



# Oregon

Kate Brown, Governor

## Water Resources Department

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November 27, 2017

### Applicant

Stanfield Hutterian Brethren  
c/o Herb Stahl  
36345 Despain Gulch Road  
Stanfield, OR 97875  
[herb.stahl@eotnet.net](mailto:herb.stahl@eotnet.net)

SUBJECT: Allocation of Conserved Water Application CW-98

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-98.

If no protest is filed, the Department will issue a Final Order consistent with this Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest period for the conserved water application.

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@oregon.gov](mailto:teri.k.hranac@oregon.gov), if I may be of assistance.

Sincerely,

Teri Hranac  
Allocation of Conserved Water  
Transfer and Conservation Section

Enclosure

cc: CW-98  
Dale VanSchoiack, CWRE (*via email at dalevconsulting@gmail.com*)  
Bill Porfily (*via email at bporfily@my180.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-98,                         ) PROPOSING APPROVAL ON  
Umatilla and Morrow Counties             ) COMPLETION OF ALLOCATION OF  
   ) CONSERVED WATER CW-98

**Applicant**

Stanfield Hutterian Brethren  
c/o Herb Stahl  
36345 Despain Gulch Road  
Stanfield, OR 97875

**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.

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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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 May 17, 2017, the Stanfield Hutterian Brethren filed an allocation of conserved water application under Certificates 91005, 91006, 91007, and 91008. The Department assigned the application number CW-98.
2. The conservation project involves modifying the center pivot circle irrigation machines to operate at lower pressures and reduced flows, and installation of state-of-the-art new low pressure, low flow spray nozzles. The low pressure, low flow nozzles are a proven technology for conserving water.
3. Application CW-98 proposes a rate reduction of approximately 27.5 cubic feet per second (cfs) and proposes to reduce the annual volume by 4,921.25 acre-feet (AF).

Conserved Water Description											
		Certificate				Needed				Conserved Water	
		Rate		Duty		Rate		Duty		Rate	Duty
Priority	Certificate	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	Maximum AF
8/15/1967	91005	43.90	1/40	7902.45	4.5	29.27	1/60	5268.3	3.0	14.63	2634.15
3/9/1979	91006	32.25	1/40	5805.00	4.5	21.50	1/60	3870.0	3.0	10.75	1935.00
9/23/1983	91007	4.90	1/40	881.10	4.5	3.27	1/60	587.4	3.0	1.63	293.70
4/6/1977	91008	1.46	1/40	233.60	4.0	0.97	1/60	175.2	3.0	0.49	58.4
<b>Totals</b>		<b>82.51</b>		<b>14822.15</b>		<b>55.01</b>		<b>9900.9</b>		<b>27.50</b>	<b>4921.25</b>

