

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

IN THE MATTER OF ALLOCATION) ORDER FINALIZING INCREMENT II
OF CONSERVED WATER) OF ALLOCATION OF CONSERVED
APPLICATION CW-63,) WATER CW-63
UMATILLA COUNTY))

Authority

ORS 537.455 to 537.500 as amended by 2003 HB 2456, 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.

ORS 537.705 and 540.505 to 540.580 establish the process in which a the holder of conserved water may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications

Applicant

Mike Hawman
84917 HWY 37
Hermiston, OR 97838
hawman@eotnet.net

Agent

Bill Porfily
PO Box 643
Stanfield OR 97875
bporfily@my180.net

Findings of Fact

1. On September 21, 2009 Mike Hawman filed an Application for Allocation of Conserved Water. The Department assigned the application number CW-63.
2. On January 4, 2011 the Department issued Special Order Volume 83, Page 281 (*pages 281 through 294 inclusive*), which approved, partially cancelled and partially finalized Allocation of Conserved Water Application CW-63. The order also notified the Applicant's and all parties who had filed comments that any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1).

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. The Order Approving and Partially Finalizing CW-63 as recorded in Special Order Volume 83, at Page 293, contained several scrivener's errors which attributed the wrong priority date to Water Right Certificate 37975. The correct priority date for Water Right Certificate 37975 is April 14, 1969. The previous order also contained several scrivener's errors, which referenced Certificate 37975 as Certificate 37897. The correct Certificate is 37975. Both errors are corrected herein.
4. The Order Approving and Partially Finalizing CW-63 as recorded in Special Order Volume 83, at Page 293, stated that the portion of the Applicant's share of the Conserved Water (*described below*) would be reserved instream until a permanent place of use could be determined. The Order further stated that, before any portion of the Conserved Water reserved instream could be applied to any beneficial use, the Applicant must submit, and the Department must approve Request for Finalization. The Applicant's portion of the Conserved Water reserved instream is as follows:

Originating Certificate	Priority	Applicant's Conserved Water Reserved Instream		
		AF	CFS	Max New Acres Available*
36803	8/28/1964**	289.72	1.57	96.57 (1/62)
37974	1/23/1969**	185.96	1.13	61.98 (1/55)
37975	4/14/1969**	669.82	4.03	223.27 (1/55)
TOTAL:		1145.5	6.73	381.82

*At specified rates. **Plus One Minute.

5. On January 28, 2011 Dale VanSchoiack of DGV Consulting, PLLC, acting as Agent for the Applicant, notified the Department that a place of use, for a portion of the Applicant's remaining Conserved Water had been determined and requested that the second increment of project be finalized. The Request for Finalization also included a map and legal description for proposed place of use for the Applicant's remaining conserved water.
6. The Applicant' January 28, 2011 Request for Finalization also requested the option of delivering the water to new lands via two additional points of diversion. The additional points of diversion are as follows:

Additional Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
5 N	30 E	WM	8	SW NW	200	POD #2 (ROYALE COLUMBIA FARMS PUMPING STATION) 2860 FEET NORTH AND 70 FEET EAST FROM THE SW CORNER OF SECTION 8
5 N	30 E	WM	7	SE SW	200	POD #3: (JB LAND PUMPING STATION) 460 FEET NORTH AND 1680 FEET EAST FROM THE SW CORNER OF SECTION 7

Transfer Review Criteria [OAR 690-380-4010(2)]

7. Water has been used within the last five years according to the terms and conditions of the rights.
8. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to the approval of CW-63.
10. The proposed changes would not result in enlargement of the rights.
11. The proposed changes would not result in injury to other water rights.

