

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 right(s) and once the conservation project is completed new certificates preserving the previously established priority of right(s) shall be issued to cover the unaffected portion of the water right(s) and separate new certificates describing the right 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 February 22, 2011, Terra Poma Land, LLC, filed an Application for an Allocation of Conserved Water. The Department assigned the application number CW-68.
2. The application as originally submitted identified that the conserved water application affected Certificate 52082. Allocation of Conserved Water application CW-68 proposes the annual duty be reduced on 270 acres of land from 4.5 acre-feet per acre to 3.5 acre-feet per acre. The original application did not specify a rate reduction.
3. Certificate 52082 was superseded by Certificates 87894 and 87895 by an order approving Transfer Application T-11227, issued on January 24, 2013, Special Order Volume 88, Pages 1200-1204. Certificate 87894 reflects the water use involved in this conserved water application.
4. On January 31, 2012, the applicant's agent amended the application to specify the reduced rate requested. The conserved water description is as follows:

Certificate 87894				Quantity Needed after Conservation Measures				Conserved Water		
Rate		Duty		Rate		Duty		Rate	Duty	
Max. CFS	CFS/AC	Max. AF	AF/AC	Max. CFS	CFS/AC	Max. AF	AF/AC	Max. CFS	Max. AF	AF/AC
6.31	1/40	1215	4.5	5.20	1/52	945	3.5	1.11	270	1.0

5. On February 5, 2013, Applicant's agent requested the Department amend the application to reflect the total number of acres, rate, and duty under new Certificate 87894.
6. The application indicates the conservation measures to be taken consist of 1) flow reduction from 10 gallons per minute per acre to 7 gallons per minute per acre by installing state-of-the-art new low pressure, low flow spray nozzles, and using IRZ's monitoring system; and 2) modifying the center pivot circle irrigation machines to operate at lower pressures and reduced flows.
7. The right to be affected by CW-68 is as follows:

Certificate: 87894 in the name of PAUL T. AND ESTHER J. JASA, (perfected under Permit S-36940)

Use: IRRIGATION of 270.0 ACRES
Priority Date: JUNE 29, 1973
Rate: 6.31 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each 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	120 FEET SOUTH AND 2980 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	7	NE SW	0.2
4 N	26 E	WM	7	SE SW	24.5
4 N	26 E	WM	7	NE SE	0.9
4 N	26 E	WM	7	NW SE	2.2
4 N	26 E	WM	7	SW SE	37.9
4 N	26 E	WM	7	SE SE	36.1
4 N	26 E	WM	8	SW SW	15.0
4 N	26 E	WM	8	SE SW	8.3
4 N	26 E	WM	17	NE NW	28.3
4 N	26 E	WM	17	NW NW	40.0
4 N	26 E	WM	17	SW NW	11.9
4 N	26 E	WM	17	SE NW	5.0
4 N	26 E	WM	18	NE NE	31.4
4 N	26 E	WM	18	NW NE	28.3
TOTAL					270.0

8. The applicant requests that the conserved water be allocated as follows:

State's Portion			Applicant's Portion			Conserved Water		
Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)
25%	0.28 cfs	67.5 AF	75%	0.83 cfs	202.5 AF	100%	1.11 cfs	270.0 AF

9. The applicant proposes that its portion of the conserved water be allocated for an out-of-stream use at the following location:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	27 E	WM	8	NE NW	29.5
3 N	27 E	WM	8	NW NW	10.6
3 N	27 E	WM	8	SW NW	8.5
3 N	27 E	WM	8	SE NW	29.5
Total					78.1

10. The applicant requests that the priority date for any conserved water be one minute junior to the priority date for Certificate 87894 (June 29, 1973).
11. The Applicant funded 100% of the conservation project. Therefore, the applicant is entitled to 75 percent of the water conserved.
12. The applicant proposes that any instream water right created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
13. On February 9, 2011, the applicant informed the Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department, and Oregon Department of Environmental Quality of its intention to file an Allocation of Conserved Water application. The applicant requested that the above agencies comment on the proposed application.
14. On February 18, 2011, ODFW notified the Department that the proposed water conserved instream is needed to improve migratory conditions and habitat for many Columbia River species. OAR 690-018-0050(4)(f).
15. On January 30, 2013, the Applicant requested the application be amended to reflect the following project schedule due to the delay of processing the Allocation of Conserved Water application:
 Proposed date to begin construction: January 2012
 Proposed date construction will be completed and Notice of Completion will be filed: April 2013
 Proposed date project will be finalized: April 30, 2013
16. The application as amended meets the requirements of OAR 690-018-0040.
17. Notice of the proposed conservation project was published in the Department's weekly notice on May 1, 2012, and in the Hermiston Herald newspaper on May 12, 19, and 26, 2012, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
18. On February 9, 2011, the applicant notified the following individuals, organizations, and agencies of its intent to file an Allocation of Conserved water application: Gerald Peterson, Sharon Collins, Greg and Cyd Cimmiyotti, Dwayne and Geraldine Caroll, John Cimmiyotti and Kallie Nicholas, Clatsop County, Columbia County, Washington County, Multnomah County, Wasco County, Sherman County, Gillam County, Morrow County, City of Boardman, City of Arlington, City of Rufus, City of The Dalles, City of Hood River, City of Cascade Locks, City of

