

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

IN THE MATTER OF ALLOCATION)	FINAL ORDER CORRECTING AND
OF CONSERVED WATER)	FINALIZING THE FIRST PORTION OF
APPLICATION CW-62)	ALLOCATION OF CONSERVED
UMATILLA COUNTY)	WATER CW-62

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.

Applicant

Carl St. Hilaire
St. Hilaire Brothers Hermiston Farm, LLC.
84186 Hwy 37
Hermiston, OR 97838

Attorney

Shonee Langford
Schwabe, Williamson & Wyatt
530 Center ST NE, Suite 400
Salem, OR 97301

Findings of Fact

1. On August 6, 2009 St. Hilaire Brothers Hermiston Farm, LLC, filed an Application for an Allocation of Conserved Water under Water Rights Certificates 53117 and 53118. The Department assigned the application number CW-62.
2. On August 16, 2010 the Department issued Special Order Volume 81, Page 706 (*pages 706 through 716 inclusive*), which approved Allocation of Conserved Water Application CW-62.
3. The order approving Allocation of Conserved Water CW-62 contained two scriveners' errors. The volume of water available on the one the original place of use under Water Right Certificate 53117 is 4,309.50 acre-feet. The rate associated with the Applicant's portion of water conserved under Water Right Certificate 53118 is 9.38 cubic feet per second (CFS), both errors are corrected herein.
4. On March 6, 2013, the Applicant notified the Department the project was complete and requested the Department to finalize the first portion of Allocation of Conserved Water project CW-62 pursuant to OAR 690-018-0062.

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.

5. The Order Approving CW-62 reserved the following portion of the Applicant's conserved water instream until a permanent place of use could be determined. The order further stated before the Applicant may apply the reserved water to a beneficial use, the Applicant must submit and the Department must approve, a Request for Finalization. The Applicant's portion of the conserved water reserved instream is as follows:

Originating Certificate	Priority Date	Rate (CFS)	Volume (AF)
53117	August 18, 1970*	7.35	1,243.13
53118	August 17, 1972*	9.38	1,577.25
Totals:		16.73	2,820.38

*Plus One Minute.

6. The Applicant designated a permanent place of use for a portion of the water conserved under Certificate 53117. The new use shall be as follows:

Use: IRRIGATION OF 382.50 ACRES
Priority Date: August 18, 1970 *plus one-minute*
Rate: 5.71 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to a diversion of ONE SIXTY-SEVENTH (1/67) of one cubic foot per second, or its equivalent for each acre irrigated. Further limited to a diversion of not to exceed 2.73 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

New Lands to Receive Conserved Water for Irrigation:

Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53117	August 18, 1970*	5 N	30 E	WM	22	NE NE	1500	4.90
53117	August 18, 1970*	5 N	30 E	WM	22	SW NE	1500	16.28
53117	August 18, 1970*	5 N	30 E	WM	22	SE NE	1500	28.00
53117	August 18, 1970*	5 N	30 E	WM	22	SE SW	1390	3.67
53117	August 18, 1970*	5 N	30 E	WM	22	NE SE	1380	40.35
53117	August 18, 1970*	5 N	30 E	WM	22	NW SE	1380	32.56
53117	August 18, 1970*	5 N	30 E	WM	22	SW SE	1380	33.78
53117	August 18, 1970*	5 N	30 E	WM	22	SE SE	1380	21.87
53117	August 18, 1970*	5 N	30 E	WM	23	NE NW	1380	20.13
53117	August 18, 1970*	5 N	30 E	WM	23	NW NW	1500	36.55
53117	August 18, 1970*	5 N	30 E	WM	23	SW NW	1500	37.63

Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53117	August 18, 1970*	5 N	30 E	WM	23	SE NW	1380	20.91
53117	August 18, 1970*	5 N	30 E	WM	23	NE NW	1380	12.05
53117	August 18, 1970*	5 N	30 E	WM	23	NW SW	1380	22.15
53117	August 18, 1970*	5 N	30 E	WM	23	SW SW	1380	40.12
53117	August 18, 1970*	5 N	30 E	WM	23	SE SW	1380	11.55
TOTAL:								382.50

*Plus one-minute

7. The Applicant designated a permanent place of use for a portion of the water conserved under Certificate 53118. The new use shall be described as follows:

Use: IRRIGATION OF 355.00 ACRES
Priority Date: August 17, 1972 *plus one-minute*
Rate: 5.30 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to a diversion of ONE SIXTY-SEVENTH (1/67) of one cubic foot per second, or its equivalent for each acre irrigated. Further limited to a diversion of not to exceed 2.73 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

New Lands to Receive Conserved Water for Irrigation:

Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53118	August 17, 1972*	5 N	30 E	WM	23	SE SW	1380	21.97
53118	August 17, 1972*	5 N	30 E	WM	23	NE SE	1380	18.31
53118	August 17, 1972*	5 N	30 E	WM	23	NW SE	1380	29.56
53118	August 17, 1972*	5 N	30 E	WM	23	SW SE	1380	38.66
53118	August 17, 1972*	5 N	30 E	WM	23	SE SE	1380	27.34
53118	August 17, 1972*	5 N	30 E	WM	26	NE NE	1380	1.17
53118	August 17, 1972*	5 N	30 E	WM	26	NW NE	1380	33.95
53118	August 17, 1972*	5 N	30 E	WM	26	SW NE	1380	20.98
53118	August 17, 1972*	5 N	30 E	WM	26	NE NW	1380	27.72
53118	August 17, 1972*	5 N	30 E	WM	26	NW NW	1380	30.91
53118	August 17, 1972*	5 N	30 E	WM	26	SW NW	1380	15.66
53118	August 17, 1972*	5 N	30 E	WM	26	SE NW	1380	14.55
53118	August 17, 1972*	5 N	30 E	WM	26	NW SW	1380	1.96
53118	August 17, 1972*	5 N	30 E	WM	27	NE NE	1380	10.14

Originating Certificate	Priority	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53118	August 17, 1972*	5 N	30 E	WM	27	NW NE	1380	8.57
53118	August 17, 1972*	5 N	30 E	WM	27	SW NE	1380	0.39
53118	August 17, 1972*	5 N	30 E	WM	27	SE NE	1380	27.97
53118	August 17, 1972*	5 N	30 E	WM	27	NE NW	1304	4.34
53118	August 17, 1972*	5 N	30 E	WM	27	NE SE	1380	20.55
53118	August 17, 1972*	5 N	30 E	WM	27	NW SE	1380	0.30
TOTAL:								355.00

*Plus one-minute

8. The Applicant has not yet surveyed the lands described in Findings of Fact #6 and #7; 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 volume allowed herein.
9. The irrigation season for the lands described in Findings of Fact #6 and #7, shall be March 1 through October 31, as determined by OAR 690-250-0070(1).
10. Finalization of the first portion of CW-62, shall reduce the Applicant's portion of conserved water, previously reserved instream by the following quantities:

Originating Certificate	Priority Date	Rate (CFS)	Volume (AF)
53117	August 18, 1970*	5.71	1,044.23
53118	August 17, 1972*	5.30	969.15
Totals:		11.01	2,013.38

*Plus One Minute.

11. The remaining portion of the Applicant's share of the conserved water shall be reserved instream until a permanent place of use is determined by the Applicant and approved by the Department. The Applicant's remaining portion of the conserved water reserved instream is as follows:

Originating Certificate	Priority Date	Rate (CFS)	Volume (AF)
53117	August 18, 1970*	1.64	198.90
53118	August 17, 1972*	4.08	608.10
Totals:		5.72	807.00

*Plus One Minute.

The remaining portion of the Applicant's share of the conserved water shall be managed as an instream right in the Columbia River from the authorized point of diversion for Certificates 53117 and 53118 at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

to the mouth of the Columbia River at River Mile 0.0.

12. To avoid enlargement, the quantity of water managed as an instream right has been modified from Finding of Fact #11 and is as follows:

Instream Reach: From the POD, as described in Finding of Fact #11, to the mouth of the Columbia River.

Originating Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53117	August 18, 1970*	0.41	198.90	March 1 through October 31
53118	August 17, 1972*	1.25	608.10	March 1 through October 31
TOTALS:		1.66	807.00	

*Plus One Minute.

13. As set forth in the order approving CW-62, the instream water right created from the state's portion of the conserved water under Certificate 53117 shall be from the point of diversion on the Columbia River, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

to the mouth of the Columbia River at River Mile 0.0.

