



Oregon

Kate Brown, Governor

Water Resources Department

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December 15, 2016

Applicant

Three Sisters Irrigation District

PO Box 2230

Sisters, OR 97759

manager@tsidweb.org

SUBJECT: Allocation of Conserved Water Application CW-90

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-90.

If no protest is filed, the Department will issue a Final Order consistent with this Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest period for the conserved water application.

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@wrdd.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac

Allocation of Conserved Water

Transfer and Conservation Section

Enclosure

cc: CW-90
Gen Hubert (via e-mail at gen@deschutesriver.org)
District #11 Watermaster (via e-mail)
Juniper Davis, OWEB #241-4999-12291 (via e-mail at juniper.davis@state.or.us)



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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-90, Deschutes) PROPOSING APPROVAL OF
County) ALLOCATION OF CONSERVED
) WATER CW-90

Applicant:
Three Sisters Irrigation District
PO Box 2230
Sisters, OR 97759

Agent:
Deschutes River Conservancy
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.

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.

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,

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.

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 describing 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 describing the unaffected portion of the water rights and separate new certificates documenting the rights 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. 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 March 21, 2016, Three Sisters Irrigation District filed an Allocation of Conserved Water Application. The Department designated the application number CW-90.
2. Three Sisters Irrigation District requested an allocation of conserved water under Certificate 74135 issued in the name of Squaw Creek Irrigation District. On June 1, 2004, Squaw Creek Irrigation District changed its name to Three Sisters Irrigation District (TSID). TSID maintains the water delivery system for the benefit of the patrons in the district.
3. On July 5, 2005, TSID adopted an Allocation of Conserved Water policy pursuant to OAR 690-018-0025. On July 6, 2010, and again on September 1, 2015, TSID reviewed and renewed the District's Allocation of Conserved Water Policy.
4. Three Sisters Irrigation District proposes to conserve water by replacing approximately 5,000 feet of open ditch on its main canal with a combination of dual 42", 36" and/or 32" buried high density polyethylene (HDPE) pipe. Replacement of the existing open and leaky portions of the delivery system will eliminate seepage and evaporation losses conserving approximately 563 acre-feet of water per year.
5. Canal or lateral piping with HDPE pipe is a proven water conservation technique.
6. The entirety of the right to be modified is:
Certificate: 74135, in the name of TSID. This right was confirmed by the Whychus [Squaw] Creek Decree.

Priority Date, Quantity and Acres:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	1.58	79.05
1887	3.00	150.00
1889	4.03	201.50
1893	0.79	39.50
1895	114.33*	5716.75
1899	2.18	108.80
1900	1.08	54.00
1901	0.45	22.30
1903	7.21	360.60
1904	17.41	870.60
Totals	153.02	7,651.10

* - Cert 74135 states 114.34

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Source: Whychus [Squaw] Creek, a tributary of the Deschutes River.

Authorized Place of Use: Entirety of Certificate

7. The acreage under Certificate 74135 has been modified by transfers and cancellations completed pursuant to ORS 540 as listed below:

Priority Date	Acres (equivalent)	Acres Abandoned T-6854	T-8743 (No longer served by District)	Remaining Acres (equivalent)
1869	48.00			48.00
1885	79.05		-52.00	27.05
1887	150.00			150.00
1889	201.50			201.50
1893	39.50			39.50
1895	5716.75			5716.75
1899	108.80			108.80
1900	54.00		-54.00	0.00
1901	22.30			22.30
1903	360.60	-16.60		344.00
1904	870.60	-167.40		703.20
Totals	7,651.10	-184.00	-106.00	7361.10

8. The rate associated with Certificate 74135 has been affected by transfers, cancellations, and allocations of conserved water. The approximate starting point for Certificate 74135 is as follows:

