



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

www.wrd.state.or.us

February 14, 2017

Applicant

East Fork Irrigation District

PO Box 162

Odell, OR 97044

johnfid@hodriverelectric.net

SUBJECT: Allocation of Conserved Water Application CW-93

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-93.

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-93

Robert Wood, District #3 Watermaster *(via e-mail)*

Kimberly Ogren, OWRD *(via e-mail)*

Chris Brun, Conf. Tribes of Warm Springs Indians, PO Box C, Warm Springs, OR 97761



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

In the Matter of Allocation of Conserved)
Water Application CW-93,)
Hood River County)
)
) **PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF
) ALLOCATION OF CONSERVED WATER
) CW-93**

Applicant

East Fork Irrigation District
PO Box 162
Odell, OR 97044

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 measure as implemented and the date on which the measure was implemented; (b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented; (c) The amount of water needed to supply existing rights after implementation of the conservation measure; (d) The amount of water conserved by implementing the conservation measure; (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; (h) Evidence that the measure was implemented within five years prior to the date of filing the application; and (i) Any other information the commission considers necessary to evaluate the application. ORS 537.465.

After determining any quantity of water needed to mitigate the effects on other water rights, 25-percent of the conserved water shall be allocated to the state and 75-percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25-percent of the funds used to finance the conservation measures comes from federal or state sources. ORS 537.470(3).

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

If an application for the allocation of conserved water is approved, the Department shall issue orders documenting the changes to the original water rights, and once the conservation project is finalized, the Department shall issue new certificates preserving the previously established priority of rights to cover the unaffected portion of the water rights. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by 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 September 14, 2016, East Fork Irrigation District (EFID) filed an allocation of conserved water application under Certificate 92000. On November 28, 2016, EFID submitted an amended application. The Department assigned the application number CW 93.
2. On June 19, 2007, East Fork Irrigation District (EFID) adopted an Allocation of Conserved Water Policy pursuant to OAR 690-018-0025. On April 15, 2014, EFID reviewed and renewed the District’s Allocation of Conserved Water Policy.
3. The water conservation project proposes to pipe approximately 10,000 feet of the open and unlined Highline Canal with new PVC gasketed pipe thereby eliminating seepage losses, overflow, and/or operational spills. Canal piping is a proven technology for conserving water.

4. The entirety of the right to be modified by CW-93 is as follows:

Certificate: 92000 in the name of EAST FORK IRRIGATION DISTRICT
(confirmed by Hood River Decree in Vol. 17 at page 333)
Use: IRRIGATION of 8521.992 ACRES, 9.78 ACRES INCHOATE, and
15.00 ACRES EQUIVALENT INDUSTRIAL.
Priority Date: November 25, 1895
Rate: 104.20 CUBIC FEET PER SECOND (CFS)
Source: EAST FORK HOOD RIVER, tributary to HOOD RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|-----|------|-----|-----|-------|------|---|
| 1 S | 10 E | WM | 4 | NW SW | 1 | 3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4 |

5. Application CW-93 proposes a rate reduction of approximately 0.70 cubic feet per second (cfs) and proposes to reduce the annual volume by 166.6 acre-feet (AF).

| Conserved Water Description | | | | | | | |
|-----------------------------|-------------|------------|-------|-------------|------------|-----------------|------------|
| Certificate | Certificate | | | Needed | | Conserved Water | |
| | Rate | Duty | | Rate | Duty | Rate | Volume |
| | Maximum CFS | Maximum AF | AF/AC | Maximum CFS | Maximum AF | Maximum CFS | Maximum AF |
| 92000 | 104.20 | 24817.38 | 3.0 | 103.50 | 24650.78 | 0.70 | 166.6 |

6. Certificate 92000 does not describe the period of use of the right. Under the terms and conditions of the Final Decree of the Circuit Court for Hood River County dated October 24, 1921, the irrigation season was fixed as beginning on the 15th day of April and ending on the 1st day of October of each year (Decree Finding No. 23). However, additional information is available from the decree indicating the duty allowed for the right is 3.0 acre-feet/acre (AF/ac), with a rate of 1/80 cfs/acre (Decree Finding No. 28) for 120 days.
7. 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.
8. A diversion structure and ditches sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of the application.
9. EFID requested the conserved water be allocated as follows:

| Certificate | State's Portion | | | Applicant's Portion | | | Conserved Water | | |
|-------------|-----------------|--------------------|--------------------------|---------------------|--------------------|--------------------------|-----------------|--------------------|--------------------------|
| | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF |
| 92000 | 75% | 0.525 | 125.0 | 25% | 0.175 | 41.6 | 100% | 0.70 | 166.6 |

10. EFID proposes its portion of the conserved water be allocated for out-of-stream uses within the following:

| Twp | Rng | Mer | Sections |
|-----|------|-----|--|
| 1 N | 10 E | WM | 1, 2, 3, 10, 11, 15, 22, 27 |
| 1 N | 11 E | WM | 6 |
| 2 N | 10 E | WM | 1, 12 through 16, 20 through 30, and 33 through 36 |
| 2 N | 11 E | WM | 6, 7, 18, 19, 30 |
| 3 N | 10 E | WM | 36 |
| 3 N | 11 E | WM | 31 |

11. EFID requested the priority date for any conserved water be one minute junior to originating right.
12. EFID received non-reimbursable state and federal funds. EFID proposes 75% of the conserved water be allocated to the state. EFID will retain 25% of the conserved water for its use. ORS 537.470(3)
13. EFID submitted a completed Land Use Form from Hood River County which indicated the proposed use is allowed outright or is not regulated under Article 7, Table 702 of Hood River County's Zoning Ordinance.
14. EFID requested 75% of the water conserved under this application be converted to an instream water right. The Department notified the County of Hood River Planning Department and the Confederated Tribes of Warm Springs of the proposed application.