4. The portion of the first right to be modified by CW-98 is as follows:
  - Certificate:** 91005 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-32309)
  - Use:** IRRIGATION of 1756.1 ACRES
  - Priority Date:** AUGUST 15, 1967
  - Rate:** 43.9 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 per acre, 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
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	1	NE NW	3	6.40
4 N	26 E	WM	1	SW NW		28.4
4 N	26 E	WM	1	SE NW		36.6
4 N	26 E	WM	1	NE SW		36.9
4 N	26 E	WM	1	NW SW		32.0
4 N	26 E	WM	1	SW SW		37.6
4 N	26 E	WM	1	SE SW		35.7
4 N	26 E	WM	2	SE NE		0.3
4 N	26 E	WM	2	NW SW	16	0.8
4 N	26 E	WM	2	SW SW	13	20.4
4 N	26 E	WM	2	SE SW	14	2.5
4 N	26 E	WM	2	SW SE		1.5
4 N	26 E	WM	2	SE SE		6.5
4 N	26 E	WM	3	SE SW		9.5
4 N	26 E	WM	3	SW SE		22.0
4 N	26 E	WM	3	SE SE		30.6
4 N	26 E	WM	10	NE NE		6.0
4 N	26 E	WM	10	SE NE		0.3
4 N	26 E	WM	10	NE SE		0.2
4 N	26 E	WM	10	SE SE		0.3
4 N	26 E	WM	11	NE NE		37.9
4 N	26 E	WM	11	NW NE		38.3
4 N	26 E	WM	11	SW NE		38.5
4 N	26 E	WM	11	SE NE		37.1
4 N	26 E	WM	11	NE NW		37.6
4 N	26 E	WM	11	NW NW		38.7
4 N	26 E	WM	11	SW NW		34.9
4 N	26 E	WM	11	SE NW		38.3
4 N	26 E	WM	11	NE SW		37.0
4 N	26 E	WM	11	NW SW		33.1
4 N	26 E	WM	11	SW SW		32.6
4 N	26 E	WM	11	SE SW		36.4
4 N	26 E	WM	11	NE SE		37.1
4 N	26 E	WM	11	NW SE		36.6
4 N	26 E	WM	11	SW SE		38.1
4 N	26 E	WM	11	SE SE		36.3
4 N	26 E	WM	12	NE NW		35.4
4 N	26 E	WM	12	NW NW		36.1
4 N	26 E	WM	12	SW NW		37.5

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	12	SE NW		37.0
4 N	26 E	WM	12	NE SW		35.2
4 N	26 E	WM	12	NW SW		33.4
4 N	26 E	WM	12	SW SW		39.2
4 N	26 E	WM	12	SE SW		36.6
4 N	26 E	WM	13	NE NW		36.4
4 N	26 E	WM	13	NW NW		35.3
4 N	26 E	WM	13	SW NW		31.7
4 N	26 E	WM	13	SE NW		36.6
4 N	26 E	WM	13	NE SW		35.1
4 N	26 E	WM	13	NW SW		31.5
4 N	26 E	WM	13	SW SW		30.6
4 N	26 E	WM	13	SE SW		28.7
4 N	26 E	WM	14	NE NE		7.9
4 N	26 E	WM	14	NW NE		5.0
4 N	26 E	WM	14	SE NE		0.1
4 N	26 E	WM	14	NE NW		6.5
4 N	26 E	WM	14	NE SE		0.3
4 N	26 E	WM	14	SE SE		0.2
4 N	26 E	WM	15	NE NE		26.6
4 N	26 E	WM	15	NW NE		30.8
4 N	26 E	WM	15	SW NE		35.7
4 N	26 E	WM	15	SE NE		31.1
4 N	26 E	WM	15	NE NW		27.5
4 N	26 E	WM	15	NW NW		32.4
4 N	26 E	WM	15	SW NW		35.4
4 N	26 E	WM	15	SE NW		39.2
4 N	26 E	WM	15	NE SW		9.6
4 N	26 E	WM	15	NW SW		1.6
4 N	26 E	WM	15	NW SE		6.9
Total						1756.1

5. The portion of the second right to be modified by CW-98 is as follows:

**Certificate:** 91006 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-44511)  
**Use:** IRRIGATION of 1290.0 ACRES  
**Priority Date:** MARCH 9, 1979  
**Rate:** 32.25 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 per acre, 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
5 N	26 E	WM	23	SE NE	1	POD 1: 600 FEET NORTH AND 230 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 23