Priority	1869	1885	1887	1889	1893	1895	1899	1900	1901	1903	1904	Totals
Certificate Rate	0.96	1.58	3.00	4.03	0.79	114.33	2.18	1.08	0.45	7.21	17.41	153.02
T-6854										-0.33	-3.35	-3.68
T-8743		-1.04						-1.08				-2.12
CW-34						-1.50						-1.50
CW-44						-1.20	-0.03				-0.28	-1.51
CW-49						-1.20	-0.03				-0.28	-1.51
CW-50						-1.20	-0.03				-0.28	-1.51
CW-51						-1.20	-0.03				-0.28	-1.51
CW-33						-2.00						-2.00
CW-56						-1.20	-0.03				-0.28	-1.51
CW-66						-8.00						-8.00
CW-77						-1.33						-1.33
CW-71				-0.09		-0.36				-0.51		-0.96
CW-83						-0.43						-0.43
CW-78						-1.33						-1.33
CW-79						-1.34						-1.34
Starting Point	0.96	0.54	3.00	3.94	0.79	92.04	2.03	0.00	0.45	6.37	12.66	122.78

The starting point for Certificate 74135 is based on all previously approved Allocation of Conserved Water projects being completed and finalized. If projects are completed and finalized in a different order, or if there are other intervening transfers, cancellations, allocations of conserved water, or other modifications to the right, then the actual quantity of water available under Certificate 74135 may change.

9. Any previously approved or pending transfers, cancellations, allocations of conserved water, or other modifications to Certificate 74135, 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 74135.
10. Based on the above adjusted starting point for Certificate 74135, conserved water application CW-90 proposes to conserve 1.33 cfs of water under the 1895 priority date as follows:

Priority Date	Before Project		After Project		Conserved Water	
	Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Rate (CFS)	Duty
1895	92.04	0.02	90.71	0.02	1.33	563.55

11. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.

12. Diversion structures, canals, and ditches sufficient to deliver the full quantity of water allowed under the existing right were present within the five-year period prior to submission of Allocation of Conserved Water application CW-90.
13. The Applicant requests the priority date for any conserved water be the same as the originating right.
14. When Allocation of Conserved Water Project CW-90 is finalized, it will result in 1.33 cfs and 563.55 acre-feet of conserved water under Certificate 74135 with an 1895 priority.
15. Pursuant to OAR 690-018-0012(1), TSID requests that 100% of the conserved water under Certificate 74135 be dedicated to the state as a new instream water right. There are no areas for which the conserved water is proposed to be used for out-of-stream uses.

Priority	State's Portion		Applicant's Portion		Conserved Water	
	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
1895	1.33	100 %	0	0%	1.33	563.55

16. The Applicant received funding for this conservation project; however, since the applicant is proposing 100% of the conserved water be allocated to the state for an instream water right, no adjustments to the proposed allocation need to be made.
17. On June 15, 2016, TSID's representative provided notice of the proposed conservation project to the Deschutes County Planning Department, the City of Sisters Planning Department, the Jefferson County Planning Department, and the Confederated Tribes of the Warm Springs Indians as required by OAR 690-018-0040(22).
18. On March 30, 2016, the Department's District 11 Watermaster reviewed Allocation of Conserved Water Application CW-90 and determined that the conservation project would result in conserved water which could be allocated without harm to other rights. The Watermaster's review and subsequent emails indicate a recent study revealed seepage losses from TSID's authorized point of diversion at approximately RM 24.5 to the OWRD gaging station 14076050 located in Sisters, Oregon at approximately RM 20.7. Enlargement could occur unless the instream water right allows for this seepage loss.
19. The instream use may be conditioned to allow less water to be protected instream below TSID's point of diversion based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly. The instream quantity may not exceed the instream quantity identified at the point of diversion.
20. The proposed allocation of conserved water project, as conditioned above in Findings of Fact #18 and #19, 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.
21. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Parks and Recreation Department (OPRD) to determine whether the water is

necessary instream to support a public use. 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, other ecological values, and recreation. 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).