The right will be protected instream from March 1 through October 31, at the rate, duty and priority date shown below:

Priority Date	Rate (CFS)	Duty (AF)
Aug. 18, 1970 <i>plus one minute</i>	0.85	414.38

14. As set forth in the order approving CW-62, the instream water right created from the state's portion of the conserved water under Certificate 53118 shall be from the point of diversion on the Columbia River, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

to the mouth of the Columbia River at River Mile 0.0.

The right will be protected instream from March 1 through October 31, at the rate, duty and priority date shown below:

Priority Date	Rate (CFS)	Duty (AF)
Aug. 17, 1972 <i>plus one minute</i>	1.08	525.75

Conclusions of Law

1. The conservation project described in Allocation of Conserved Water Application CW-62 is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Division 18. Water has been conserved which can be allocated without harming other water rights.
2. Consistent with ORS 537.490 and OAR 690-018-0062(3), the Applicant has completed the conservation project and requests a portion of the conserved water be allocated to a new use. The unallocated portion of the conserved water shall be reserved instream as required by OAR 690-018-0062.

Now, therefore, it is ORDERED:

Consistent with Special Order Volume 81, Page 706, the Department takes the following actions:

3. The Applicant's request to finalize the first portion of CW-62, as described above, is approved.
4. Water Right Certificates 53117 and 53118 are cancelled.
5. The Department shall issue new certificates describing the lands involved in the allocation of conserved water, being all of Certificate 53117 and Certificate 53118. The new rates and duties for the lands previously described under Certificates 53117 and 53118 are as follows:

Certificate	Priority	Acres	Rate		Volume	
			CFS/AC	CFS	AF/AC	AF
53117	August 18, 1970	1,326.0	1/67	19.70	3.25	4,309.50
53118	August 17, 1972	1,682.4	1/67	25.00	3.25	5,467.80
TOTAL:		3,008.4		44.70		9,777.30

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

6. The Department shall issue new instream water right certificates for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Columbia River as described in Findings of Fact #13 and #14.

7. The Applicant designated a permanent place of use for a portion of the water conserved under Certificate 53117. The new use shall be described as follows:

Use: IRRIGATION OF 382.50 ACRES
Priority Date: August 18, 1970 *plus one-minute*
Rate: 5.71 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to a diversion of ONE SIXTY-SEVENTH (1/67) of one cubic foot per second, or its equivalent for each acre irrigated. Further limited to a diversion of not to exceed 2.73 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

New Lands to Receive Conserved Water for Irrigation:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	22	NE NE	1500	4.90
5 N	30 E	WM	22	SW NE	1500	16.28
5 N	30 E	WM	22	SE NE	1500	28.00
5 N	30 E	WM	22	SE SW	1390	3.67
5 N	30 E	WM	22	NE SE	1380	40.35
5 N	30 E	WM	22	NW SE	1380	32.56
5 N	30 E	WM	22	SW SE	1380	33.78
5 N	30 E	WM	22	SE SE	1380	21.87
5 N	30 E	WM	23	NE NW	1380	20.13
5 N	30 E	WM	23	NW NW	1500	36.55
5 N	30 E	WM	23	SW NW	1500	37.63
5 N	30 E	WM	23	SE NW	1380	20.91
5 N	30 E	WM	23	NE NW	1380	12.05
5 N	30 E	WM	23	NW SW	1380	22.15
5 N	30 E	WM	23	SW SW	1380	40.12
5 N	30 E	WM	23	SE SW	1380	11.55
TOTAL:						382.50

8. The Applicant designated a permanent place of use for a portion of the water conserved under Certificate 53118. The new use shall be described as follows:

Use: IRRIGATION OF 355.00 ACRES
Priority Date: August 17, 1972 *plus one-minute*
Rate: 5.30 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, shall be limited to a diversion of ONE SIXTY-SEVENTH (1/67) of one cubic foot per second, or its equivalent for each acre irrigated. Further limited to a diversion of not to exceed 2.73 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

