

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

In the Matter of Allocation of Conserved Water Application CW-85, Morrow County) FINAL ORDER ON FINALIZATION OF ALLOCATION OF CONSERVED WATER APPLICATION CW-85

Applicant

Windy River
822 Highway 395 South #423
Hermiston, OR 97838

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 proposed conservation 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.

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). If an application for the allocation of conserved water is approved, the Department shall issue orders covering 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

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.

to cover the unaffected portion of the water rights and separate new certificates describing 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.

Findings of Fact

1. On September 17, 2014, the Department issued a Final Order of Approval on Completion of Allocation of Conserved Water CW-85, recorded at Special Order Volume 93, Pages 456-464.
2. On April 2, 2015, Windy River submitted a Request for Finalization, requesting the Department finalize the allocation of conserved water on the Columbia River as set forth in the Final Order and as listed below:

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
89304	25%	2.21	401.67	75%	6.62	1205.00	100%	8.83	1606.67

3. The priority date for the conserved water is June 29, 1973, plus one minute.
4. Water Right Certificate 89304 was cancelled by Special Order Volume 93, Pages 456-464. The reduced rate and duty for the existing use under Certificate 89304 is as follows:

Use: IRRIGATION of 1606.67 ACRES
Priority Date: JUNE 29, 1973
Rate: 30.89 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTY-SECOND (1/52) 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 5623.35 acre-feet per year.
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	16	SW NE	14.20
4 N	26 E	WM	16	SE NE	6.30
4 N	26 E	WM	16	NW NW	6.40
4 N	26 E	WM	16	SW NW	39.96
4 N	26 E	WM	16	SE NW	26.10
4 N	26 E	WM	16	NE SW	22.80
4 N	26 E	WM	16	NW SW	10.00
4 N	26 E	WM	16	NE SE	29.01
4 N	26 E	WM	16	NW SE	29.80
4 N	26 E	WM	16	SW SE	0.20
4 N	26 E	WM	16	SE SE	1.20
4 N	26 E	WM	17	NE NE	0.80
4 N	26 E	WM	17	SE NE	15.59
4 N	26 E	WM	17	SW NW	7.52
4 N	26 E	WM	17	SE NW	0.31
4 N	26 E	WM	17	NE SW	15.50
4 N	26 E	WM	17	NW SW	39.99
4 N	26 E	WM	17	SW SW	35.71
4 N	26 E	WM	17	SE SW	35.64
4 N	26 E	WM	17	NE SE	1.80
4 N	26 E	WM	17	NW SE	1.40
4 N	26 E	WM	17	SW SE	6.30
4 N	26 E	WM	18	SW NE	17.13
4 N	26 E	WM	18	SE NE	11.52
4 N	26 E	WM	18	SE SW	8.30
4 N	26 E	WM	18	NE SE	34.95
4 N	26 E	WM	18	NW SE	28.65
4 N	26 E	WM	18	SW SE	40.54
4 N	26 E	WM	18	SE SE	34.84
4 N	26 E	WM	19	NE NE	34.97
4 N	26 E	WM	19	NW NE	36.03
4 N	26 E	WM	19	SW NE	41.41
4 N	26 E	WM	19	SE NE	35.25
4 N	26 E	WM	19	NE NW	3.80
4 N	26 E	WM	19	SE NW	8.50
4 N	26 E	WM	19	NE SW	4.40
4 N	26 E	WM	19	SE SW	9.00
4 N	26 E	WM	19	NE SE	35.54
4 N	26 E	WM	19	NW SE	36.99
4 N	26 E	WM	19	SW SE	40.93
4 N	26 E	WM	19	SE SE	34.91
4 N	26 E	WM	20	NW NE	5.70
4 N	26 E	WM	20	SW NE	5.10
4 N	26 E	WM	20	NE NW	32.63
4 N	26 E	WM	20	NW NW	39.51
4 N	26 E	WM	20	SW NW	34.69
4 N	26 E	WM	20	SE NW	35.56
4 N	26 E	WM	20	NE SW	31.75
4 N	26 E	WM	20	NW SW	38.82
4 N	26 E	WM	20	SW SW	35.25
4 N	26 E	WM	20	SE SW	36.02