15. EFID proposed any instream water right be created for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, and pollution abatement.
16. EFID requested the Department protect the new instream water right created from the conserved water under Certificate 92000 from the authorized point of diversion at approximately River Mile (RM) 6.4 of the East Fork Hood River to the mouth of the East Fork Hood River at RM 0, where it joins the West Fork Hood River to form the mainstem Hood River at approximately RM 12.5 in the NWNE of Section 1, Township 1 North, Range 9 East, W.M., and in the mainstem Hood River from this location (RM 12.5) to the location of the Highline Canal return flows at approximately RM 10.5.
17. The construction of the conservation measures is set to begin no earlier than October 1, 2017.
18. EFID requested the deadline for submitting the Notice of Completion of June 30, 2018. EFID will submit a Request for Finalization on or before December 31, 2019.
19. The application meets the requirements of OAR 690-018-0040.
20. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW), and Oregon Department of Environmental Quality (DEQ), to ascertain whether the proposed instream flows are necessary to support instream flow uses.
21. Notice of the proposed conservation project was published in the Department's weekly notice on December 6, 2016, and January 3, 2017, and in the *Hood River News* newspaper on December 7, 2016, and January 7 and 11, 2017, 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]

22. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #5).
23. On October 5, 2016, the District #3 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined 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).
24. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #13). OAR 690-018-0050(4)(c).

25. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-93 under Certificate 92000 are as follows:

| Originating Certificate | Rate | | Duty | |
|-------------------------|-------------|--------|------------|-------|
| | Maximum CFS | CFS/AC | Maximum AF | AF/AC |
| 92000 | 103.5 | 1/80 | 24650.78 | 3.0 |

(Finding of Fact #5).

26. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is as follows:

| Priority Date | Period | Rate (cfs) | Volume (acre-feet) |
|---|------------------|------------|--------------------|
| November 25, 1895, <i>plus one minute</i> | 6/3 through 9/30 | 0.525 | 125.0 |

(Finding of Fact #9).

27. As required by OAR 690-018-0050(4)(f), in consultation with ODFW and DEQ, the Department has determined that the instream right created will support public benefits. The East Fork Hood River contains critical habitat for several fish species which are currently listed under the Endangered Species Act. Reduced stream flow has been identified as a primary limiting factor negatively affecting fish in the stream. Low summer flows caused by irrigation diversions also reduce the recreational value of the river system.

The East Fork Hood River, below EFID’s diversion, does not meet the state’s water quality criteria. Temperature and biological criteria are flow-related parameters. The Western Hood Subbasin TMDL and WQMP list “flow management” as a key management measure for controlling instream temperatures.

Restoring stream flow in the Hood River has been identified as a key recovery action in the Lower Columbia River Recovery and Conservation Plan for salmon and steelhead.

(Finding of Fact #20).

28. The new instream water right created will be protected in the East Fork Hood River from the authorized point of diversion, as described in Finding of Fact #4, at approximately river mile 6.4, to the mouth of the East Fork Hood River, described as where the East Fork and West Fork Hood River join to form the main stem Hood River. This is further described as Hood River Mile 12.5 in the NWNE of Section 1, Township 1 North, Range 9 East, W.M., at latitude 45.605229, longitude 121.633196. OAR 690-077-0015(8).
29. EFID had requested the instream water right be protected from the authorized point of diversion to the mouth of Hood River. If water is to be protected from the source stream (East Fork Hood River) into a receiving stream (Hood River), the quantity must be measurable in the receiving stream. The Department has determined the 0.525 cfs is not a measurable quantity in Hood River.
30. The State’s portion of conserved water may be protected for 120 days during the irrigation season without enlarging the right.

31. The instream right shall allow the use and protection of flows as follows:

| Priority Date | Period | Rate (cfs) | Volume (acre-feet) |
|---|------------------|------------|--------------------|
| November 25, 1895, <i>plus one minute</i> | 6/3 through 9/30 | 0.525 | 125.0 |

From the authorized point of diversion located at approximately river mile 6.4 on the East Fork of Hood River:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|-----|------|-----|-----|-------|------|---|
| 1 S | 10 E | WM | 4 | NW SW | 1 | 3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4 |

To the mouth of the East Fork Hood River, described as where the East Fork and West Fork of Hood River join to form the main stem Hood River. This is further described as Hood River Mile 12.5 in the NWNE of Section 1, Township 1 North, Range 9 East, W.M., at latitude 45.605229, longitude 121.633196. (Findings of Fact #9, #11, and #29).