New Lands to Receive Conserved Water for Irrigation:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	23	SE SW	1380	21.97
5 N	30 E	WM	23	NE SE	1380	18.31
5 N	30 E	WM	23	NW SE	1380	29.56
5 N	30 E	WM	23	SW SE	1380	38.66
5 N	30 E	WM	23	SE SE	1380	27.34
5 N	30 E	WM	26	NE NE	1380	1.17
5 N	30 E	WM	26	NW NE	1380	33.95
5 N	30 E	WM	26	SW NE	1380	20.98
5 N	30 E	WM	26	NE NW	1380	27.72
5 N	30 E	WM	26	NW NW	1380	30.91
5 N	30 E	WM	26	SW NW	1380	15.66
5 N	30 E	WM	26	SE NW	1380	14.55
5 N	30 E	WM	26	NW SW	1380	1.96
5 N	30 E	WM	27	NE NE	1380	10.14
5 N	30 E	WM	27	NW NE	1380	8.57
5 N	30 E	WM	27	SW NE	1380	0.39
5 N	30 E	WM	27	SE NE	1380	27.97
5 N	30 E	WM	27	NE NW	1304	4.34
5 N	30 E	WM	27	NE SE	1380	20.55
5 N	30 E	WM	27	NW SE	1380	0.30
Totals:						355.00

9. The Applicant has not yet surveyed the lands described above; 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 volume allowed herein.

10. The irrigation season shall be March 1 through October 31, as determined by OAR 690-250-0070(1).
11. Before water 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.
12. 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.
13. 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 emailed, faxed, mailed or delivered in person.
14. 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.
15. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. Claims 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 changes and full beneficial use of the water.
16. When satisfactory proof of the completed changes are received, new certificates confirming the use of the conserved water on the new lands will be issued.
17. The remaining portion of the Applicant's share of the conserved water shall be reserved instream until a permanent place of use is determined by the Applicant and approved by the Department. The Applicant's remaining portion of the conserved water reserved instream is as follows:

Originating Certificate	Priority Date	Rate (CFS)	Volume (AF)
53117	August 18, 1970*	1.64	198.90
53118	August 17, 1972*	4.08	608.10
Totals:		5.72	807.00

**Plus One Minute.*

The remaining portion of the Applicant's share of the conserved water shall be managed as an instream right in the Columbia River from the authorized point of diversion for Certificates 53117 and 53118 at:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

to the mouth of the Columbia River at River Mile 0.0.

18. To avoid enlargement, the quantity of water managed as an instream right has been modified from Finding of Fact #11 and is as follows:

Instream Reach: From the POD, as described in Finding of Fact #11, to the mouth of the Columbia River.

Originating Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53117	August 18, 1970*	0.41	198.90	March 1 through October 31
53118	August 17, 1972*	1.25	608.10	March 1 through October 31
TOTALS:		1.66	807.00	

19. Once a permanent place of use is determined for the Applicant's share of the conserved water, the Applicant shall submit a statement consistent with OAR 690-018-0062 (3)(a) that identifies:

- a. The name and address of the person using the water;
- b. A description of the type of beneficial use of the water;
- c. A legal description of the place of use; and
- d. A map that meets the standards in OAR 690-310-0050.

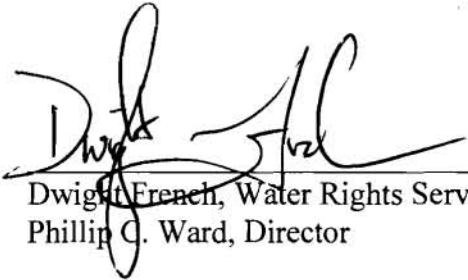
Prior to water being used at the new location, approval must be obtained from the Department. Once water has been used at the new location, if the applicant notifies the Department that the respective right has become appurtenant to the specified lands and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.

When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

All other conditions and limitations of the originating water rights, Certificates 53117 and 53118, and any related decree shall be included in the new certificates.

If the permanent place of use is to be the same location as to where the water is being temporarily reserved instream, then the Applicant need only submit a statement requesting that the instream place of use be made permanent.

Dated at Salem, Oregon this 2 day of April 2013.



Dwight French, Water Rights Services Administrator for
Phillip C. Ward, Director

APR 02 2013

Date of Mailing: _____

Kody Thurgood prepared this order. If you have any questions about the information in this document, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@ wrd.state.or.us.