Mosier, City of Fairview, City of Troutdale, City of Portland, City of Scappoose, City of St. Helens, Columbia City, City of Prescott, City of Clatskanie, City of Astoria, Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indians, meeting the requirements of OAR 690-0180050(1)(b).

19. On February 13, 2013, the Department issued a Preliminary Determination proposing approval of Allocation of Conserved Water Application CW-68 and mailed a copy to the applicant. No protests were filed.
20. On February 21, 2013, the applicant submitted a Notice of Completion for CW-68 and a Request for Finalization for CW-68, notifying the Department that the conservation project was complete and requesting that the allocation of the conserved water be finalized. The applicant further requested that the deadline for filing a Claim of Beneficial Use for the applicant's out-of-stream use, at the location identified in Finding of Fact #9 above, be due by October 1, 2016.

Allocation of Conserved Water Review Criteria [OAR 690-018-0050]

21. As evidenced by Findings of Fact #2 and #4, the proposed allocation of conserved water will result in a reduced diversion for the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a).
22. On May 23, 2012, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would not harm other water rights; therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).
23. The application is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c).
24. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing use under Certificate 87894 are:
Rate: 5.20 cfs limited to 1/52 cfs per acre
Duty: 3.5 acre-feet per acre per irrigation season
Annual Volume: 945 acre-feet
25. Pursuant to OAR 690-018-0050(4)(e) and (h), the rate and duty for the applicant's share of the conserved water, after completion of the proposed project, for use on the lands described in Finding of Fact #9 are:
Rate: 0.83 cfs
Duty: 3.5 acre-feet per acre per irrigation season
Annual Volume: 202.5 acre feet per year
26. As required by OAR 690-018-0050(4)(f), the Department has determined that conserved water is needed to support instream uses in the Columbia River to provide for the conservation, maintenance and enhancement of aquatic habitat, fish, wildlife, wildlife habitat and other ecological values. Finding of Fact #14.

27. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the applicant does not need to be adjusted because non-reimbursable public funds are not being used for the project. Finding of Fact #11.
28. The state's portion of the conserved water for instream use is 0.28 cfs limited to 67.5 acre-feet per year. The stream reach for the State's instream water right is from the previously authorized point of diversion under Certificate 87894 located at approximately RM 269:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	120 FEET SOUTH AND 2980 FEET WEST FROM THE NE CORNER OF SECTION 2

to the mouth of the Columbia River at River Mile 0.0. ORS 537.470(3); OAR 690-077-0015(8).

29. To prevent enlargement, the rate of the instream right must be adjusted so the annual volume limitation is not exceeded over the course of the proposed instream period of March 1 through October 31. Therefore, the rate of the state's instream water right will be 0.14 cfs with an annual volume limitation of 67.5 acre feet.
30. The instream right shall allow the use and protection of flows from March 1 through October 31. The amount and timing of the proposed instream flow are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
31. The protection of flows within the proposed reach are appropriate, considering:
- The instream water right begins at the recorded point of diversion;
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - There are no known return flows from Certificate 87894 within the proposed reach. OAR 690-077-0015(8) and (10).
32. The combination of instream rights for the proposed reach on the Columbia River 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(11).
33. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water right established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).
34. The total monthly quantities of water to be protected under the proposed instream right in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow. OAR 690-077-0015(4).
35. The areas for which the conserved water may be used for out-of-stream uses are located within Section 8, Township 3 N, R 27 E, W.M. OAR 690-018-0050(4)(h).

