

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

In the Matters of Allocation of Conserved)	FINAL ORDER APPROVING
Water Application CW-60 and Transfer)	TRANSFER APPLICATION T-11540 and
Application T-11540, Washington County)	FINAL ORDER OF APPROVAL ON
)	COMPLETION AND FINALIZATION OF
)	ALLOCATION OF CONSERVED
)	WATER CW-60

Applicants
Sherwood School District
23295 SW Main Street
Sherwood, OR 97140

Agent
Martha Pagel
Schwabe, Williamson & Wyatt
530 Center Street NE, Suite 400
Salem, OR 97301

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

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 right and once the conservation project is completed new certificates preserving the previously established priority of right shall be issued to cover the unaffected portion of the water right 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.

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

TRANSFER APPLICATION T-11540

Findings of Fact

1. On February 26, 2013, SHERWOOD SCHOOL DISTRICT filed an application to change the place of use under Certificate 85185. The Department assigned the application number T-11540.
2. Transfer application T-11540 was submitted as a companion to Allocation of Conserved Water Application CW-60.
3. Transfer Application T-10780 was previously submitted by the Applicant on February 6, 2009, in conjunction with CW-60. Due to advice from the Department, the application was withdrawn on August 18, 2009, recorded at Special Order Volume 78, Page 718. Further review by the Department of CW-60 required the submission of a transfer application, and Transfer Application T-11540 was filed.
4. Notice of the application for transfer was published on March 5, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On April 5, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11540 to the Applicant. The draft Preliminary Determination cover letter set forth a deadline of May 5, 2013, for the Applicant to respond. The Applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the Applicant is authorized to pursue the transfer.

6. On April 11, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11540 and sent a copy to the Applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 16, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

7. The portion of the right to be transferred is as follows:

Certificate: 85185 in the name of SHERWOOD SCHOOL DISTRICT; DAN C. JAMISON (perfected under Permit G-11787)
Use: IRRIGATION of 11.36 ACRES
Priority Date: JUNE 21, 1991
Rate: 0.142 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, is limited to a diversion of ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: A WELL within the CHICKEN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	30	NW SW	795 FEET SOUTH AND 1015 FEET EAST FROM THE NW CORNER OF THE NWSW OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NE SW	1.16
2 S	1 W	WM	30	NW SW	10.20

8. Transfer Application T-11540 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NE SW	4.10
2 S	1 W	WM	30	NW SW	1.03
2 S	1 W	WM	30	SW SW	6.23

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-10780, according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

10. Because of the delay in processing the applications the withdrawal of Transfer Application T-10780, the Department is utilizing the time period from the filing of Transfer Application T-10780 for the determination of the evidence of use.
11. 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 Transfer Application T-10780.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.
14. All other application requirements under T-11540 are met.

ALLOCATION OF CONSERVED WATER APPLICATION CW-60

15. On April 16, 2009, Sherwood School District, filed an Application for an Allocation of Conserved Water. The Department assigned the application number CW-60. In addition, Sherwood School District simultaneously filed Transfer Application T-10780 to change the place of use involved in conserved water application CW-60.
16. On August 3, 2009, the Applicant amended CW-60 clarifying the proposed rate needed following implementation of the conservation measure and submitted amended maps.
17. On August 18, 2009, Sherwood School District withdrew Transfer Application T-10780. The Final Order Withdrawing an Application for a Water Right Transfer is recorded in Special Order Volume 78, Page 718.
18. On March 31, 2011, the Applicant amended CW-60, clarifying the number of acres involved in the conservation project and the volume of water conserved. In addition, the Applicant submitted amended maps.
19. On February 26, 2013, following review of the conserved water application, the Applicant submitted Transfer Application T-11540 to change the place of use involved in the conserved water application. In addition, the Applicant submitted an amended application for CW-60 which clarified the acreage and rates involved in the conserved water.
20. The conservation measure to be implemented consists of construction of a new high efficiency sprinkler system for the school grounds to replace the prior combination of a permanent fixed head sprinkler system and a portable pipe sprinkler system. The new irrigation system will incorporate a high efficiency zoned sprinkler system with a state-of-the art "weather-smart" controller, which will adjust the water application to real-time weather data and will consider both evapotranspiration and rainfall.
21. Contingent upon approval of the change in place of use in Transfer Application T-11540, the right to be affected by CW-60 is as follows:

Certificate: 85185 in the name of SHERWOOD SCHOOL DISTRICT; DAN C. JAMISON (perfected under Permit G-11787)
Use: IRRIGATION of 13.04 ACRES
Priority Date: JUNE 21, 1991
Rate: 0.163 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, is limited to a diversion of ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: A WELL within the CHICKEN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	30	NW SW	795 FEET SOUTH AND 1015 FEET EAST FROM THE NW CORNER OF THE NWSW OF SECTION 30

Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NE SW	5.78
2 S	1 W	WM	30	NW SW	1.03
2 S	1 W	WM	30	SW SW	6.23
Total					13.04

22. Based on the February 26, 2013 amendment, the Applicant requests the following water be conserved as follows:

Certificate 85185				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
0.163	1/80	32.60	2.50	0.143	1/91	22.82	1.75	0.020	9.78	0.75

23. The Applicant funded 100% of the conservation project. Therefore, pursuant to OAR 690-018-0012(1), 25 percent of the conserved water shall go to the state, and 75 percent of the conserved water may go to the applicant in the quantities described below:

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%	0.005 cfs	2.43 AF	75%	0.015 cfs	7.35 AF	100%	0.020	9.78 AF

24. The Applicant proposes that a portion of the conserved water allocated to the Applicant be allocated for use as follows:

Rate: 0.014 cfs

Duty: 1.75 acre-feet per acre per irrigation season

Annual Volume: 7.03 acre feet per year

Location:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NW SW	4.02

25. The Applicant requests that the remaining portion of the conserved water allocated to the Applicant be reserved for a period of up to five years to determine if it will be needed by the School District. The rate and volume reserved to the Applicant for a five-year period is 0.001 cfs and 0.32 AF.
26. The Applicant requests that the priority date for any conserved water be June 21, 1991, the same priority date as Certificate 85185.
27. The property is located within the Chehalem Mountain Groundwater Limited Area. The state's share of the conserved water shall remain in the aquifer.
28. In the February 26, 2013 amended application, the Applicant indicated the proposed conservation project was completed in 2009 and requested that the allocation be finalized.
29. The application as amended meets the requirements of OAR 690-018-0040.
30. Notice of Allocation of Conserved Water Application CW-60 was published in the Department's weekly notice on June 9, 2009, and in *The Times* newspaper on June 11, 18, and 25, 2009, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
31. On February 13, 2013, the Department issued a Preliminary Determination proposing approval of Allocation of Conserved Water Application CW-60 and mailed a copy to the Applicant. No protests were filed.

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

32. As evidenced by Findings of Fact #22 and #24, 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).
33. On December 23, 2009, the District #18 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).

34. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c).
35. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing use at the proposed new place of use under Transfer Application T-11540 are:
Rate: 0.143 cfs limited to 1/91 cfs per acre
Duty: 1.75 acre-feet per acre per irrigation season
Annual Volume: 22.82 acre-feet
36. Pursuant to OAR 690-018-0050(4)(e), the rate and duty for the Applicant's share of the conserved water after completion of the proposed project are:
Rate: 0.015 cfs
Duty: 1.75 acre-feet per acre per irrigation season
Annual Volume: 7.35 acre feet per year
37. The areas for which the conserved water may be used are located within Section 30, Township 2 S, R 1 W, W.M. OAR 690-018-0050(4)(h).
38. 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).
39. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).
40. Because of the change in place of use resulting from Transfer Application T-11540, the Department will not be issuing a reduced rate certificate for the existing use as identified in Finding of Fact #35 at this time.

Conclusions of Law

1. The change in place of use proposed in Transfer Application T-11540 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.
2. The project described in Allocation of Conserved Water Application CW-60, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Division 018.
3. The proposed changes under CW-60 will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #22 and 35.
4. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #33.
5. The applications are consistent with the requirements established in OAR 690-005-0045. Findings of Fact #14 and #34.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-11540 is approved.
2. 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 85185 and any related decree.
3. Water right certificate 85185 is cancelled. A new certificate will be issued for that portion of Certificate 85185 not involved in the transfer application or allocation of conserved water project.
4. The former place of use of the transferred right shall no longer receive water under the right.
5. The changes proposed in Application CW-60 are approved.
6. The quantity of water conserved is as follows:

Conserved Water		
Rate	Duty	
Max. CFS	Max. AF	AF/AC
0.020	9.78	0.75

Finding of Fact #22.

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

State Portion			Applicant Portion			Conserved Water		
Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)	Percentage	Maximum Rate	Maximum Duty (Volume)
25 %	0.005 cfs	2.43 AF	75 %	0.015 cfs	7.35 AF	100%	0.020 cfs	9.78 AF

Finding of Fact #23.

8. The new rate and duty for the existing use under Certificate 85185 at the proposed place of use identified under Transfer Application T-10540 is as follows:

Use: IRRIGATION of 13.04 ACRES

Priority Date: JUNE 21, 1991

Rate: 0.143 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-NINETY-FIRST (1/91) 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 1.75 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the CHICKEN CREEK BASIN

Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NE SW	5.78
2 S	1 W	WM	30	NW SW	1.03
2 S	1 W	WM	30	SW SW	6.23
Total					13.04

Finding of Fact #21.

9. The new rate, duty, and location for the proposed use for a portion of the Applicant's share of the conserved water right is as follows:

Use: IRRIGATION of 4.02 ACRES
Priority Date: JUNE 21, 1991
Rate: 0.014 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 1.75 acre-feet per acre for each acre irrigated during the irrigation season of each year and an annual volume limitation not to exceed 7.03 acre feet.

Source: A WELL within the CHICKEN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	30	NW SW	795 FEET SOUTH AND 1015 FEET EAST FROM THE NW CORNER OF THE NWSW OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	30	NW SW	4.02

Finding of Fact #24.

10. The remaining portion of the Applicant's share of the conserved water is reserved to the Applicant for a period of up to five years from the date of this Order. Finding of Fact #25.
11. Water use measurement conditions:
- Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).
 - The water user shall maintain the meter or measuring device in good working order.
 - The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

12. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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. Findings of Fact #25 and #40.
13. After satisfactory proofs of beneficial use are received, new certificates confirming the reduced rate of the right transferred under T-11540, and the Applicant's share of conserved water will be issued.

Dated at Salem, Oregon this 28 day of May, 2013.



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

Date of Mailing: May 30 2013