

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

In the Matter of Allocation of Conserved ) PRELIMINARY DETERMINATION  
Water Application CW-103, Deschutes ) APPROVING ALLOCATION OF  
County ) CONSERVED WATER CW-103

**Applicant:**

Three Sisters Irrigation District  
PO Box 2230  
Sisters, OR 97759

**Agent:**

Deschutes River Conservancy  
700 NW Hill Street, Suite 1  
Bend, OR 97703

**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 not subject to repayment. 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.
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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 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 May 8, 2018, Three Sisters Irrigation District filed an Allocation of Conserved Water Application. The Department designated the application number CW-103.
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 adopted the District's Allocation of Conserved Water Policy.
4. Three Sisters Irrigation District proposes to conserve water by replacing approximately 4,000 feet of open ditch on its main canal with 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 636.7 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
<b>Totals</b>	<b>153.02</b>	<b>7,651.10</b>

\* - 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
<b>Totals</b>	<b>7,651.10</b>	<b>-184.00</b>	<b>-106.00</b>	<b>7361.10</b>

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
<b>Certificate Rate</b>	<b>0.96</b>	<b>1.58</b>	<b>3.00</b>	<b>4.03</b>	<b>0.79</b>	<b>114.33</b>	<b>2.18</b>	<b>1.08</b>	<b>0.45</b>	<b>7.21</b>	<b>17.41</b>	<b>153.02</b>
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
CW-90						-1.33						-1.33
CW-99						-1.00						-1.00
<b>Starting Point</b>	<b>0.96</b>	<b>0.54</b>	<b>3.00</b>	<b>3.94</b>	<b>0.79</b>	<b>89.71</b>	<b>2.03</b>	<b>0.00</b>	<b>0.45</b>	<b>6.37</b>	<b>12.66</b>	<b>120.45</b>

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 adjusted starting point for Certificate 74135, as set forth in Finding of Fact #8, conserved water application CW-103 proposes to conserve 1.5 cfs of water under the 1895 priority date as follows:

Priority Date	Before Project		After Project		Conserved Water	
	Rate		Rate (CFS)		Rate (CFS)	Duty
	Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS	Maximum AF
1895	89.71	0.02	88.21	0.02	1.50	636.7

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-103.
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-103 is finalized, it will result in 1.50 cfs and 636.7 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 to 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	1.50	100 %	0	0%	1.50	636.7

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 February 26, 2018, TSID's representative provided notice of the proposed conservation project to the Confederated Tribes of the Warm Springs Indians, Deschutes County Planning Department, Jefferson County Planning Department, and the City of Sisters Planning Department as required by OAR 690-018-0040(22).
18. On May 14, 2018, the Department's District 11 Watermaster reviewed Allocation of Conserved Water Application CW-103 and determined that the conservation project would result in conserved water which could be allocated without harm to other rights. The Watermaster's review indicated 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 shall 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. Certificate 74135 and the Squaw Creek Decree do not specify an irrigation season of use. However, the Deschutes River Decree specifies an irrigation season of April 1 through October 31. To prevent enlargement of the right, the instream right shall be limited to the irrigation season and such time TSID is diverting water for a beneficial use under Certificate 74135.

21. The proposed allocation of conserved water project, as conditioned above in Findings of Fact #18, #19 and #20, 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.
22. 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 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. In addition, the water is necessary to enhance the scenic and recreational values associated with streams and rivers. OAR 690-018-0050(4)(f).
23. The requested deadline for filing the Notice of Completion is August 31, 2018. The requested deadline for filing the Request for Finalization is October 1, 2018.
24. Notice of the proposed conservation project was published in the Department's weekly notice on May 22, 2018, and in *The Bulletin* newspaper on May 30, and June 6, 2018, 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]***

25. Allocation of Conserved Water Application CW-103 contains all the information required by OAR 690-018-0040.
26. 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).
27. As conditioned in Findings of Fact #18, #19, and #20, 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).
28. Allocation of Conserved Water application CW-103 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).
29. Pursuant to OAR 690-018-0050(4)(e), after finalization for CW-103 the reduced rates for the existing uses 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

Priority Date	Maximum Rate (cfs)	Acres (Equivalent)
1895	88.21	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	118.95	7361.10

(Findings of Fact #8 and #10).

30. In consultation with ODFW and OPRD, the Department has determined that the conserved water is needed to support instream uses. (Finding of Fact #22), OAR 690-018-0050(4)(f).
31. 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).
32. 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.
33. 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 as set forth in Finding of Fact #19.
34. 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 and #32).