ALLOCATION OF CONSERVED WATER

12. On March 3, 2011 the Applicant submitted an amended map which described how the Applicant intended to deliver the conserved water to the new place of use. The map also showed the locations of the additional points of diversion.
13. On April 4, 2011 the Applicant submitted amended place of use maps which meet the requirements of OAR 690-018-0050 and OAR 690-380-3100.
14. The applicants have completed the project and request that the Increment II of Allocation of CW-63 be finalized pursuant to OAR 690-018-0062.
15. A portion of the Applicant’s share of water conserved under Certificate 36803, with a August 28, 1964, plus one minute priority, may be used for 89.20 acres of new irrigation described as follows

Originating Certificate: 36803 in the name of ERVIN EDMUNDS (perfected under Permit S-30000)

Use: IRRIGATION of 89.20 ACRES

Priority Date: August 28, 1964

Rate: 1.44 CUBIC FEET PER SECOND

Duty: 267.60 Acre Feet (AF)

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
5 N	30 E	WM	8	NE NW	200	POD #1 (HAWMAN PUMPING STATION) 9360 FEET NORTH AND 3530 FEET WEST FROM THE SE CORNER OF SECTION 17

NEW LANDS TO RECEIVE CONSERVED WATER FOR IRRIGATION*								
Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
36803	8/28/1964	4 N	30 E	WM	2	NE NW	400	24.0
36803	8/28/1964	4 N	30 E	WM	2	NW NW	400	16.7
36803	8/28/1964	4 N	30 E	WM	2	SW NW	400	1.2
36803	8/28/1964	4 N	30 E	WM	2	SE NW	400	2.7
36803	8/28/1964	5 N	30 E	WM	35	SW SW	1315	17.8
36803	8/28/1964	5 N	30 E	WM	35	SE SW	1305	26.8
TOTAL:								89.2

**The Applicant has not yet surveyed of the above designated lands; therefore, the legal description of the designated place of use as set forth above may have a slight variance from the legal description that will be set forth when the Claim of Beneficial Use is submitted. However, the total number of acres, along with rates and duties established herein, shall be the maximum number of acres, rates and duties allowed under Increment II of CW-63.*

The rate, duty and priority dates for the above listed acres is shown below:

Priority	Total Acres	New Irrigation		
		AF/AC	Total Duty AF	Max Rate CFS
8/28/1964*	89.2	3.0	267.60	1.44
<i>*Plus One Minute</i>				

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/62 of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.00 acre-feet per acre for each acre irrigated. The irrigation season is March 1 through October 31, as determined by OAR 690-250-0070(1).

16. The remaining portion of the Applicant's share of water conserved under Certificate 37974, with a priority date of January 23, 1969, plus one minute, may be used for a maximum of 61.98 acres of new irrigation described as follows:

Originating Certificate: 37974 in the name of ERVIN EDMUNDS (perfected under Permit S-33594)

Use: IRRIGATION of 61.98 ACRES

Priority Date: January 23, 1969

Rate: 1.13 CUBIC FEET PER SECOND

Duty: 185.96

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
5 N	30 E	WM	8	NE NW	200	POD #1 (HAWMAN PUMPING STATION) 9360 FEET NORTH AND 3530 FEET WEST FROM THE SE CORNER OF SECTION 17

NEW LANDS TO RECEIVE CONSERVED WATER FOR IRRIGATION*								
Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
37974	1/23/1969	5 N	30 E	WM	35	NE NW	1305	6.5
37974	1/23/1969	5 N	30 E	WM	35	NE NW	1305	15.6
37974	1/23/1969	5 N	30 E	WM	35	NE NW	1305	22.98
37974	1/23/1969	5 N	30 E	WM	35	NE NW	1305	16.9
TOTAL:								61.98

*The Applicant has not yet surveyed of the above designated lands; therefore, the legal description of the designated place of use as set forth above may have a slight variance from the legal description that will be set forth when the Claim of Beneficial Use is submitted. However, the total number of acres, along with rates and duties established herein, shall be the maximum number of acres, rates and duties allowed under Increment II of CW-63.

The rate, duty and priority dates for the above listed acres is shown below:

Priority	Total Acres	New Irrigation		
		AF/AC	Total Duty AF	Max Rate CFS
1/23/1969*	61.98	3.0	185.96	1.13
*Plus One Minute				

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/55 of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.00 acre-feet per acre for each acre irrigated. The irrigation season is March 1 through October 31, as determined by OAR 690-250-0070(1).