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	20	NW SE	4.50
4 N	26 E	WM	20	SW SE	4.00
4 N	26 E	WM	29	NW NE	3.80
4 N	26 E	WM	29	SW NE	4.20
4 N	26 E	WM	29	NE NW	32.49
4 N	26 E	WM	29	NW NW	39.48
4 N	26 E	WM	29	SW NW	35.44
4 N	26 E	WM	29	SE NW	36.40
4 N	26 E	WM	29	NE SW	33.48
4 N	26 E	WM	29	NW SW	39.22
4 N	26 E	WM	29	SW SW	34.05
4 N	26 E	WM	29	SE SW	35.64
4 N	26 E	WM	29	NW SE	4.60
4 N	26 E	WM	29	SW SE	4.80
4 N	26 E	WM	30	NE NE	34.94
4 N	26 E	WM	30	NW NE	34.70
4 N	26 E	WM	30	SE NE	14.60
4 N	26 E	WM	30	NE NW	4.91
4 N	26 E	WM	30	NE SE	21.80
4 N	26 E	WM	30	SE SE	15.00
4 N	26 E	WM	32	NW NE	4.50
4 N	26 E	WM	32	NE NW	24.90
TOTAL					1606.67

5. The rate and volume allocated to the State for instream use is adjusted to prevent enlargement of the right so the annual volume limitation is not exceeded. By reducing the rate, the state's instream right may be protected throughout the entire irrigation season without enlarging the right as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	3/1 through 10/31	0.83	401.67

6. The state's instream water right shall allow for the protection of flows for public benefit for pollution abatement:

From the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

To the mouth of the Columbia River at river mile 0.0.

7. The Applicant's portion of conserved water shall be managed instream until a Notice of Use and Disposition is filed under OAR 690-018-0090. To prevent enlargement of the right, the rate of the conserved water rate must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be protected throughout the entire irrigation season without enlarging the right.

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	3/1 through 10/31	2.48	1205.00

8. The water shall be managed instream from the authorized point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

To the mouth of the Columbia River at river mile 0.0.

9. The proposed areas within which the Applicant's portion of conserved water is proposed to be used for future out-of-stream uses are within:

Township	Range	Mer.
2 North	23, 24, 26, 27, and 28 East	WM
3 North	23, 24, 26, 27, 28, 29 and 30 East	WM
4 North	23, 24, 25, 26, 27, 28, 29, and 30 East	WM
5 North	26, 27, 28, 29 and 30 East	WM

Conclusion of Law

The project described in Allocation of Conserved Water Application CW-85, is consistent with the criteria in ORS 537.455 to 537.500, ORS 540.520 to 540.530, and OAR Chapter 690, Divisions 018 and 077.

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

1. The quantities of water conserved are as follows:

Certificate	State's Portion			Applicant's Portion		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
89304	25%	2.21	401.67	75%	6.62	1205.00

2. 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 Certificates 89304.

3. A superseding Certificate will be issued for the existing use at the place of use described in Finding of Fact #4 at the reduced rate and duty as follows:

Use: IRRIGATION of 1606.67 ACRES

Priority Date: JUNE 29, 1973

Rate: 30.89 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FIFTY-SECOND (1/52) 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 5623.35 acre-feet per year.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

4. The Department shall issue a new instream water right certificate for pollution abatement in the Columbia River as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	3/1 through 10/31	0.83	401.67

From the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

To the mouth of the Columbia River at river mile 0.0.

5. The Applicant's portion of conserved water shall be managed instream until a Notice of Use and Disposition is filed under OAR 690-018-0090. To prevent enlargement of the right, the rate of the conserved water must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be protected throughout the entire irrigation season without enlarging the right.

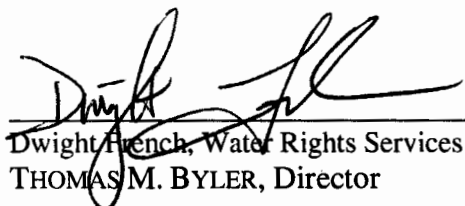
Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	3/1 through 10/31	2.48	1205.00

6. The water shall be managed instream from the authorized point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

To the mouth of the Columbia River at river mile 0.0.

Dated at Salem, Oregon this 2 day of April, 2015.


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

Mailing Date: APR 07 2015