



# Oregon

Kate Brown, Governor

November 5, 2015

## Water Resources Department

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LGW Ranch  
Attn: Lon Wadekamper  
29899 Country Lane  
Hermiston, OR97838

RE: Allocation of Conserved Water Application CW-72

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-75.

If no protest is filed within 60 days of the mailing, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest period.

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@ wrd.state.or.us](mailto:teri.k.hranac@ wrd.state.or.us), if I may be of assistance.

Sincerely,

Teri Hranac  
Allocation of Conserved Water  
Transfer and Conservation Section

Enclosure

cc: CW-72  
Martha M. Pagel, Shonee Langford, Schwabe Williamson & Wyatt, 530 Center Street NE, Suite 400,  
Salem, OR 97301 (via e-mail at [mpagel@schwabe.com](mailto:mpagel@schwabe.com); [slangford@schwabe.com](mailto:slangford@schwabe.com))  
Westland Irrigation District, P.O. Box 944, Hermiston, OR 97875  
Confederated Tribes of the Umatilla Indian Reservation, Nixyaawii Governance Center,  
46411 Timine Way, Pendleton, OR 97801  
David Filippi (via e-mail at [dfilippi@stoel.com](mailto:dfilippi@stoel.com))  
Gordon Lyford (via e-mail at [wrrw@frontiernet.net](mailto:wrrw@frontiernet.net))  
District #5 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-72,	)	PROPOSING APPROVAL ON
Umatilla County	)	COMPLETION AND FINALIZATION
	)	ALLOCATION OF CONSERVED
	)	WATER CW-72

**Applicant**

Lon G. Wadekamper  
LGW Ranch  
29899 Country Lane  
Hermiston, OR 97838

**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; (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.

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

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.
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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 rights, and once the conservation project is finalized, the Department shall issue new certificates preserving the previously established priority of rights to cover the unaffected portion of the water rights. 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

1. On March 12, 2012, Lon G. Wadekamper, LGW Ranch, filed an allocation of conserved water application under Certificate 83856. The Department assigned the application number CW-72.
2. The conservation project involves modifying the center pivot nozzles from 15 gpm to 7.5 gpm per nozzle. The change to a lower gallon-per-minute nozzle is a proven technology for conserving water.
3. On August 6, 2015, the Applicant submitted amended application maps clarifying the features of the irrigation system.
4. Allocation of Conserved Water Application CW-72 proposes a rate reduction of approximately 1.7 cubic feet per second (cfs) and proposes to reduce the annual volume by 307.8 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
83856	5.12	0.025	923.4	4.5	3.42	0.017	615.60	3.0	1.70	307.80

5. The entirety of the right to be modified by CW-72 is as follows:

**Certificate:** 83856 in the name of Lon G. Wadekamper (perfected under Permit S-46567)  
**Use:** IRRIGATION of 205.2 ACRES  
**Priority Date:** JUNE 25, 1981  
**Rate:** 5.12 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:** UNNAMED STREAM with any deficiency supplied by Westland Irrigation District WASTEWATER, tributaries of the UMATILLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	28 E	WM	33	SW SW	1320 FEET NORTH AND 70 FEET EAST FROM THE SW CORNER OF SECTION 33

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	28 E	WM	32	NE NE	26.3
5 N	28 E	WM	32	SE NE	25.8
5 N	28 E	WM	32	NE SE	20.1
5 N	28 E	WM	33	NE NW	1.1
5 N	28 E	WM	33	NW NW	33.3
5 N	28 E	WM	33	SW NW	38.3
5 N	28 E	WM	33	SE NW	6.3
5 N	28 E	WM	33	NE SW	4.6
5 N	28 E	WM	33	NW SW	34.4
5 N	28 E	WM	33	SW SW	15.0
Total					205.2

6. Certificate 83856 does not list a season of use; therefore, pursuant to OAR 690-250-0070, the irrigation season of use is March 1 through October 31.
7. 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.
8. 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.
9. The Applicant requests the conserved water be allocated as follows:

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
25	0.425	76.95	75	1.275	230.85	100	1.70	307.80

10. The Applicant proposes its portion of the conserved water be allocated for an out-of-stream use within Sections 28, 29, 32, and 33, Township 5 North, Range 28 East, W.M.
11. The Applicant requests the priority date for any conserved water be the same as the originating right.
12. The Applicant funded 100% of the conservation project.

