

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

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

FINAL ORDER APPROVING
ALLOCATION OF CONSERVED
WATER

Authority

ORS 537.455 to 537.500 as amended by 2003 HB 2456, 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.

Applicant

Carl St. Hilaire
St. Hilaire Brothers Hermiston Farm, LLC.
84186 Hwy 37
Hermiston, OR 97838

Attorney

Martha O. Pagel
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530 Center ST NE, Suite 400
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Findings of Fact

1. On August 6, 2009 St. Hilaire Brothers Hermiston Farm, LLC, filed an Application for an Allocation of Conserved Water under Water Rights Certificates 53117 and 53118. The Department assigned the application number CW-62.
2. The Applicant proposes to conserve water by replacing or re-fitting center pivot sprinkler systems with low pressure and drop tube sprinklers, pressure regulators, wireless radio controls and a variable speed drive (VSD) at the booster station. Other system improvements include the installation of a second VSD at the POD, an infra-red leak detection system and installation of soil moisture monitoring equipment.
3. The first right to be modified is as follows:

Certificate: 53117 in the name of MUTUAL LIFE INSURANCE COMPANY (perfected under Permit S-35522)

Use: IRRIGATION of 1326.0 ACRES

Priority Date: AUGUST 18, 1970

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.

Rate: 29.5 CUBIC FEET PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 4.5 acre-feet per acre per year

Source: COLUMBIA RIVER, tributary to 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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	30 E	WM	20	SW NE	2.4
5 N	30 E	WM	20	NE NW	0.3
5 N	30 E	WM	20	NW NW	1.2
5 N	30 E	WM	20	SW NW	37.6
5 N	30 E	WM	20	SE NW	24.1
5 N	30 E	WM	20	NE SW	35.0
5 N	30 E	WM	20	NW SW	32.4
5 N	30 E	WM	20	SW SW	38.4
5 N	30 E	WM	20	SE SW	30.4
5 N	30 E	WM	20	NE SE	16.0
5 N	30 E	WM	20	NW SE	40.4
5 N	30 E	WM	20	SW SE	39.6
5 N	30 E	WM	20	SE SE	33.6
5 N	30 E	WM	21	NE NE	31.6
5 N	30 E	WM	21	NW NE	33.8
5 N	30 E	WM	21	SW NE	39.2
5 N	30 E	WM	21	SE NE	30.8
5 N	30 E	WM	21	NE NW	31.6
5 N	30 E	WM	21	NW NW	33.6
5 N	30 E	WM	21	SW NW	34.4
5 N	30 E	WM	21	SE NW	37.8
5 N	30 E	WM	21	NE SW	39.4
5 N	30 E	WM	21	NW SW	34.2
5 N	30 E	WM	21	SW SW	30.2
5 N	30 E	WM	21	SE SW	26.4
5 N	30 E	WM	21	NE SE	38.8
5 N	30 E	WM	21	NW SE	35.6
5 N	30 E	WM	21	SW SE	37.6
5 N	30 E	WM	21	SE SE	33.2
5 N	30 E	WM	22	NW SW	0.8
5 N	30 E	WM	27	SW NW	4.0
5 N	30 E	WM	27	NW SW	1.6
5 N	30 E	WM	28	NE NE	36.0
5 N	30 E	WM	28	NW NE	32.8
5 N	30 E	WM	28	SW NE	25.7
5 N	30 E	WM	28	SE NE	38.0
5 N	30 E	WM	28	NE NW	39.2
5 N	30 E	WM	28	NW NW	39.2
5 N	30 E	WM	28	SW NW	25.0
5 N	30 E	WM	28	SE NW	33.6

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	30 E	WM	28	NE SW	41.2
5 N	30 E	WM	28	NW SW	39.2
5 N	30 E	WM	28	SW SW	19.6
5 N	30 E	WM	28	SE SW	24.0
5 N	30 E	WM	28	NE SE	23.2
5 N	30 E	WM	28	NW SE	22.8
5 N	30 E	WM	28	SW SE	0.5
TOTAL:					1326.0

4. The second right to be modified is as follows:

Certificate: 53118 in the name of MUTUAL LIFE INSURANCE COMPANY
(perfected under Permit S-36418)

