

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

In the Matter of Allocation of Conserved) FINAL ORDER OF APPROVAL ON
Water Application CW-85,) COMPLETION OF CONSERVED
Morrow County) WATER 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 measure as implemented and the date on which the measure was implemented; (b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented; (c) The amount of water needed to supply existing rights after implementation of the conservation measure; (d) The amount of water conserved by implementing the conservation measure; (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; (h) Evidence that the measure was implemented within five years prior to the date of filing the application; and (i) Any other information the commission considers necessary to evaluate the application. 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

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.

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, the Department shall issue new certificates preserving the previously established priority of rights to cover the unaffected portion of the water rights. 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 May 1, 2014, Windy River filed an allocation of conserved water application under Certificate 79482. The Department assigned the application number CW-85.
2. Certificate 79482 was superseded by Certificate 89304 on May 27, 2014.
3. The conservation project involves modifying the center pivot circle irrigation machines to operate at lower pressures and reduced flows and installation of state-of-the-art new low pressure low flow spray nozzles. The installation of low pressure low flow spray nozzles is a proven technology for conserving water.
4. Application CW-85 proposes a rate reduction of approximately 8.83 cubic feet per second (cfs) and proposes to reduce the annual volume by 1606.67 acre-feet (AF).

Conserved Water Description											
Certificate	Certificate				Needed				Conserved Water		
	Rate		Duty		Rate		Duty		Rate	Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	Maximum AF	AF/AC
89304	39.72	0.0247	7230.02	4.5	30.89	0.0192	5623.35	3.5	8.83	1606.67	1.0

5. The portion of the right to be modified by CW-85 is as follows:
 - Certificate:** 89304 in the name of POTLATCH CORPORATION (perfected under Permit S-36940)
 - Use:** IRRIGATION of 1606.67 ACRES
 - Priority Date:** JUNE 29, 1973
 - Rate:** 39.72 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, is limited to ONE-FORTIETH 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 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	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

Twp	Rng	Mer	Sec	Q-Q	Acres
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
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

6. Certificate 89304 does not list a period of use; therefore, pursuant to OAR 690-250-0070, the irrigation season of use is March 1 through October 31.
7. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of the application.
9. The Applicant requests that the conserved water be allocated as follows:

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

10. The Applicant requests that the priority date for any conserved water be one minute junior to the originating right.

11. The Applicant proposes that its portion of the conserved water be allocated for future out-of-stream use within the following areas:

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

12. The Applicant funded 100% of the conservation project.
13. The Applicant submitted a completed Land Use form from Morrow County which indicated the proposed use was allowed outright or is not regulated by Morrow County's comprehensive plan pursuant to ordinance MC20, Article 3, Section 3.010.
14. The implementation of the conservation measures began no earlier than June 2011. The Applicant provided evidence that it attempted to identify and resolve the concerns of water right holders in the area, governmental entities, and other organizations.
15. 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.
16. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 89304 from the authorized point of diversion to the mouth of the Columbia River.
17. The Applicant submitted a Notice of Completion with the application indicating the project was complete. The Applicant will submit a Request for Finalization of the allocation on or before March 1, 2019.
18. The application meets the requirements of OAR 690-018-0040.
19. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality (DEQ) to ascertain whether the proposed instream flows are necessary to support instream flow purposes.
20. Notice of the proposed conservation project was published in the Department's weekly notice on May 20 and June 3, 2014, in the *East Oregonian* newspaper on May 17 and 28, and June 4, 2014, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

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

21. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #4).
22. On May 9, 2014, Department staff performed a review of the proposed Allocation of Conserved Water Project. The Department staff 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 conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #13). OAR 690-018-0050(4)(c).
24. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-85 under Certificate 89304 are as follows:

Originating Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
89304	30.89	0.0192	5623.35	3.5

(Finding of Fact #4).

25. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is as follows:

Maximum Rate	Maximum Duty (Volume)
2.21 cfs	401.67 AF

(Finding of Fact #9).

26. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The Columbia River is listed as water quality limited for temperature, pH and several toxic parameters. The flow is needed to help meet water quality standards. The record does support an instream water right for pollution abatement. There is insufficient information in the record to support an instream right for conservation and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
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 the Applicant funded 100% of the project. (Finding of Fact #12). The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
June 29, 1973, plus one minute	6.62 cfs	1205.0 AF

(Findings of Fact #9 and #10).

28. The new instream water right created will be protected in the Columbia River from the authorized point of diversion, as described in Finding of Fact #5, to the mouth. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
29. To prevent enlargement, the rate of water to be protected instream 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.

30. The instream right shall allow the use and protection of flows for pollution abatement 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

31. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).

32. The protection of flow within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of significant loss of streamflow to the river bed downstream from the point of diversion; and
- d. There are no known return flows resulting from the exercise of the water right.

OAR 690-077-0015(8).

33. 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 do not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).

34. There are no existing instream water rights on the Columbia River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process). 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 rights established by this conserved water project would provide protection for additional flows for pollution abatement. OAR 690-077-0015(11).

35. The proposed areas within which the conserved water is proposed to be used for future out-of-stream uses are:

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

(Finding of Fact #11). OAR 690-018-0050(4)(h).

36. The project is complete. The deadline for submitting a Request for Finalization is March 1, 2019. (Finding of Fact #17). OAR 690-018-0050(4)(i).

37. All conserved water, both the state's and applicant's portions, shall be managed instream until a Request for Finalization is filed. 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	3.31	1606.67

38. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #22). OAR 690-018-0050(4)(j).

Conclusions of Law

1. The project described in Allocation of Conserved Water Application CW-85, is consistent with the criteria in ORS 537.455 to 537.500, and OAR 690, Divisions 018 and 077.
2. The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #4 and #24.
3. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #22.
4. 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-85 are approved.
2. The quantities of water conserved and allocated are as follows:

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 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 Certificate 89304 and any related decree.
4. Water Right Certificate 89304 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and a superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #5) 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

5. Water use measurement conditions:

- a. Before the use of the Applicant's portion of conserved water, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
- b. The water user shall maintain the meters or measuring devices in good working order.
- c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. The project is complete. The deadline for filing a Request for Finalization is on or before March 1, 2019.

7. All conserved water (both the state's and applicant's portions) shall be managed instream as listed below until a Request for Finalization is filed:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	3/1 through 10/31	3.31	1606.67

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.

8. 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

Dated at Salem, Oregon this 17 day of September, 2014.



 Dwight French, Water Rights Services Administrator for
 DIRECTOR
 OREGON WATER RESOURCES DEPARTMENT

SEP 24 2014

Mailing date: _____