13. The Applicant submitted a completed Land Use Form from Umatilla County which indicated the proposed use was allowed outright or is not regulated by Umatilla County's comprehensive plan.
14. At the time of filing, the Applicant had not initiated implementation of the conservation measures. The implementation of the conservation measures began no earlier than June 2012, and was completed in June 2013.
15. The Applicant proposes that any instream water right created be for pollution abatement.
16. The Applicant requests the Department protect the new instream water right created from the conserved water under Certificate 83856 from the authorized point of diversion to the mouth of the Umatilla River.
17. In its initial application, the Applicant requested that the project be finalized.
18. The application meets the requirements of OAR 690-018-0040.
19. Notice of the proposed conservation project was published in the Department's weekly notice on March 20, 2012, and in the East Oregonian newspaper on March 15 and 22, 2013, as required under OAR 690-018-0050(1)(a) and (2). Comments were received from Gordon Lyford and Westland Irrigation District.

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

20. 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 #4).
21. On May 20, 2015, the Watermaster for District #5 performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would harm other water rights through loss of return flows. OAR 690-018-0050(4)(b).
22. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #13). OAR 690-018-0050(4)(c).
23. Based on USDI, Bureau of Reclamation's AgriMet Crop Water Use Chart for Hermiston, Oregon (<http://www.usbr.gov/pn/agrimet/chart/heroch.txt>), the most consumptive agricultural crop for the area covering the location of this water right is apples, requiring 52.8 inches per acre per year, inclusive of evaporative losses. This converts to 4.35 acre-feet per acre (52.8 inches x 40 (40 miner's inches equals 1 cfs) / 245 days (irrigation season) / 1.983471 (conversion to AF) = 4.35 AF). Therefore, the maximum consumptive volume is 892.62 AF, and return flows account for 30.83 acre feet during the irrigation season (4.35 AF/acre x 205.2 = 892.62 AF. Maximum volume under certificate 83856 = 923.45 AF – 892.62 AF (maximum consumptive volume) = 30.83 AF (return flow)). This 30.83 acre feet converts to 0.06 cubic foot per second (30.83 / 245 days in irrigation season = 0.1258 AF/day / 1.983471 cfs conversion = 0.06 cfs).

24. The quantity of conserved water needed to mitigate for harm to other water rights is 0.06 cfs, limited to 30.83 AF during the irrigation season. (OAR 690-018-0050(4)(d).

25. Pursuant to ORS 537.470(3), the conserved water shall be allocated as follows:

Conserved Water Less Mitigation			State's Portion			Applicant's Portion		
Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
100	1.64	276.97	25	0.41	69.24	75	1.23	207.73

OAR 690-018-0040(4)(d).

26. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses at the place of use identified in Finding of Fact # 5 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
83856	3.42	0.017 (1/60)	615.60	3.0

(Finding of Fact #4).

27. The Unnamed Stream enters a pipe in the SWNW of Section 4, Township 4 N, Range 28 E, W.M. The Unnamed Stream is diverted and is no longer in its natural channel. ORS 537.332(1) defines instream as "...within the natural stream channel or lake bed or place where water naturally flows or occurs." Because the Unnamed Stream is diverted and is not in its natural channel, the state's portion of conserved water should not be converted to an instream water right.

28. The rate and volume allocated to the State are as follows:

Maximum Rate	Maximum Duty (Volume)
0.41 cfs	69.24 AF

Finding of Fact #25, OAR 690-018-0050(4)(e).

29. The Unnamed Stream does not meet the criteria to establish or create an instream water right; therefore, the State's portion of conserved water cannot be necessary to support instream flow purposes. Pursuant to ORS 537.470(3) the water allocated to the State shall revert to the public for appropriation by the next user in priority. OAR 690-018-0050(4)(f).

30. 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 the Applicant funded 100% of the project. (Finding of Fact #12). The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
6/25/1981	1.23 cfs	207.73 AF

Finding of Fact #25.

31. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Sections 28, 29, 32, and 33, Township 5 North, Range 28 East, W.M. and Sections 4 and 5, Township 4 North, Range 28 East, W.M. (Finding of Fact #10). OAR 690-018-0050(4)(h).
32. The project is complete and the applicant has requested finalization. (Finding of Fact #17). OAR 690-018-0050(4)(i).
33. No additional conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #24). OAR 690-018-0050(4)(j).
34. On August 28, 2015, the Department issued a draft Preliminary Determination and sent copies to the applicant, commenters, and the parties that had previously requested copies of the determination. The applicant provided comments to the draft Preliminary Determination.

