

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

In the Matter of Allocation of Conserved)
Water Application CW-68,)
Morrow County)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
ALLOCATION OF CONSERVED
WATER CW-68

Applicants

Terra Poma Land, LLC
Attn: Glen Chowning and Ken VanDewall
PO Box 862
Hermiston, OR 97838

Agent

Molly Reid
GSI Water Solutions, Inc.
8019 W. Quinault Avenue, Suite 201
Kennewick, WA 99336

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 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 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).

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file protest this Preliminary Determination to the Water Resources Commission within 60 days of the mailing of this determination.
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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

Background

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 50582. 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 50582 was superseded by Certificates 87894 and 87895 by an order approving Transfer Application T-11227, issued on January 24, 2012, 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.
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).

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

19. As evidenced by Findings of Fact #2 and #4, 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).
20. 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).
21. 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).
22. 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
23. Pursuant to OAR 690-018-0050(4)(e) and (h), the rate and duty for the applicant's portion of the conserved water, after completion of the proposed project, for use on the lands described in Finding of Fact #7 is:
Rate: 0.83 cfs
Duty: 3.5 acre-feet per acre per irrigation season
Annual Volume: 202.5 acre feet per year
24. 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.
25. 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.
26. The Applicant requested the Department to protect the new instream water right created from the state's portion of conserved water from the authorized point of diversion as described in Finding of Fact #7, to the mouth of the Columbia River.

27. 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. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

28. 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 0.16 cfs with an annual volume limitation of 67.5 acre feet.
29. 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).
30. 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).
31. 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).
32. 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).
33. 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).
34. 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).
35. 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

36. 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					125.0

Determination and Proposed Action

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. If protests are not filed pursuant to OAR 690-018-0050(6), the conserved water application will be approved, and upon finalization of the conservation project, Certificate 83893 will be diminished.

If Allocation of Conserved Water Application CW-68 is approved, the Order Approving will include the following:

- The changes proposed in CW-68 are approved.*

2. *The proposed changes will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #2, #4, and #8.*
3. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #20.*
4. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #21.*
5. *The quantity of water conserved is as follows:*

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

Finding of Fact #4.

6. *The quantity of conserved water is allocated as follows:*

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

Finding of Fact #8.

7. *The new rate and duty for the existing use under Certificate 87894 is 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 #8.

8. *The new rate and duty, and location for the proposed out-of-stream use of the conserved water right is as follows:*
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

Finding of Fact #8.

9. The deadline for filing a Notice of Completion of the conservation measures is April 30, 2013. Finding of Fact # 15.
10. The deadline for filing Request for Finalization of the conservation project is April 30, 2013. Finding of Fact # 15.
11. The State's portion of the conserved water will be dedicated instream as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
June 29, 1973 plus one minute	March 1 through October 31	0.18	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 #27, #28, and #29.

12. 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. Finding of Fact #31.
13. 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 #32.
14. 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 #33.

15. *Upon finalization of the conservation project, Certificate 87893 will be diminished as set forth in Finding of Fact #36.*
16. *No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. Finding of Fact #20.*

Dated at Salem, Oregon this 13 day of February, 2013.



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

Date of Mailing: FEB 13 2013

This Preliminary Determination was prepared by Teri Hranac. If you have any questions about the information in this document, you may reach me at 503-986-0881 or teri.k.hranac@wrds.state.or.us.

Protests should be addressed to the attention of Allocation of Conserved Water Program, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.