32. 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).

33. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion. The reach for an instream water right is typically from the point of diversion on the source stream to the mouth of that source stream. However, water may be protected further downstream if the quantity of water is measurable in the receiving stream, in this case, Hood River. The quantity of water proposed to be protected instream is not measurable in Hood River.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. 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).

34. The combination of instream rights for the proposed reach on the East Fork Hood River 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).

35. There is an existing instream water right on the East Fork Hood River established pursuant to ORS 537.341 (minimum flow conversion). 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, and pollution abatement. OAR 690-077-0015(11).

36. 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 is taking the minimum

amount allowed under ORS 537.470(3). The rate and volume allocated to the Applicant is as follows:

| Priority Date | Maximum Rate | Maximum Duty (Volume) |
|-------------------------------------|--------------|-----------------------|
| November 25, <i>plus one minute</i> | 0.175 cfs | 41.6 AF |

(Finding of Fact #12).

37. The areas the conserved water is proposed to be used for out-of-stream uses are as follows:

| Twp | Rng | Mer | Sections |
|-----|------|-----|--|
| 1 N | 10 E | WM | 1, 2, 3, 10, 11, 15, 22, 27 |
| 1 N | 11 E | WM | 6 |
| 2 N | 10 E | WM | 1, 12 through 16, 20 through 30, and 33 through 36 |
| 2 N | 11 E | WM | 6, 7, 18, 19, 30 |
| 3 N | 10 E | WM | 36 |
| 3 N | 11 E | WM | 31 |

(Finding of Fact #10). OAR 690-018-0050(4)(h).

38. The deadline for submitting a Notice of Completion is June 30, 2018. The deadline for submitting a Request for Finalization is December 31, 2019. (Finding of Fact #18). OAR 690-018-0050(4)(i).

39. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #23). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-93, 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(b), the conserved water application will be approved.*

If Allocation of Conserved Water Application CW-93 is approved, the Order Approving will include the following:

1. *The proposed change will result in a reduced diversion for the uses allowed under the original water right. Finding of Fact #25.*
2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #23.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #24.*
4. *The changes proposed in CW-93 are approved.*

Upon filing of the Notice of Completion:

5. The quantities of water conserved and allocated are as follows:

| Certificate | State's Portion | | | Applicant's Portion | | | Conserved Water | | |
|-------------|-----------------|--------------------|--------------------------|---------------------|--------------------|--------------------------|-----------------|--------------------|--------------------------|
| | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF | Percentage | Maximum Rate (CFS) | Maximum Duty (Volume) AF |
| 92000 | 75% | 0.525 | 125.0 | 25% | 0.175 | 41.6 | 100% | 0.70 | 166.6 |

6. 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 92000 and any related decree.

7. Water Right Certificate 92000 is modified. A superseding certificate will be issued for the existing uses and places of use at the reduced rate and duty described below upon a determination by the Department that is necessary to more fully describe the right.

Use: IRRIGATION of 8521.99 ACRES, 9.8 ACRES INCHOATE, and 15.0 ACRES EQUIVALENT INDUSTRIAL

Priority Date: NOVEMBER 25, 1895

Rate: 103.50 CUBIC FEET PER SECOND

Limit: 24,650.78 ACRE FEET PER YEAR

Source: EAST FORK HOOD RIVER, tributary to the HOOD RIVER

Authorized Place of Use:
ENTIRETY OF CERTIFICATE

8. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

9. The deadline for filing a Notice of Completion of the conservation measures is on or before June 30, 2018. Finding of Fact #38.

10. The deadline for filing Request for Finalization of the conservation project is on or before December 31, 2019. Finding of Fact #38.

11. All conserved water shall be managed instream until the allocation is finalized as follows:

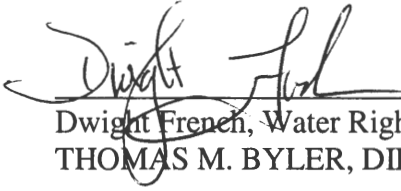
| Priority Date | Period | Rate (cfs) | Volume (acre-feet) |
|------------------------------------|------------------|------------|--------------------|
| November 25, 1895, plus one minute | 6/3 through 9/30 | 0.70 | 166.6 |

From the authorized point of diversion located at approximately river mile 6.4 on the East Fork of Hood River:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Measured Distances |
|-----|------|-----|-----|-------|------|---|
| 1 S | 10 E | WM | 4 | NW SW | 1 | 3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4 |

To the mouth of the East Fork Hood River, described as where the East Fork and West Fork of Hood River join to form the main stem Hood River. This is further described as Hood River Mile 12.5 in the NWN of Section 1, Township 1 North, Range 9 East, W.M., at latitude 45.605229, longitude 121.633196.

Dated at Salem, Oregon this 14 day of February, 2017.



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

Mailing Date: FEB 15 2017

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

NOTICE OF RIGHTS

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

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

If protests are received raising issues that cannot be resolved pursuant 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).