25

*Maximum combined diversion rate for all rights perfected under Permit S-33954 is 118.31 cfs.

The acreage, rate, duty, and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocations of conserved water, or other prior modification to the certificates. All other conditions and limitations of the existing water right shall be included in the superseding certificates.

5. Water Right Certificate 83571 is modified. The reduced rate and duty for POD 1 is as follows:

Certificate	Priority	Season	Rate (CFS)	Volume (AF)	
				AF/ac	Max. Duty
83571 POD 1	10/31/1900	1	311.757	9.80	247,060.23
	10/31/1900	2	415.671		
	10/31/1900	3	549.478		
	12/2/1907	3	220.231		
POD 1 Combined Season Total			769.709		

6. Water right Certificates 72281, 72282, 88876, and 88877 shall be subject to the following conditions and limitations:

The North Unit Irrigation District (NUID) Water Accounting agreement dated July 12, 1996, as amended by CW-75, requires NUID to pump 10.585% of the total irrigation demand from the Crooked River. The Agreement shall be amended and pro-rated according to the quantities of water used after completion of this project. Upon approval

and finalization of this project, NUID shall be required to pump 9.61% of the total irrigation demand from the Crooked River.

North Unit Irrigation District and the Deschutes River Conservancy have agreed that the new instream right created by this Allocation of Conserved Water project will be in addition to historic minimum stream flows in the Crooked River as defined in the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81. The quantity of water that must be by-passed will be determined by the Department's District 11 Watermaster office. Prior to March 31 of each year, the District 11 Watermaster shall determine the quantity of water that must be by-passed in accordance with the "Dry Year" "Non-Dry Year" agreement described in Attachment 3, to Allocation of Conserved Water Application CW-81.

- Approval and finalization of this Allocation of Conserved Water will result in conserved water from Certificate 83571 for use on lands previously served by Certificate 88876:

Rate/Limit:

Priority	Season	Rate (CFS)	AF/AC	Max. New Acres	Max. Duty (AF)
10/31/1900	1	1.640	2.5	520.0	1,300.00
10/31/1900	2	2.186			
10/31/1900	3	2.885			
12/2/1907	3	1.164			
Combined Season Total		4.049			

Source: Deschutes River, tributary of the Columbia River

Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Source/Measured Distances
17 S	12 E	WM	29	SE NE	NUID MAIN CANAL: 1700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29.
17 S	12 E	WM	29	SE NE	COID NORTH CANAL: 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29.

Place of Use:

IRRIGATION					Supplemental Information	
Twp	Rng	Sec	Q-Q	Acres	Tax Map ID	User Name
9 S	13 E	15	NW SE	13.90	913150000600	Paul Moore Acres, Inc.
9 S	13 E	26	NE NE	0.50	913260000100	Scott Samsel
9 S	13 E	26	NE NE	2.30	913260000101	Robert & Barbara Mammen
9 S	14 E	27	SW SW	16.50	914270000700	Martin Rev. Trust
9 S	14 E	27	SE SW	0.30	914270000700	Martin Rev. Trust
9 S	14 E	30	NE SW	13.60	914300000500	H Bryce & Joy Vibbert
9 S	14 E	30	SE SW	22.60	914300000500	H Bryce & Joy Vibbert
9 S	14 E	30	NW SE	0.50	914300000500	H Bryce & Joy Vibbert
9 S	14 E	31	SW SE	1.40	914310000101	Michael & Kelly Mazour
9 S	14 E	31	SE SE	30.20	914310000101	Michael & Kelly Mazour
10 S	13 E	5	SW SE	4.80	1013050000700	Jack & Denise Skipper Trust
10 S	13 E	22	SW SW	38.80	1013220000700	Clowers Trust
10 S	14 E	18	SE NW	1.60	1014180000500	Yvonne Frost