Use: IRRIGATION of 1682.4 ACRES

Priority Date: AUGUST 17, 1972

Rate: 37.5 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 a diversion of 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	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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	30 E	WM	15	NE SW	33.7
5 N	30 E	WM	15	NW SW	31.6
5 N	30 E	WM	15	SW SW	34.5
5 N	30 E	WM	15	SE SW	32.4
5 N	30 E	WM	22	NE NW	33.2
5 N	30 E	WM	22	NW NW	32.5
5 N	30 E	WM	22	SW NW	34.4
5 N	30 E	WM	22	SE NW	30.8
5 N	30 E	WM	22	NE SW	33.3
5 N	30 E	WM	22	NW SW	33.7
5 N	30 E	WM	22	SW SW	34.1
5 N	30 E	WM	22	SE SW	30.9
5 N	30 E	WM	27	NE NW	34.3
5 N	30 E	WM	27	NW NW	32.3
5 N	30 E	WM	27	SW NW	33.5
5 N	30 E	WM	27	SE NW	31.7
5 N	30 E	WM	27	NE SW	0.1

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	30 E	WM	27	NW SW	17.7
5 N	30 E	WM	27	SW SW	6.9
5 N	30 E	WM	27	SE SW	26.0
5 N	30 E	WM	27	SW SE	10.7
5 N	30 E	WM	27	SE SE	2.8
5 N	30 E	WM	28	NE SE	7.8
5 N	30 E	WM	28	SW SE	4.2
5 N	30 E	WM	28	SE SE	11.4
5 N	30 E	WM	32	NE NE	0.8
5 N	30 E	WM	32	SE NE	26.0
5 N	30 E	WM	32	SE SW	33.2
5 N	30 E	WM	32	NE SE	36.0
5 N	30 E	WM	32	NW SE	31.2
5 N	30 E	WM	32	SW SE	31.1
5 N	30 E	WM	32	SE SE	32.8
5 N	30 E	WM	33	NE NE	39.8
5 N	30 E	WM	33	NW NE	18.8
5 N	30 E	WM	33	SW NE	31.5
5 N	30 E	WM	33	SE NE	34.3
5 N	30 E	WM	33	NE NW	21.2
5 N	30 E	WM	33	NW NW	1.7
5 N	30 E	WM	33	SW NW	31.0
5 N	30 E	WM	33	SE NW	39.3
5 N	30 E	WM	33	NE SW	35.2
5 N	30 E	WM	33	NW SW	36.8
5 N	30 E	WM	33	SW SW	30.0
5 N	30 E	WM	33	SE SW	32.8
5 N	30 E	WM	33	NE SE	38.9
5 N	30 E	WM	33	NW SE	38.2
5 N	30 E	WM	33	SW SE	16.9
5 N	30 E	WM	33	SE SE	16.3
5 N	30 E	WM	34	NE NE	30.0
5 N	30 E	WM	34	NW NE	36.4
5 N	30 E	WM	34	SW NE	33.0
5 N	30 E	WM	34	SE NE	28.5
5 N	30 E	WM	34	NE NW	40.0
5 N	30 E	WM	34	NW NW	35.8
5 N	30 E	WM	34	SW NW	35.9
5 N	30 E	WM	34	SE NW	30.0
5 N	30 E	WM	34	NE SW	35.3
5 N	30 E	WM	34	NW SW	37.8
5 N	30 E	WM	34	SW SW	3.6
5 N	30 E	WM	34	SE SW	2.8
5 N	30 E	WM	34	NE SE	32.0
5 N	30 E	WM	34	NW SE	32.4
5 N	30 E	WM	34	SW SE	0.3
5 N	30 E	WM	34	SE SE	0.3
TOTAL:					1682.4

5. Water has been used within the last five years according to the terms and conditions of the right. The record does not contain information that would demonstrate that the right is subject to forfeiture under ORS 540.610.
6. A diversion structure and delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Application CW-62.
7. The proposed Allocation of Conserved Water project will result in the following amount of conserved water under Certificates 53117 and 53118:

Certificate	Existing Acres	Before Project			After Project			Conserved Water		
		AF/AC	AF	CFS	AF/AC	AF	CFS	AF/ac	AF	CFS
53117	1,326.0	4.5	5,967.0	29.5	3.25	4,309.0	19.7	1.25	1,657.5	9.8
53118	1,682.4	4.5	7,570.8	37.5	3.25	5,467.8	25.0	1.25	2,103.0	12.5
Total:	3,008.4	4.5	13,537.8	67.0	3.25	9,777.3	44.7	1.25	3,760.5	22.3

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

Certificate #	Priority Date	Applicant's Share of Conserved Water		State's Share of Conserved Water		Total Amount of Conserved Water	
		AF	CFS	AF	CFS	AF	CFS
53117	August 18, 1970	1,243.13	7.35	414.38	2.45	1,657.5	9.8
53118	August 17, 1972	1,577.25	9.58	525.75	3.13	2,103.0	12.5
Total:		2,820.38	16.73	940.12	5.58	3,760.5	22.3