35. 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)	1.50

**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	1.50

36. 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.
37. 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).

38. 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).



39. 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.
40. 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).
41. Instream water rights, with a senior priority date, created through an allocation of conserved water application generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights. On Whychus Creek, during the period April 1 through September 30, the total quantities of water to be protected instream under the existing and proposed instream rights within a portion of the reach from approximately T15S, R10E, Section 21 (approximately River Mile (RM) 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20) will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73224, which was created under ORS 537.341, an application process for state agencies to establish new instream water rights. During the period July 10 through October 15, the total quantities of water to be protected instream under the existing and proposed instream rights within another portion of the reach from T14S, R10E, Section 26

(approximately RM 16) to the mouth of Whychus Creek will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73223, which was also created under ORS 537.341. However, the Department has identified this instream water right will provide an additional beneficial purpose. The Oregon Department of Fish and Wildlife has identified that Whychus Creek is a high priority for flow restoration. In addition, the original instream flows established under Certificates 73224 and 73223 were based on flow needs for resident redband trout and did not account for flows necessary to support reintroduction of Mid-Columbia summer steelhead trout and spring Chinook salmon.

42. The Department has identified the quantities protected instream under this right may be additive to other existing instream water rights established within the same reach under ORS 537.341, 537.346, 537.348 or 537.470 during the months of April through October for the portion of the reach extending from approximately T15S, R10E, Section 21 (approximately RM 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20)] and during the period July 10 through October 15 for the portion of the reach extending from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek. In other portions of the identified reach, the quantities protected instream may be additive to other existing water rights established under ORS 537.348 and 537.470 and may replace a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes.
43. 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).
44. The deadline for filing the Notice of Completion is August 31, 2018. The deadline for filing the Request for Finalization is October 1, 2018. (Finding of Fact #23). OAR 690-018-0050(4)(i).
45. Except as conditioned in Finding of Fact #18, #19 and #20, no other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

### **Determination and Proposed Action**

The project described in Allocation of Conserved Water Application CW-103, 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.*

*If Allocation of Conserved Water Application CW-103 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. Findings of Fact #10 and #29.*

2. *The proposed allocation of conserved water, as conditioned, will not harm existing water rights. Findings of Fact #18, #19 and #20.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #17.*
4. *The quantity of water conserved and allocated 100% to the State is as follows:*

<b>Conserved Water Description</b>		
<i>Certificate</i>	<i>Priority</i>	<i>Maximum CFS</i>
74135	1895	1.50

*Finding of Fact #15.*

5. *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.*
6. *The deadline for filing the Notice of Completion is August 31, 2018. The deadline for filing the Request for Finalization is October 1, 2018.*

*Upon Filing the Notice of Completion and Request for Finalization*

7. *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:**

<i>Priority Date</i>	<i>Maximum Rate (cfs)</i>	<i>Acres (Equivalent)</i>
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	88.21	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
<b>Totals</b>	<b>118.95</b>	<b>7361.10</b>

*Finding of Fact #29.*

8. *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.*

9. *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***

<i>Priority Date</i>	<i>Period of Use</i>	<i>Location</i>	<i>Rate (CFS)</i>
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)	1.50

***Deschutes River, tributary to the Columbia River***

<i>Priority Date</i>	<i>Period of Use</i>	<i>Location</i>	<i>Rate (CFS)</i>
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	1.50

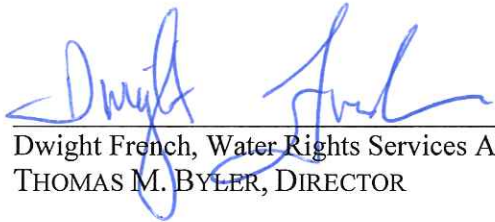
*(Findings of Fact #34 and #35)*

*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.*

*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 during the months of April through October for the portion of the reach extending from approximately T15S, R10E, Section 21 (approximately RM 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20)] and during the period July 10 through October 15 for the portion of the reach extending from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek. In other portions of the identified reach, the quantities protected instream may be additive to other existing water rights established under ORS 537.348 and 537.470 and may replace a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes.*

*(Findings of Fact #41 and #42).*

Dated at Salem, Oregon this 29<sup>th</sup> day of June, 2018.



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

Mailing date: JUN 29 2018

## 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>.