



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone: 503-986-0900  
FAX: 503-986-0904  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

March 22, 2013

VIA E-MAIL and REGULAR MAIL

### **Applicant**

Sherwood School District  
23295 SW Main Street  
Sherwood, OR 97140  
[wlowry@sherwood.k12.or.us](mailto:wlowry@sherwood.k12.or.us)

### **Agent**

Martha Pagel  
Schwabe Williamson & Wyatt  
530 Center Street, #400  
Salem, OR 97301  
[mpagel@schwabe.com](mailto:mpagel@schwabe.com)

SUBJECT: Allocation of Conserved Water Application CW-60

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-60.

If no protest is filed, the Department will issue a Final Order consistent with this Preliminary Determination. The Final Order will combine both the Preliminary Determinations for Transfer Application T-11540 and the Allocation of Conserved Water Application CW-60. You should receive a copy of the Final Order shortly after the close of the protest periods for both the transfer and conserved water applications.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position to the Water Resources Commission.

Please do not hesitate to contact me at 503-986-0881 or [teri.k.hranac@wrds.state.or.us](mailto:teri.k.hranac@wrds.state.or.us), if I may be of assistance.

Sincerely,

Teri Hranac  
Allocation of Conserved Water  
Transfer and Conservation Section

Enclosure

cc: CW-60  
Cole Beaman, District #18 Watermaster (via e-mail)



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

In the Matter of Allocation of Conserved ) PRELIMINARY DETERMINATION  
Water Application CW-60, ) PROPOSING APPROVAL OF  
Washington County ) 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 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 a protest to this Preliminary Determination to the Water Resources Commission within 60 days of the mailing of this determination.

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.

### **Findings of Fact**

1. 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.
2. On August 3, 2009, the applicant amended CW-60 clarifying the proposed rate needed following implementation of the conservation measure and submitted amended maps.
3. On August 18, 2009, due to erroneous advice from the Department, 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.
4. 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.
5. On February 26, 2013, following new information and advice from the Department, 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.
6. 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.
7. 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

8. 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

9. The Applicant funded 100% of the conservation project. Therefore, pursuant to OAR 690-018-0012(1), 25 percent of the conserved water may 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

10. 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

11. 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 quantity and volume reserved to the applicant for a five-year period is 0.001 cfs and 0.32 AF.
12. The applicant requests that the priority date for any conserved water be June 21, 1991, the same priority date as Certificate 85185.
13. The property is located within the Chehalem Mountain Groundwater Limited Area. The applicant proposes that the state's share of the conserved water remain in the aquifer.
14. 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.
15. The application as amended meets the requirements of OAR 690-018-0040.
16. Notice of the proposed conservation project 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.

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

17. As evidenced by Findings of Fact #8 and #9, 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).
18. 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).
19. 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).
20. 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

21. 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
22. The areas for which the conserved water may be used for out-of-stream uses are located within Section 30, Township 2 S, R 1 W, W.M. OAR 690-018-0050(4)(h).
23. 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).
24. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).
25. 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 #9 at this time.

### **Determination and Proposed Action**

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. If protests are not filed to CW-60, pursuant to OAR 690-018-0050(6), and to Transfer Application T-11540, pursuant to OAR 690-380-40300, the applications will be combined into one Order.

*If Allocation of Conserved Water Application CW-60 is approved, the Order Approving will include the following:*

1. *The changes proposed in CW-60 are 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.*
4. *The proposed changes will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #8 and #9.*
5. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #18.*
6. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #19.*

7. The quantity of water conserved is as follows:

<b>Conserved Water</b>		
<i>Rate</i>		<i>Duty</i>
<i>Max. CFS</i>	<i>Max. AF</i>	<i>AF/AC</i>
0.02	9.78	0.75

*Finding of Fact #8.*

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

<b>State Portion</b>			<b>Applicant Portion</b>			<b>Conserved Water</b>		
<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>
25 %	0.005 cfs	2.43 AF	75 %	0.015 cfs	7.35 AF	100%	0.020 cfs	9.78 AF

*Finding of Fact #9.*

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

<b>IRRIGATION</b>					
<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Acres</i>
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

*Findings of Fact #7 and 8.*

10. The new rate, duty, and location for the proposed out-of-stream 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

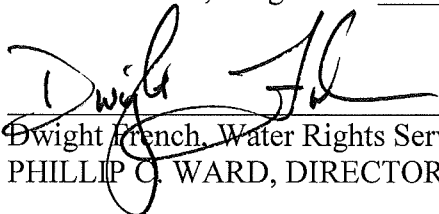
**Authorized Place of Use:**

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

Finding of Fact #10.

11. 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. Finding of Fact #11.
12. The applicant has completed the project and will not be requesting additional time to finalize the project. Finding of Fact #23.
13. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. Finding of Fact #24.
14. 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 #10 and #25.
15. After satisfactory proofs of beneficial use are received, new certificates confirming the reduced rate of right transferred under T-11540, and the applicant's share of conserved water will be issued.

Dated at Salem, Oregon this 21 day of March, 2013.

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

Date of Mailing: March 22, 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@wrd.state.or.us](mailto:teri.k.hranac@wrd.state.or.us).

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



## NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415. The commission shall notify the applicant and any other person requesting notice, of the action the commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).