9. In consultation with the Oregon Department of Fish and Wildlife, the Department has determined that conserved water is needed for enhancement, conservation and maintenance of aquatic habitat and to improve water quality in the Columbia River.
10. The Department requested comments from Department of Environmental Quality and Oregon Parks and Recreation Department. However no comments were received from either Department.
11. Public notice was published in the Department's weekly notice on August 25, 2009 and in the *East Oregonian* on October 7, 14 and 21, 2009 as required under OAR 690-018-0050. No comments were received in response to these notices.
12. Pursuant to ORS 537.485, the applicant requests that the priority dates of the conserved water be one-minute junior to the originating right.
13. The proposed allocation of conserved water will not harm existing rights.

14. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.

15. The application includes land use information forms completed and signed by a representative of the Umatilla County planning department, demonstrating that the application is compatible with the local comprehensive land use plan. Additionally, the Department notified the following downstream local and tribal governments:

Cities: Arlington, Astoria, Boardman, Clatskanie, Columbia City, The Dalles, Fairview, Hermiston, Mosier, Portland, Prescott, Rufus, Scappoose, St. Helens, and Troutdale;

Counties: Clatsop, Columbia, Gilliam, Morrow, Multnomah, Sherman, Wasco, and Washington;

Tribal governments: Confederated Tribes of the Umatilla Indian Reservation, and Confederated Tribes of Warm Springs.

16. After the allocation of conserved water, the water rights held by the Applicant will allow use of the following quantities of water on the existing acres:

Certificate	Existing Acres	After Project		
		AF/AC	AF	CFS
53117	1,326.0	3.25	4,309.0	19.7
53118	1,682.4	3.25	5,467.8	25.0
Total:			9,776.8	44.7

17. The Applicant's portion of the conserved water may be used for irrigation on a maximum of 867.81 acres of new land. The rate and duty for the new lands are as follows:

Priority	Acres	After Project		
		AF/AC	AF	CFS**
Aug. 18, 1970*	382.50	3.25	1,243.13	7.35
Aug. 17, 1972*	485.31	3.25	1,577.25	9.38
	867.81	3.25	2,820.38	16.73
<i>*Plus One Minute</i>		<i>**1/67 CFS/AC</i>		

18. The State's share of the conserved water is:

Priority Date	Rate (CFS)	Duty (AF)
Aug. 18, 1970 plus one minute	3.13	525.75
Aug. 17, 1972 plus one minute	2.45	414.38
Total:	5.58	940.13

19. The instream water right created from the conserved water under Certificates 53117 and 53118 is from the point of diversion on the Columbia River, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

To the mouth of the Columbia River at River Mile 0.0.

To avoid enlargement, the instream rate has been modified and will be protected instream from March 1 through October 31 at the rate, duty and priority date shown below:

Priority Date	Rate (CFS)	Duty (AF)
Aug. 18, 1970 plus one minute	1.081	525.75
Aug. 17, 1972 plus one minute	0.835	414.38
Total:	1.916	940.13

- 20. The Applicant anticipates the conservation project will be fully implemented by August 31, 2015. The Applicant has until August 31, 2015 to file a notice of completion of the conservation measures. Upon filing a notice of completion of the conservation measures, the Applicant requests that the project be finalized pursuant to OAR 690-018-0062.
- 21. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Review Criteria

Pursuant to OAR 690-018-0050, in reviewing the application for allocation of conserved water the Department has determined the following:

- A. Allocation of Conserved Water Application CW-62 contains all the information required by OAR 690-018-0040.
- B. The proposed conservation project will result in a 22.31 CFS reduction in the quantity of water diverted for the uses allowed under the original rights as established in Findings of Fact #7 and #8.
- C. Consistent with Findings of Fact #11 and #13, the proposed Allocation of Conserved Water will not harm other water rights. Therefore, no reduction in the quantity of conserved water to be allocated is required to mitigate for the affects on other water rights. (Finding of Fact #14).
- D. As established by Finding of Fact #15, the conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045.
- E. The new rates and duties are described in Findings of Fact #7, #8, #16-18.
- F. The applicant request thats 25% of the conserved water be allocated to an instream water right to be held in trust by the Water Resources Department for the people of Oregon and

that the priority date of the conserved water right is the same as the originating rights, plus one minute. (Findings of Fact #8 and #12).