22. The requested deadline for filing the Notice of Completion and the Request for Finalization is December 31, 2016.
23. Notice of the proposed conservation project was published in the Department's weekly notice on April 19, 2016, and in *The Bulletin* newspaper on May 7 and 14, 2016, as required under OAR 690-018-0050. No comments were filed in response to the notices.

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

24. Allocation of Conserved Water Application CW-90 contains all the information required by OAR 690-018-0040.
25. As established in Findings of Fact #10, 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)
26. Consistent with Findings of Fact #18 and #19, 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).
27. As established in Finding of Fact #17, CW-90 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).
28. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates for the existing uses involved in this conserved water project under Certificate 74135 are as follows:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	0.54	27.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	90.71	5716.75
1899	2.03	108.80
1900	0.00	0.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	121.45	7361.10

(Findings of Fact #8 and #10).

29. In consultation with ODFW, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #21), OAR 690-018-0050(4)(f).
30. Consistent with ORS 537.470(3), TSID requested 100% of the conserved water be allocated for an instream water right to be held in trust by the Water Resources Department for the people of Oregon and the priority date of the instream right to be the same as the originating right. (Findings of Fact #13 and #15), OAR 690-018-0050(4)(g).
31. Three Sisters Irrigation District requested the Department protect the new instream water right created from the conserved water under Certificate 74135 from the authorized point of diversion on Whychus Creek, at approximately river mile 24.5 to the mouth at river mile 0.0, then into the Deschutes River to Lake Billy Chinook. OAR 690-018-0050(4)(h); OAR 690-077-0015(8). An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek), but may be protected further if measurable into the receiving stream (Deschutes River). The quantity that may be protected instream from Whychus Creek is measurable into the Deschutes River and may be protected instream in the Deschutes River.
32. The applicant has requested the instream use begin at the authorized point of diversion. The point of diversion is located within a known losing reach on Whychus Creek. The losing reach extends from the point of diversion located at approximately River Mile (RM) 24.5 to the OWRD gaging station 14076050 located in Sisters, at approximately RM 20.7. The Department's study on seepage loss monitoring in Whychus Creek in 2015 and 2016, found using a set percentage loss factor for monitoring water would be problematic. Therefore, to prevent enlargement of the water right, the instream use will be conditioned to allow less water to be protected instream below TSID's point of diversion based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow instream flows to be adjusted accordingly. The instream quantity may not exceed the instream quantity identified at the point of diversion.
33. Consistent with OAR 690-077-0015(8) and (10), the conserved water shall have a priority date of 1895, and shall be allocated as an instream water right for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation. The instream water right shall provide for the protection of flows in Whychus Creek from the authorized point of diversion located at approximately river mile 24.5:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

To the mouth of Whychus Creek at the confluence with the Deschutes River at RM 0.0, then into the Deschutes River to Lake Billy Chinook. (Findings of Fact #15, #29, and #31).

34. The instream right shall allow the use and protection of flows from April 1 through October 31, or such other times as TSID is diverting water for a beneficial use under Certificate 74135, as follows:

Whychus Creek, tributary to the Deschutes River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 1: At the Authorized POD at approximately RM 24.5 to the confluence of Whychus Creek with the Deschutes River (RM 0.0)	1.33

Deschutes River, tributary to the Columbia River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 2: From the confluence of Whychus Creek with the Deschutes River (RM 0.0) to Lake Billy Chinook at RM 120	1.33

35. Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from the point of diversion to the mouth of Whychus Creek and whether the described instream flows below the point of diversion may be adjusted. If adjusted, instream flows from immediately below the point of diversion to the mouth of Whychus Creek and into the Deschutes River to Lake Billy Chinook may not exceed the quantities specified at the point of diversion.
36. The protection of flows within the proposed reaches are appropriate, considering:
 - i. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right.
 - ii. The instream water use begins at the recorded point of diversion;
 - iii. The location of confluences with other streams downstream of the point of diversion;
 - iv. The known areas of natural loss of stream flow to the river beds downstream from the point of diversion; and
 - v. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
 OAR 690-077-0015(8).
37. 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).
38. 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 right is 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 emergence, and juvenile rearing. Certificate 73224 provides for a stream reach in Whychus [Squaw] Creek from the South Fork of Whychus [Squaw] Creek at RM 35.0 to Indian Ford Creek at RM 19.5, to provide the required stream flow for migration, spawning, egg incubation, fry emergence, and juvenile rearing.

39. The flow targets at the time of establishing the instream water rights were based on the needs of resident redband trout and did not account for the flows necessary to support reintroduced Mid-Columbia summer steelhead trout and spring Chinook salmon. The current instream flows under Certificates 73223 and 73224 are insufficient for the reintroduction of anadromous runs of Mid-Columbia summer steelhead trout and spring Chinook salmon. Summer steelhead trout are listed as threatened under the federal Endangered Species Act. The additional flows beyond the established state agency instream water rights are necessary and will provide a public benefit as follows:
- a. Adult upstream migration. For steelhead (September-January) and for Chinook (May-August) flows need to be higher than the instream water rights for: 1) physical passage of large fish upstream over riffles and shallow bars, and 2) migration cues – relatively high flows to stimulate upstream movement to spawning grounds.
 - b. Spawning. Habitat Suitability Criteria for steelhead trout and Chinook salmon spawning indicate that the anadromous fish prefer water about 0.5 ft. deeper and 0.8 ft./sec. faster than resident rainbow trout. This equates to a much higher recommended flow for anadromous vs. resident spawning.
 - c. Outmigration. Outmigrating juvenile steelhead trout (March-June) and Chinook salmon (February-March) will benefit greatly from higher flows to facilitate emigration of juveniles downstream to the mainstem Deschutes.
 - d. The proposed instream right is located in an ODFW flow restoration priority watershed.

OAR 690-077-0015(10) and (11).

40. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), from the authorized point of diversion to River Mile 19.5 on Whychus Creek are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat from March 1 through September 14. By adding to these instream water rights for this reach, from the authorized point of diversion to RM 19.5, any instream water right created as a result of this conserved water project will provide additional flows identified as necessary as set forth in Finding of Fact #39. For the period of September 15 to October 31, by replacing a portion of these instream water rights, any new instream water right created as a result of this conserved water project would provide for additional flows identified as necessary for the conservation, maintenance, enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation.

OAR 690-077-0015(11).

41. From River Mile 19.5 to the mouth of Whychus Creek, into the Deschutes River to Lake Billy Chinook, instream water rights established pursuant to ORS 537.335 (state agency process), ORS 537.346 (minimum streamflow conversion), ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat. By replacing a portion of these instream water rights, any instream water right created as a result of this conserved water project will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates. OAR 690-077-0015(11).

42. There are no areas for which the conserved water is proposed to be used for out-of-stream uses. (Finding of Fact #15), OAR 690-018-0050(4)(h).
43. The deadline for filing the Notice of Completion and Request for Finalization is December 31, 2016. (Finding of Fact #22), OAR 690-018-0050(4)(i).
44. Except as conditioned in Finding of Fact #18, no other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Findings of Fact #18 and #19), OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-90, 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 change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #10 and #28.*
2. *The proposed allocation of conserved water, as conditioned, will not harm existing water rights. Findings of Fact #18 and #19.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #17.*
4. *The changes proposed in CW-90 are approved.*
5. *The deadline for filing the Notice of Completion and Request for Finalization is December 31, 2016.*

Upon filing the Notice of Completion and Request for Finalization, the Order will include the following:

6. *The quantity of water conserved and allocated 100% to the State is as follows:*

Conserved Water Description		
<i>Certificate</i>	<i>Priority</i>	<i>Maximum CFS</i>
74135	1895	1.33

Finding of Fact #15.