17. A portion of the Applicant's share of water conserved under Certificate 37975, with a priority date of April 14, 1969 plus one minute. This portion of the Applicant's conserved water may be used for 212.82 acres of new irrigation described as follows

Originating Certificate: 37975 in the name of ERVIN EDMUNDS (perfected under Permit S-34254)
Use: IRRIGATION of 212.82 ACRES
Priority Date: April 14, 1969
Rate: 3.84 CUBIC FEET PER SECOND
Duty: 638.46 Acre Feet
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
5 N	30 E	WM	8	NE NW	200	POD #1 (HAWMAN PUMPING STATION) 9360 FEET NORTH AND 3530 FEET WEST FROM THE SE CORNER OF SECTION 17

NEW LANDS TO RECEIVE CONSERVED WATER FOR IRRIGATION*								
Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
37975	4/14/1969	4 N	2	WM	2	NE NE	400	14.9
37975	4/14/1969	4 N	2	WM	2	NW NE	400	27.6
37975	4/14/1969	4 N	2	WM	2	SW NE	400	22.5
37975	4/14/1969	4 N	2	WM	2	SE NE	400	9.2
37975	4/14/1969	4 N	2	WM	35	NE NW	400	1.9
37975	4/14/1969	4 N	2	WM	35	SE NW	400	0.4
37975	4/14/1969	5 N	35	WM	35	NW NE	1305	34.7
37975	4/14/1969	5 N	35	WM	35	SW NE	1305	16.5
37975	4/14/1969	5 N	35	WM	35	NE NW	1305	16.0
37975	4/14/1969	5 N	35	WM	35	SW NW	1305	11.62
37975	4/14/1969	5 N	35	WM	35	SE NW	1305	6.4
37975	4/14/1969	5 N	35	WM	35	NE SW	1305	1.9
37975	4/14/1969	5 N	35	WM	35	SE SW	1305	5.4
37975	4/14/1969	5 N	35	WM	35	NW SE	1305	10.0
37975	4/14/1969	5 N	35	WM	35	SW SE	1305	30.9
37975	4/14/1969	5 N	35	WM	35	SE SE	1305	2.9
TOTAL:								212.82

**The Applicant has not yet surveyed of the above designated lands; therefore, the legal description of the designated place of use as set forth above may have a slight variance from the legal description that will be set forth when the Claim of Beneficial Use is submitted. However, the total number of acres, along with rates and duties established herein, shall be the maximum number of acres, rates and duties allowed under Increment II of CW-63.*

The rate, duty and priority dates for the above listed acres is shown below:

Priority	Total Acres	New Irrigation		
		AF/AC	Total Duty AF	Max Rate CFS
4/14/1969*	212.82	3.0	638.46	3.84
<i>*Plus One Minute</i>				

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/55 of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.00 acre-feet per acre for each acre irrigated. The irrigation season is March 1 through October 31, as determined by OAR 690-250-0070(1).

18. After completion of this increment of CW-63, the Applicant's remaining portion of the water conserved under Allocation of Conserved Water Project CW-63 will be as follows:

Originating Certificate	Priority	Total Acres Remaining	AF/AC	Total Duty	Max Rate	Per Acre Rate Remaining
36803	8/28/1964*	7.37	3.00	22.12 AF	0.13 CFS	1/57 CFS
37974	1/23/1969*	0.00	0.00	0.00 AF	0.00 CFS	na
37975	4/14/1969*	10.45	3.00	31.36 AF	0.19 CFS	1/55 CFS
Total:		17.82	3.00	53.50 AF	0.32 CFS	NA

**Plus One Minute*

19. The Applicant's remaining portion the water conserved under CW-63 will remain reserved instream until the Applicant finds a suitable place of use for the remainder of the Applicant's portion of the conserved water.
20. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Conclusions of Law

- 1) The additional points of diversion proposed in the Request for Finalization of CW-63 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-018-0010.
- 2) The conservation project described in Allocation of Conserved Water Application CW-63 is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 18. Water has been conserved and can be allocated without Harming other water rights.

