

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

In the Matter of Allocation of Conserved)
Water Application CW-62,)
Morrow County)
)
)
)

ORDER ON SUBMISSION OF CLAIM
OF BENEFICIAL USE AND
APPROVING DISPOSITION AND USE
OF A PORTION OF THE APPLICANT'S
PORTION OF CONSERVED WATER

Applicant

St. Hilaire Brothers / Hermiston Farm, LLC
84186 Highway 37
Hermiston, OR 97838-6393

Applicable Law

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 conserved water applications and for implementing the use of the conserved water.

Pursuant to ORS 537.470(3), the Department determined the allocation of conserved water under Conserved Water Application CW-62. Any person or agency allocated conserved water under ORS 537.470 may reserve the water instream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the Commission of any change in the type of use, place of use, or point of diversion.

OAR 690-018-0062 establishes the criteria and procedures on completion and finalization of a conserved water project.

Findings of Fact

1. On August 16, 2010, the Department issued a Final Order approving the proposed project, providing the time to complete the project and requiring the applicant to submit a statement identifying a "permanent place of use," recorded at Special Order Volume 81, Pages 706-716.
2. On April 2, 2013, the Department issued a Final Order Correcting and Finalizing the First Portion of Allocation of Conserved Water CW-62 (Correcting Final Order), recorded at Special Order Volume 89, Pages 145-155.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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 Correcting Final Order stated the Applicant designated a “permanent place of use” for a portion of the conserved water allocated to the applicant and required completion of use at the permanent place of use by October 1, 2015, and submission of a Claim of Beneficial use within one year after full beneficial use of water. (Identified in the table below in the column “Applied (Proof Required”). Thereafter, a certificate would be issued. (Correcting Final Order, Order ¶¶ 7, 8, 15, and 16).
4. The Correcting Final Order identified the entirety of the Applicant’s portion of conserved water as follows:

Applicant’s Portion of Conserved Water				Applied (Proof Required)		Reserved Instream for Future Out-of-Stream Use	
Originating Certificate	Priority	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)
53117	8/18/1970*	7.35	1243.13	5.71	1044.23	1.64	198.90
53118	8/17/1972*	9.38	1577.25	5.30	969.15	4.08	608.10
	Totals	16.73	2820.38	11.01	2013.38	5.72	807.00

* - plus one minute

5. The Correcting Final Order also stated the remaining portion of the Applicant’s portion of conserved water would be managed instream in the Columbia River until a permanent place of use was designated. The order further stated once a permanent place of use was determined for the remaining portion of the Applicant’s portion of conserved water, the Applicant shall submit a statement consistent with OAR 690-018-0062(3)(a) identifying:
 - 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 meeting the standards in OAR 690-310-0050.
6. The proposed areas for the Applicant’s portion of conserved water to be used for out-of-stream uses were identified by the Applicant on February 27, 2015.

Township	Ranges
1 North	11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
2 North	11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
3 North	11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
4 North	22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 East
5 North	25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 East
6 North	30, 31, 32, 33, 34, 35, 36, 37, 38, 39
1 South	10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 30.5, 31, 32, 33, 34, 35, 36, 37, and 38 East
2 South	10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29,

Township	Ranges
	30, 30.5, 31, 32, 33, 34, 35, 36, and 37 East
3 South	9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 30.5, 31, 32, 33, 33.5, and 34 East
4 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 33.5, and 34 East
5 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 33.5, and 34 East
6 South	8, 8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 East
7 South	8, 8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 East
8 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 East
9 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 East

7. On September 21, 2017, the Applicant submitted a Claim of Beneficial Use for the “Applied (Proof Required)” portion of conserved water as required under the Correcting Final Order.

8. The submitted Claim of Beneficial Use identified the following point of diversion and places of use:

Use: IRRIGATION OF 737.5 ACRES

Priority Date: August 18, 1970, *plus one-minute* for lands under Certificate 53117, and August 17, 1972, *plus one minute* for lands under Certificate 53118

Rate: 11.01 cfs, being 5.71 cfs under August 18, 1970, *plus one minute* priority, and 5.30 cfs under August 17, 1972, *plus one minute* priority

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

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

Authorized Place of Use:

Originating Certificate	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53117	5 N	30 E	WM	22	NE NE	1500	4.90
53117	5 N	30 E	WM	22	SW NE	1500	16.28
53117	5 N	30 E	WM	22	SE NE	1500	28.00
53117	5 N	30 E	WM	22	SE SW	1390	3.67
53117	5 N	30 E	WM	22	NE SE	1380	40.35
53117	5 N	30 E	WM	22	NW SE	1380	32.56
53117	5 N	30 E	WM	22	SW SE	1380	33.78
53117	5 N	30 E	WM	22	SE SE	1380	21.87