7. *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 Certificate 74135, and any related decree.*
8. *Water Right Certificate 74135 is modified. The reduced rates for the existing uses under Certificate 74135 are as follows:*

Use: **IRRIGATION, POND MAINTENANCE, INDUSTRIAL USE, AND STOCK WATER**

Limit/Duty: 1/50 Cubic Foot per Second per Acre, as modified by prior conserved water applications

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

Priority, Rate, Acreage:

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1869	0.96	48.00
1885	0.54	27.05
1887	3.00	150.00
1889	3.94	201.50
1893	0.79	39.50
1895	90.71	5716.75
1899	2.03	108.80
1900	0.00	0.00
1901	0.45	22.30
1903	6.37	344.00
1904	12.66	703.20
Totals	121.45	7361.10

Finding of Fact #28.

9. Water Use Measurement Conditions:

- a. *TSID shall maintain, monitor, and operate the existing measurement devices, or such other suitable measurement devices approved by the Director, on TSID's main canal in such a manner to render reliable measurements.*
- b. *TSID shall maintain the meters or measuring devices in good working order.*
- c. *TSID and the water users 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.*

10. An instream water right certificate shall be issued for Whychus Creek to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values, and recreation from the authorized point of diversion at approximately River Mile 24.5:

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

To the mouth of Whychus Creek at the confluence with the Deschutes River at RM 0.0, then into the Deschutes River to Lake Billy Chinook as follows:

Whychus Creek, tributary to the Deschutes River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 1: At the Authorized POD at approximately RM 24.5 to the confluence of Whychus Creek with the Deschutes River (RM 0.0)	1.33

Deschutes River, tributary to the Columbia River

Priority Date	Period of Use	Location	Rate (CFS)
1895	April 1 through October 31	Reach 2: From the confluence of Whychus Creek with the Deschutes River (RM 0.0) to Lake Billy Chinook at RM 120	1.33

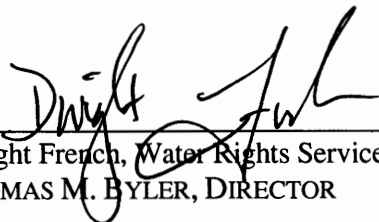
(Findings of Fact #33 and #34)

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from the point of diversion to the mouth of Whychus Creek and whether the described instream flows below the point of diversion may be adjusted. If adjusted, instream flows from immediately below the point of diversion to the mouth of Whychus Creek and into the Deschutes River to Lake Billy Chinook may not exceed the quantities specified at the point of diversion.

The instream right created shall be additive to any instream water rights established pursuant to ORS 537.341, 537.346, 537.348 or 537.470 from the authorized point of diversion to River Mile 19.5 for the period of April 1 through September 14. For the period of September 15 through October 31, the instream right created shall replace a portion of any instream water right created pursuant to ORS 537.341, 537.346, and shall be additive to any instream water right created pursuant to ORS 537.348 or 537.470 from the authorized point of diversion to River Mile 19.5.

The instream right created shall replace a portion of any instream water right established pursuant to ORS 537.341 and 537.346, and shall be additive to any instream water right established pursuant to 537.348 and 537.470 from River Mile 19.5 to the mouth of Whychus Creek into the Deschutes River to Lake Billy Chinook. Findings of Fact #40 and #41.

Dated at Salem, Oregon this 15 day of December, 2016.



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

Mailing Date: DEC 19 2016

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).

NOTICE REGARDING SERVICEMEMBERS: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act 50 U.S.C. App. §§ 501-597b. You may contact the Oregon State Bar or the Military Department for more information. The toll-free telephone number for the Oregon State Bar is (800) 452-8260. The toll-free number for the Oregon Military Department is: (800) 452-7500. The internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is <http://legalassistance.law.af.mil>.