- G. Consistent with Finding of Fact #9, the State’s portion of the conserved water is needed for enhancement, conservation and maintenance of aquatic habitat and to improve water quality in the Columbia River between the authorized POD and the Pacific Ocean.
- H. The State’s portion of the conserved water shall be allocated to instream water rights for enhancement, conservation and maintenance of aquatic habitat and to improve water quality and shall provide for the protection of flows in the Columbia River from the authorized point of diversion at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	30 E	WM	8	SW NW	2,920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

to the mouth of the Columbia River. The instream water right shall be for 0.835 cfs with a priority date of August 17, 1972 plus one minute and 1.081 cfs with a priority date of August 18, 1970 plus one minute. The new instream right shall replace a portion of any instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The rights shall allow for the use and protection of flows from March 1 through October 31. (Finding of Fact #19).

- I. The Applicant has until August 31, 2015 to file a notice of completion of the conservation measures or request additional time to complete the project. Upon filing a notice of completion of the conservation measures, the Applicant requests that the project be finalized pursuant to OAR 690-018-0062.
- J. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #21).

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-62, is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018. Water will be conserved which can be allocated without harming other water rights.

Now; therefore, it is ordered that:

The changes proposed in CW-62 are approved.

- 1. The changes in Conserved Water Application CW-62 are approved.

2. The Applicant has until August 31, 2015 to file a notice of completion of the conservation measures, unless the Director grants an extension of time.
3. When the Applicant files a notice of completion, the project will be finalized, unless the Applicants requests additional time to finalize the project and the Director grants an extension of time for the purposes of finalization.

On receipt of the notice of completion of the conservation project described above, the Department shall:

4. Cancel Water Right Certificates 53117 and 53118.
5. Approval of this Allocation of Conserved Water reduces the amount of water lawfully available to the lands previously described under Certificates 53117 and 53118 by the following amounts:

Certificate	Duty	Rate
53117	1,657.5 AF	9.80 CFS
53118	2,103.0 AF	12.50 CFS
Total:	3,760.5 AF	22.30 CFS

6. An allocation of conserved water remaining right certificates will be issued describing the lands involved in the allocation of conserved water, being all of Certificate 53117 and Certificate 53118. The new rates and duties for the lands previously described under Certificate are as follows:

Certificate	Priority	Acres	Duty		Rate	
			AF/AC	AF	CFS/AC	CFS
53117	August 18, 1970	1,326.0	3.25	4,309.0	1/67	19.7
53118	August 17, 1972	1,682.4	3.25	5,467.8	1/67	25.0
TOTAL:		3,008.4	3.25	9,777.3	1/67	44.7

The acreage, rate, duty, and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other prior modification to the certificates. All other conditions and limitations of the existing water right shall be included in the superseding certificate.

7. The conserved water held by St. Hilaire Brothers Hermiston Farm, LLC, shall be reserved instream until a permanent place of use is determined. The priority date and rate that shall be reserved instream are:

Priority Date	Rate (cfs)	Duty
Aug. 18, 1970*	7.35	1,243.13
Aug. 17, 1972*	9.38	1,577.25
Total:	16.73	2,820.38

This water will be protected in the Columbia River from the authorized point of diversion for Certificates 53117 and 53118 at:

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

to the mouth of the Columbia River at River Mile 0.0.

8. Once a permanent place of use is determined for the Applicant's share of the conserved water, the Applicant shall submit a statement consistent with OAR 690-018-0062 (3)(a) that identifies:
 - 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 meets the standards in OAR 690-310-0050.

Prior to water being used at the new location, approval must be obtained from the Department. Once water has been used at the new location, if the applicant notifies the Department that the respective right has become appurtenant to the specified lands and provides satisfactory proof, the Department shall issue a certificate for the use of water at the identified location.

When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

All other conditions and limitations of the existing water rights, Certificates 53117 and 53118, and any related decree shall be included in the new certificates.

If the permanent place of use is to be the same location as to where the water is being temporarily reserved instream, then the Applicant need only submit a statement requesting that the instream place of use be made permanent.

9. A new instream certificate shall be issued for enhancement, conservation and maintenance of aquatic habitat, to improve water quality, for wildlife habitat and other ecological values in the Columbia River from the authorized point of diversion for Certificates 53117 and 53118 at:

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

to the mouth of the Columbia River at River Mile 0.0.

The instream water right shall be protected instream from March 1 through October 31 at the rates and priority dates shown below:

Priority Date	Rate (CFS)	Duty (AF)
Aug. 18, 1970 plus one minute	1.081	525.75
Aug. 17, 1972 plus one minute	0.835	414.38
Total:	1.916	940.13

and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon this 16 day of August, 2010.


Phillip C. Ward
Director

Date of Mailing: AUG 17 2010