Now, therefore, it is ORDERED:

ADDITIONAL POINT OF DIVERSION

1. The additional points of appropriation proposed in the request to Finalize Increment II of Allocation of Conserved Water Application CW-63, as described above, are approved.
2. The right to the use of the water is restricted to the quantity of water that may be beneficially used at the place of use described, herein and is subject to all other conditions and limitations contained in Certificates 36803, 37974, 37975 and any related decree.
3. The quantity of water diverted at the additional points of appropriation, together with the quantity of water diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

ALLOCATION OF CONSERVED WATER

4. The request to finalized Increment II of Allocation of Conserved Water Application CW-63, as described above, is approved.
5. Finalization of Increment II of Allocation of Conserved Water Project CW-63 reduces the Applicant’s share of conserved water by the following amounts:

CERTIFICATE	RATE (CFS)	DUTY (AF)
36803	1.44	267.60
37974	1.13	185.94
37975	3.84	638.46
TOTAL:	6.41	1,092.00

6. Additionally the Applicant’s remaining portion of the water conserved under Allocation of Conserved Water Application CW-63 may be used to irrigate a maximum of 17.82 acres of new land. The rates, duties and priority dates for the additional new lands are as follows:

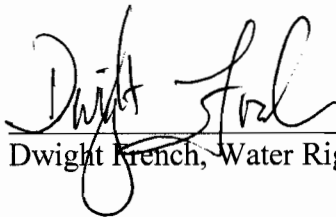
Originating Certificate	Priority	Applicant’s Conserved Water Reserved Instream		
		AF	CFS	Max New Acres Available
36803	8/28/1964	22.12	0.13	7.37 (1/57*)
37974	1/23/1969	0.00	0.00	na
37975	4/14/1969	31.36	0.19	10.45 (1/55*)
TOTAL:		53.50	0.32	17.82 AC

*Maximum rate (CFS) per acre.

7. However, the remaining portion of the Applicant’s share of the conserved water shall be reserved instream until the Applicant provides the information required under OAR 690-018-0062(3) and the Department approves the new use.
8. Before water use may be applied to the new lands the applicant shall install totalizing flow meters to the Department’s satisfaction at the authorized points of diversion from the Columbia River (*if not already present*) and at such places, including “tie-ins,” or connection

points as deemed necessary by the Watermaster to ensure the Applicant is not exceeding the quantity of water allowed on the new lands as described above. Additionally, the meters must be maintained in good working order according to manufacturer's specifications. A different plan for measurement of diverted water at each point of diversion that is acceptable to, and approved by the Director, may be allowed.

9. The applicant shall provide the Watermaster access to the meters or measuring devices at all times. However, if the meter is located within a private structure, the Watermaster shall provide reasonable notice of intent to inspect the meter, prior to entering the private structure.
10. The Applicant shall maintain a complete record of water usage on a monthly basis and shall submit annual reports of water usage to the Watermaster's office in Pendleton. The water use reports shall include recorded monthly water usage measurements from each point of diversion and each tie-in. The reports shall also include dates of measurement and other information as may be requested by the Watermaster. The frequency or timing of the reports may be modified upon a determination by the Department that an alternate frequency is needed or appropriate. The reporting frequency may also be modified, if requested by the Applicant and approved by the Department. The reports may be e-mailed, faxed or mailed.
11. Additional measurement and reporting conditions, including, but not limited to, additional measuring sites, general water-use information, the place and nature of use of water, and telemetry may be required at the discretion of the Department.
12. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
13. When satisfactory proof of the completed changes is received, new certificates confirming the use of the conserved water on the new lands will be issued.



Dwight French, Water Rights Services Administrator *for*

Signed

MAY 02 2011

Phillip C. Ward, Director

Mailing date: **MAY 03 2011**