IRRIGATION					Supplemental Information	
Twp	Rng	Sec	Q-Q	Acres	Tax Map ID	User Name
10 S	14 E	18	NE SE	5.30	1014180001000	Volbeda LLC
10 S	14 E	18	NW SE	0.50	1014180000700	Volbeda LLC
10 S	14 E	18	SE SE	5.00	1014180001000	Volbeda LLC
10 S	14 E	21	NW NW	7.20	1014210000202	Vern & Dena Forristall
10 S	14 E	21	SW NW	2.40	1014210000400	Robert & Andrea Simmons
10 S	14 E	31	NE SW	1.90	101431C002001	Daniel & Ronia Commingore
10 S	14 E	31	NW SW	0.20	101431C002001	Daniel & Ronia Commingore
10 S	14 E	32	NW NW	0.20	1014320000604	Amy Marie Dowers
10 S	14 E	32	NW NW	2.80	1014320000602	Amy Marie Dowers
10 S	14 E	33	SW NW	1.20	1014330000400	Clymore Trusts
11 S	13 E	3	SW NE	8.50	1113030000112	Satterlie Family Trust
11 S	13 E	10	NE NE	0.10	1103100000100	James Hamm
11 S	13 E	10	SE NE	0.60	1113100000100	James Hamm
11 S	13 E	14	SE NW	0.60	111314BD01900	KB Management LLC
11 S	13 E	14	SE NW	2.80	111314BD01900	KB Management LLC
11 S	13 E	15	NW SE	11.90	1113150001100	Gordon & Jeris Clark
11 S	13 E	21	NW SE	0.80	1113210000600	Robert & Roberta Vanek
11 S	13 E	23	NW SW	0.40	111323CB00500	Jerry & Monica Miller
11 S	13 E	33	NE NW	0.30	1113330000101	Avila Trusts
11 S	14 E	6	NE NW	0.50	111406BA00200	Patty Lou Zachary
11 S	14 E	31	NE NW	39.00	1114310000300	Roy W Nance
11 S	14 E	31	SE NW	27.50	1114310000300	Roy W Nance
12 S	12 E	12	SW NW	0.40	121212BC00107	Carl & Kimberly Stanley
12 S	12 E	12	SW NW	0.10	121212BC00101	Feldman, Vicki & Ricki
12 S	12 E	13	SW SW	0.70	1212130000601	Ed & Sharon Macy Rev. Trust
12 S	12 E	25	SW NE	7.90	1212250000100	Daniel & Kimberlie Hollinger
12 S	12 E	25	SE NE	11.10	1212250000100	Daniel & Kimberlie Hollinger
12 S	12 E	34	NW SW	32.30	1212340000400	Kathleen T Jones Rev. Trust
12 S	13 E	6	NE NW	0.60	1213060000202	Sarah Miller
12 S	13 E	6	NW NW	2.90	1213060000202	Sarah Miller
12 S	13 E	9	NW SW	15.60	1213090001500	Coleman Ranch, Inc.
12 S	13 E	9	SW SW	15.40	1213090001500	Coleman Ranch, Inc.
12 S	13 E	10	NE NE	2.60	1213100000200	Whitaker, et al.
12 S	13 E	16	NW NE	19.90	1213160000300	G Thayne & N Kaye Corwin
12 S	13 E	16	SW NE	3.80	1213160000200	Douglas & Pamela Middlestetter
12 S	13 E	16	NE NW	39.40	1213160000300	G Thayne & N Kaye Corwin
12 S	13 E	18	NW NE	1.40	1213180000300	Duane E Benson Trust
12 S	13 E	19	NE NE	0.50	1213190000204	Thomas Gates
13 S	12 E	2	SE NW	19.00	1312020000500	Karen Child
13 S	12 E	10	NE NE	7.30	1312100000100	Schmidt Family Rev. Trust
13 S	12 E	10	SE NE	13.70	1312100000100	Schmidt Family Rev. Trust
13 S	12 E	12	SW NW	18.50	1312120000300	Karen Iverson Rev. Living Trust
13 S	12 E	12	NE SW	9.00	1312120000400	McKinney Rev. Living Trust
13 S	12 E	12	NW SW	1.50	1312120000400	McKinney Rev. Living Trust
13 S	12 E	12	SW SW	0.70	1312120000400	McKinney Rev. Living Trust
13 S	13 E	16	SW SE	10.00	1313160000105	Jerry & Linda Jones
13 S	13 E	32	NE NE	8.10	1313320000102	Deanne & Norman Bain, Jr.
13 S	13 E	32	SW NE	0.10	1313320000102	Deanne & Norman Bain, Jr.
13 S	13 E	32	SE NE	10.80	1313320000102	Deanne & Norman Bain, Jr.
Total				520.00		

8. The right for the use of conserved water shall be subject to all other conditions and limitations of the originating water right Certificate 83571, and any related decree.
9. Any deficiency in the available supply of conserved water for use under the 1907 priority date on the lands listed under #7 above shall be supplied by the supplemental irrigation right from stored water under Application S-88048, if approved.
10. The Districts shall maintain and operate the existing measurement device at the points of diversion on the Deschutes River and shall make such improvements as may be required by the Department.
11. The Districts shall allow the Watermaster access to the meters or measuring devices. Where a meter is located within a private structure, the Watermaster shall be granted access upon reasonable notice.
12. At NUID's request, upon receipt of satisfactory proof of use which contains the criteria of OAR 690-018-0062(3)(a), a new certificate, issued in the name of North Unit Irrigation District, confirming the use of the conserved water on the new lands will be issued.
13. An instream water right certificate shall be issued for the Crooked River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement from the authorized point of diversion at approximately River Mile 27.5:

Authorized Point of Diversion:

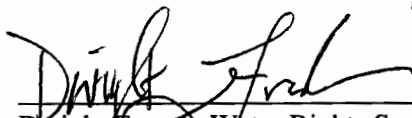
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 13

to the mouth of Crooked River at River Mile 0.0 and shall be measured at OWRD Gauging Station #14087300.

Priority Date	Instream Period	Rate Instream	Volume Instream
9/18/1968	April 1 through October 31	4.86	2,064.40 AF

The instream right created shall replace a portion of any 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.

Dated at Salem, Oregon this 4 day of February, 2015.


 Dwight French, Water Rights Services Administrator for
 THOMAS M. BYLER, DIRECTOR

Mailing date: FEB 09 2015

This Preliminary Determination was prepared by Teri Hranac. If you have any questions regarding this document, you may reach me at 503-986-0881, or teri.k.hranac@ wrd.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 to 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).