Originating Certificate	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
53117	5 N	30 E	WM	23	NE NW	1380	20.13
53117	5 N	30 E	WM	23	NW NW	1500	36.55
53117	5 N	30 E	WM	23	SW NW	1500	37.63
53117	5 N	30 E	WM	23	SE NW	1380	20.91
53117	5 N	30 E	WM	23	NE NW	1380	12.05
53117	5 N	30 E	WM	23	NW SW	1380	22.15
53117	5 N	30 E	WM	23	SW SW	1380	40.12
53117	5 N	30 E	WM	23	SE SW	1380	11.55
53118	5 N	30 E	WM	23	SE SW	1380	21.97
53118	5 N	30 E	WM	23	NE SE	1380	18.31
53118	5 N	30 E	WM	23	NW SE	1380	29.56
53118	5 N	30 E	WM	23	SW SE	1380	38.66
53118	5 N	30 E	WM	23	SE SE	1380	27.34
53118	5 N	30 E	WM	26	NE NE	1380	1.17
53118	5 N	30 E	WM	26	NW NE	1380	33.95
53118	5 N	30 E	WM	26	SW NE	1380	20.98
53118	5 N	30 E	WM	26	NE NW	1380	27.72
53118	5 N	30 E	WM	26	NW NW	1380	30.91
53118	5 N	30 E	WM	26	SW NW	1380	15.66
53118	5 N	30 E	WM	26	SE NW	1380	14.55
53118	5 N	30 E	WM	26	NW SW	1380	1.96
53118	5 N	30 E	WM	27	NE NE	1380	10.14
53118	5 N	30 E	WM	27	NW NE	1380	8.57
53118	5 N	30 E	WM	27	SW NE	1380	0.39
53118	5 N	30 E	WM	27	SE NE	1380	27.97
53118	5 N	30 E	WM	27	NE NW	1304	4.34
53118	5 N	30 E	WM	27	NE SE	1380	20.55
53118	5 N	30 E	WM	27	NW SE	1380	0.30
Total							737.50

9. On November 22, 2017, the Applicant submitted a 60-Day Notice of Use or Disposition of the Applicant's Portion of Conserved Water which included the additional information required under 537.490(1) and OAR 690-018-0062(3)(A), along with an amended map.

Review Criteria

10. Under ORS 537.490(1), the Department may only require a Notice of Use or Dispensation (Notice of Use) of the right to the use of conserved water. The Notice of Use shall include the name and address of the person buying or leasing the right to the use of conserved water; the use to which the conserved water is to be put; and the terms of any agreement between the appropriator and the person using the conserved water.

11. Under OAR 690-018-0062(4)(c), upon receipt of a request that an allocation of conserved water be finalized, the Director shall issue an **order** allowing: a) the use of any portion of the conserved water allocated to the applicants, at the location for the type of use identified pursuant to subsection (3)(a) of the rule; and the use and management as an instream water right for that water that is being leased or temporarily reserved instream for future out-of-stream use.
12. OAR 690-18-0090 allows any person or agency entitled to the use of conserved water to notify the Director of any change in the type of use, place of use, or point of diversion.
13. ORS 537.500(1) states a water right for conserved water shall have the same legal status as any other water right for which a certificate has been issued.
14. Under ORS 537.490(3), any right to the use of conserved water sold under ORS 537.490(1) shall: a) become appurtenant to the premises upon which the purchaser uses the water, and b) shall be subject to the provisions of ORS 540.505 to 540.565 [transfer statutes] and 540.610 to 540.650 [forfeiture statutes].
15. None of the conserved water statutes or rules requires an applicant to specify a permanent place of use of the conserved water, thereby making the water right appurtenant to the lands specified. Only upon gift or sale of the conserved water shall the water right become appurtenant to the premises upon which use is made and a certificate of water right shall be issued upon satisfactory proof.

Conclusions of Law

1. The Department did not have the authority to require the Applicant to submit a Claim of Beneficial Use making the conserved water appurtenant to specific lands.
2. The Applicant has complied with the terms of the Correcting Order with the submission of a Claim of Beneficial Use submitted on September 21, 2017.
3. The proposed use is within the area described by the applicant under OAR 690-018-0050(4)(h).
4. The proposed use would not constitute an expansion of the right.
5. The proposed use is consistent with OAR 690-005-0045(Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

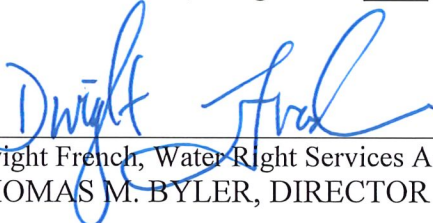
Now, therefore, it is **ORDERED**:

1. The use of water as described in Finding of Fact #8 is approved.
2. 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.

3. 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.
4. 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.
5. 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.
6. The use of water as identified in Finding of Fact #8 may be made until such time as a Notice of Use and Disposition is received pursuant to ORS 537.490 and OAR 690-018-0090.
7. The use of water as identified in Finding of Fact #8 is subject to the provisions of OAR 690-0018-0090(6) and ORS 540.610 to 540.660.

DATED at Salem, Oregon this 27 day of November, 2017.



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

Mailing date: NOV 28 2017