

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

In the Matter of Allocation of Conserved) FINAL ORDER OF APPROVAL OF
Water Application CW-97,) ALLOCATION OF CONSERVED
Benton County) WATER CW-97

Applicants

Barbara & Fred Foulke
12145 Elkins Road
Monmouth, OR 97361

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 and the proposed location of use; (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.

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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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 describing the changes in the original water rights. Once the conservation project is finalized, the Department shall issue new certificates preserving the previously established-priority date of the rights to reflect the unaffected portion of the water rights. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by 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, 2017, Barbara and Fred Foulke filed an allocation of conserved water application under Certificate 48577. The Department assigned the application number CW-97.
2. The conservation project involves converting the existing delivery system from rain bird sprinklers to drip irrigation. The conversion from sprinklers to drip irrigation is a proven technology for conserving water.
3. Application CW-97 proposes a rate reduction of approximately 0.09 cubic foot per second (cfs) and proposes to reduce the annual volume by 39.7 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
48577	0.16	1/80	56.0	2.5	0.07	1/300	16.3	0.73	0.09	39.7

4. The portion of the right to be modified by CW-97 is as follows:
 - Certificate:** 48577 in the name of CHARLES R. NEWTON, *et al.* (perfected under Permit G-6407)
 - Use:** IRRIGATION of 22.4 ACRES
 - Priority Date:** MARCH 31, 1975
 - Rate:** 0.16 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 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall be further limited to appropriation of

water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.

Source: WELL NO. 2 within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	5	NW SE	44	280 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	4 W	WM	5	SW NE	44	2.1
11 S	4 W	WM	5	SE NW	44	7.0
11 S	4 W	WM	5	NE SW	44	9.0
11 S	4 W	WM	5	NW SE	44	4.3
Total						22.4

5. Certificate 48577 does not list a period of use; therefore, pursuant to OAR 690-250-0070(1), the irrigation season of use is March 1 through October 31.
6. 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.
7. 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.
8. The Applicants request 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
48577	25%	0.02	9.9	75%	0.07	29.8	100%	0.09	39.7

9. The Applicants propose that its portion of the conserved water be allocated for an out-of-stream use within SENE, SWNE, SENW, NESW, NWSE, NESE of Section 5, Township 11 South, Range 4 West, W.M
10. The Applicants request that the priority date for any conserved water be the same as the originating right.
11. The Applicants funded 100% of the conservation project.
12. The Applicants submitted a completed Land Use Form from Benton County which indicated the proposed use was allowed outright or is not regulated by Benton County's comprehensive plan.
13. The application meets the requirements of OAR 690-018-0040.

14. The Applicants requested the deadline for filing a Notice of Completion and Request for Finalization of October 31, 2019.
15. Notice of the proposed conservation project was published in the Department's weekly notice on March 21, 2017, and in the Gazette-Times newspaper on March 11 and 18, 2017, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
16. On July 25, 2017, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-97, and mailed a copy to the Applicant on July 27, 2017. No protests were filed within 60 days from the date of mailing the Preliminary Determination. OAR 690-018-0050(6).

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

17. 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 #3).
18. On March 2, 2017, the District #16 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).
19. To prevent enlargement of the right, the water user shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water use measurements to the to the Department annually, or more frequently as may be required by the Director.
20. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #12). OAR 690-018-0050(4)(c).
21. 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-97 under Certificate 48577 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
48577	0.07	1/300	16.3	0.73

(Finding of Fact #3).

22. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State to remain in the source aquifer is as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
March 31, 1975	March 1 through October 31	0.02	9.9

(Finding of Fact #8).

23. This conservation project is for groundwater. Therefore, pursuant to OAR 690-018-0050(4)(f), no finding is necessary.

24. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the Applicants does not need to be adjusted because the Applicants funded 100% of the project. (Findings of Fact #8 and 11). The rate and volume allocated to the Applicants are as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
March 31, 1975	0.07 cfs	29.8 AF

(Finding of Fact #8).

25. The areas within which the conserved water is proposed to be used for out-of-stream uses are within the SENE, SWNE, SENW, NESW, NWSE, and NESE, Section 5, Township 11 South, Range 4 West, W.M. (Finding of Fact #9). OAR 690-018-0050(4)(h).
26. The deadline for submitting a Notice of Completion is October 31, 2019. The deadline for submitting a Request for Finalization is October 31, 2019. (Finding of Fact #14). OAR 690-018-0050(4)(i).
27. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #18). OAR 690-018-0050(4)(j).

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-97, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

Now, therefore, it is ORDERED:

- The proposed change will result in a reduced diversion for the uses allowed under the original water right. (Findings of Fact #3 and #17).
- The proposed allocation of conserved water will not harm existing water rights. (Findings of Fact #18 and #27).
- The application is consistent with the requirements established in OAR 690-005-0045. (Findings of Fact #12 and #20).
- The changes proposed in CW-97 are approved.
- The quantities of water proposed to be 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
48577	25%	0.02	9.9	75%	0.07	29.8	100%	0.09	39.7

6. The deadline for filing a Notice of Completion and a Request for Finalization of the conservation measures is on or before October 31, 2019. (Finding of Fact #26).

Upon filing of the Notice of Completion and Request for Finalization:

7. The quantities of water to be 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
48577	25%	0.02	9.9	75%	0.07	29.8	100%	0.09	39.7

8. 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 48577 and any related decree.

9. Water Right Certificate 48577 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 #4) at the reduced rate and duty as follows:

Use: IRRIGATION of 22.4 ACRES

Priority Date: MARCH 31, 1975

Rate: 0.07 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 ONE THREE HUNDREDTH 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 0.73 acre-feet per acre for each acre irrigated during the irrigation season of each year and an annual volume limitation of 16.3 acre-feet. This right shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.

Source: WELL NO. 2 within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
11 S	4 W	WM	5	NW SE	44	280 FEET SOUTH AND 40 FEET EAST FROM THE CENTER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	4 W	WM	5	SW NE	44	2.1
11 S	4 W	WM	5	SE NW	44	7.0
11 S	4 W	WM	5	NE SW	44	9.0
11 S	4 W	WM	5	NW SE	44	4.3
Total						22.4

10. Water use measurement conditions:

a. Before the use of the Applicants' 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 meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
11. *The water user shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director.*
 12. *The project is complete and no additional time is needed for finalization. The Applicants' portion of conserved water (0.07 cfs, 29.8 AF) shall remain in the aquifer until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090.*
 13. *The areas within which the Applicants' portion of conserved water is proposed to be used for out-of-stream uses are within the SENE, SWNE, SENW, NESW, NWSE, and NESE, Section 5, Township 11 South, Range 4 West, W.M.*
 14. *The State's portion of conserved water (0.02 cfs, 9.9 AF) shall remain in the aquifer.*

Dated at Salem, Oregon this 27 day of September, 2017.


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

Mailing date: SEP 28 2017