36. Pursuant to OAR 690-018-0062, the applicant notified the Department that the Allocation of Conserved Water Project has been completed and requested the project be finalized upon approval. OAR 690-018-0050(4)(i).
37. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

Partial Diminishment of a Water Right Certificate Upon Finalization of Conservation Project

38. On February 5, 2013, an affidavit was received from Glenn Chowning and Ken Vandewall on behalf of Terra Poma Land, LLC certifying that a portion of Certificate 87893 will be diminished from a right for primary irrigation to a right for supplemental irrigation. The right to be diminished upon finalization of the conservation project is as follows:

Certificate: 87893 in the name of LEOTA NELL MARTIN (perfected under Permit G-1965)
Use: IRRIGATION of 78.1 ACRES
Priority Date: OCTOBER 2, 1961
Rate: 0.70 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-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL NO. 2, tributary to the UMATILLA RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	27 E	WM	8	NE NE	850 FEET SOUTH AND 660 FEET WEST FROM THE NE CORNER OF SECTION 8

Authorized Place of Use to be Diminished:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	27 E	WM	8	NE NW	29.5
3 N	27 E	WM	8	NW NW	10.6
3 N	27 E	WM	8	SW NW	8.5
3 N	27 E	WM	8	SE NW	29.5
Total					78.1

Conclusions of Law

1. The project described in Allocation of Conserved Water Application CW-68, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.
2. The proposed changes will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #2 and #4.

3. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #22.
4. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. Finding of Fact #22.
5. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #23.

Now, therefore, it is ORDERED:

1. The changes proposed in CW-68 are approved.
2. The quantity of water conserved is as follows:

Conserved Water		
Rate	Duty	
Max. CFS	Max. AF	AF/AC
1.11	270.0	1.0

Finding of Fact #4.

3. The quantity of conserved water is allocated as follows:

State's Share of Conserved Water			Applicant's Share of Conserved Water			Total Amount of Conserved Water		
Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)
25 %	0.28 cfs	67.5 AF	75 %	0.83 cfs	202.5 AF	100%	1.11 cfs	270.0 AF

Finding of Fact #8.

4. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 87894 and any related decree.
5. Water Right Certificate 87894 is cancelled. A new Certificate will be issued at the reduced rate and duty for the existing use under Certificate 87894 as follows:

Use: IRRIGATION of 270.0 ACRES
Priority Date: JUNE 29, 1973
Rate: 5.20 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.
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Findings of Fact #4 and #7.

6. The project is complete. No additional time is requested for finalization. Finding of Fact #20.
7. The applicant's portion of conserved water for proposed out-of-stream uses may be used at the following rate, duty, and location:

Use: IRRIGATION of 78.1 ACRES
Priority Date: JUNE 29, 1973 plus one minute
Rate: 0.83 CUBIC FOOT 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 a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year and an annual volume limitation not to exceed 202.5 acre feet.
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	27 E	WM	8	NE NW	29.5
3 N	27 E	WM	8	NW NW	10.6
3 N	27 E	WM	8	SW NW	8.5
3 N	27 E	WM	8	SE NW	29.5
Total					78.1

Findings of Fact #8 and #9.

8. The approved use of the applicant's share of conserved water shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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.
9. When satisfactory proof of the use of the conserved water is received, a new certificate confirming the use will be issued.
10. 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 follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	March 1 through October 31	0.14	67.5

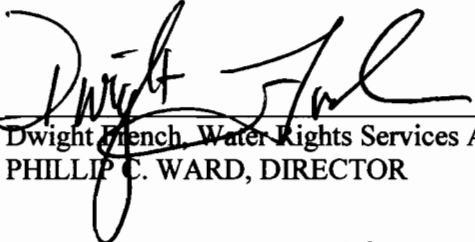
From the authorized point of diversion under Certificate 87894 located at approximately RM 269:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	120 FEET SOUTH AND 2980 FEET WEST FROM THE NE CORNER OF SECTION 2

to the mouth of the Columbia River at River Mile 0.0. Findings of Fact #28, #29, and #30.

11. The new instream right shall replace a portion of any future instream water rights established pursuant to ORS 537.341 or ORS 537.346 unless otherwise specified by a subsequent order establishing a new instream water right.
12. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water right established by this conserved water would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. Finding of Fact #33.
13. The total monthly quantities of water to be protected under the proposed instream right in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow. Finding of Fact #34.
14. Water right certificate 87893 is cancelled. A new and superseding certificate will be issued to describe the portion of the right diminished to supplemental irrigation by this order. Finding of Fact #38.

Dated at Salem, Oregon this 16 day of April, 2013.


Dwight French, Water Rights Services Administrator, for
PHILLIP C. WARD, DIRECTOR

APR 18 2013

Mailing Date: _____