**Determination and Proposed Action**

The project described in Allocation of Conserved Water Application CW-72 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.*

*If Allocation of Conserved Water Application CW-72 is approved, the Order Approving will include the following:*

1. *The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #4 and #20.*
2. *The proposed allocation of conserved water, as mitigated, will not harm existing water rights. Findings of Fact #24 and #33.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #22.*
4. *The changes proposed in CW-72 are approved.*
5. *The quantities of water conserved and allocated are as follows:*

<b>Conserved Water less Mitigation</b>			<b>State's Portion</b>			<b>Applicant's Portion</b>		
<i>Percentage</i>	<i>Maximum Rate (CFS)</i>	<i>Maximum Duty (Volume) AF</i>	<i>Percentage</i>	<i>Maximum Rate (CFS)</i>	<i>Maximum Duty (Volume) AF</i>	<i>Percentage</i>	<i>Maximum Rate (CFS)</i>	<i>Maximum Duty (Volume) AF</i>
100%	1.64	276.97	25%	0.41	69.24	75%	1.23	207.73

6. *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 83856 and any related decree.*

7. *Water Right Certificate 83856 is cancelled. A new certificate will be issued for the existing use and place of use (described in Finding of Fact #5) at the reduced rate and duty as follows:*

**Use:** *IRRIGATION of 205.20 ACRES*  
**Priority Date:** *JUNE 25, 1981*  
**Rate:** *3.42 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-SIXTHIETH (1/60) 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 615.60 acre-feet per year.*  
**Source:** *UNNAMED STREAM with any deficiency supplied by Westland Irrigation District WASTEWATER, tributaries to the UMATILLA RIVER*

8. *Water use measurement conditions:*
- a. *Before the use of the Applicant's 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 of the following points:*
    1. *Inflow of the Unnamed Stream into the pond,*
    2. *Inflow of all Westland Irrigation District's canal water into the pond,*
    3. *The authorized point of diversion (Pump/outlet of pond),*
  - b. *The water user shall maintain the meters or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
  - d. *If the Director notifies the water user to install additional totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice.*

9. *The project is complete and no additional time is needed for finalization. (Finding of Fact #32).*

10. *The Applicant's portion of conserved water may be utilized as listed below until further notice is provided as set forth in ORS 537.490(10) and OAR 690-018-0090:*

**Orig. Certificate:** *83856*  
**Use:** *IRRIGATION of 75.90 ACRES*  
**Priority Date:** *JUNE 25, 1981*  
**Rate:** *1.23 CUBIC FEET PER SECOND*  
**Source:** *UNNAMED STREAM with any deficiency supplied by Westland Irrigation District WASTEWATER, tributaries to the UMATILLA RIVER*  
**Limit:** *207.73 Acre-Feet per Year*



**Point of Diversion:**

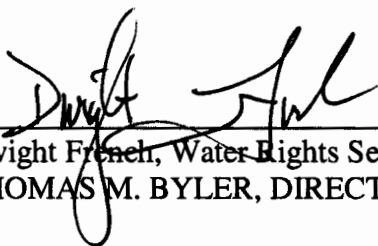
<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
5 N	28 E	WM	33	SW SW	1320 FEET NORTH AND 70 FEET EAST FROM THE SW CORNER OF SECTION 33

**Place of Use:**

<i>Twn</i>	<i>Range</i>	<i>Mer.</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Tax Lot</i>	<i>Acres</i>
5 N	28 E	WM	28	SW SW	200	2.3
5 N	28 E	WM	29	NE SE	1404	5.1
5 N	28 E	WM	29	SE SE	1404	14.8
5 N	28 E	WM	32	NE NE	1404	2.0
5 N	28 E	WM	32	NE SE	1404	3.1
5 N	28 E	WM	32	SW SE	6300	9.0
5 N	28 E	WM	32	SE SE	6300	7.2
5 N	28 E	WM	32	SE SE	6001	8.9
5 N	28 E	WM	33	NE SW	400	11.1
5 N	28 E	WM	33	NW SW	400	3.8
5 N	28 E	WM	33	SW SW	400	4.6
5 N	28 E	WM	33	SE SW	1500	4.0
<b>Total</b>						<b>75.9</b>

11. The State's portion of conserved water, 0.41 cfs, limited to 69.24 acre feet, shall revert to the public for appropriation by the next user in priority.

Dated at Salem, Oregon this 5 day of November, 2015.

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

Mailing Date: NOV 09 2015

## 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 to 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).

**NOTICE TO ACTIVE DUTY SERVICEMEMBERS:** Active duty service members 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>.