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	1	SW NW		2.5
4 N	26 E	WM	1	NW SW		5.3
4 N	26 E	WM	2	SW NE		7.4
4 N	26 E	WM	2	SE NE		12.3
4 N	26 E	WM	2	SE NW	10	3.8
4 N	26 E	WM	2	NE SW	11	35.9
4 N	26 E	WM	2	NW SW	16	21.0
4 N	26 E	WM	2	SW SW	13	15.5
4 N	26 E	WM	2	SE SW	14	36.3
4 N	26 E	WM	2	NE SE		37.2
4 N	26 E	WM	2	NW SE		38.5
4 N	26 E	WM	2	SW SE		35.0
4 N	26 E	WM	2	SE SE		29.3
4 N	26 E	WM	3	SW SW		4.2
4 N	26 E	WM	10	NE NW		32.1
4 N	26 E	WM	10	NW NW		31.6
4 N	26 E	WM	10	SW NW		37.9
4 N	26 E	WM	10	SE NW		37.5
4 N	26 E	WM	10	NE SW		34.5
4 N	26 E	WM	10	NW SW		37.1
4 N	26 E	WM	10	SW SW		35.2
4 N	26 E	WM	10	SE SW		39.8
4 N	26 E	WM	10	NW SE		31.5
4 N	26 E	WM	10	SW SE		40.1
4 N	26 E	WM	10	SE SE		36.7
4 N	26 E	WM	11	NE NW		1.4
4 N	26 E	WM	11	NW NW		0.1
4 N	26 E	WM	11	SW SW		5.5
4 N	26 E	WM	13	SW NW		6.5
4 N	26 E	WM	13	NW SW		3.8
4 N	26 E	WM	13	SW SW		4.2
4 N	26 E	WM	14	NE NE		26.3
4 N	26 E	WM	14	NW NE		29.9
4 N	26 E	WM	14	SW NE		38.7
4 N	26 E	WM	14	SE NE		38.3
4 N	26 E	WM	14	NE NW		26.9
4 N	26 E	WM	14	NW NW		36.3
4 N	26 E	WM	14	SW NW		37.8
4 N	26 E	WM	14	SE NW		38.1
4 N	26 E	WM	14	NE SW		35.0
4 N	26 E	WM	14	NW SW		39.2
4 N	26 E	WM	14	SW SW	1	11.5
4 N	26 E	WM	14	SE SW	3	26.0
4 N	26 E	WM	14	NE SE		36.9
4 N	26 E	WM	14	NW SE		34.4

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	14	SW SE	5	32.5
4 N	26 E	WM	14	SE SE		35.8
4 N	26 E	WM	15	NE NE		7.9
4 N	26 E	WM	15	NW NE		7.1
4 N	26 E	WM	15	SE NE		8.0
4 N	26 E	WM	15	NE NW		7.8
4 N	26 E	WM	15	NW NW		1.9
4 N	26 E	WM	15	NE SE		14.6
4 N	26 E	WM	23	NE NE		14.3
4 N	26 E	WM	23	NW NE		0.5
4 N	26 E	WM	24	NW NW	4	4.6
Total						1290.0

6. Certificate 91006 contains scriveners' errors in the calculation of the total acreage and corresponding quantity from each point of diversion. The certificate should read as follows: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 32.7 CUBIC FEET PER SECOND (CFS), further limited to no more than **32.25** CFS from POD 1 for irrigation of **1290.0** acres and **0.45** CFS from POD 2 for irrigation of **18.0** acres, or its equivalent in case of rotation, measured at the point of diversion.

7. The entirety of the third right to be modified by CW-98 is as follows:

**Certificate:** 91007 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-48119)

**Use:** IRRIGATION of 195.8 ACRES

**Priority Date:** SEPTEMBER 23, 1983

**Rate:** 4.9 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
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	10	NE NE	31.7
4 N	26 E	WM	10	NW NE	37.6
4 N	26 E	WM	10	SW NE	38.1
4 N	26 E	WM	10	SE NE	36.1
4 N	26 E	WM	10	NE NW	2.0
4 N	26 E	WM	10	SE NW	0.7



Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	10	NE SE	35.1
4 N	26 E	WM	10	NW SE	5.0
4 N	26 E	WM	11	SW NW	4.4
4 N	26 E	WM	11	NW SW	5.1
Total					195.8

8. The entirety of the fourth right to be modified by CW-98 is as follows:

**Certificate:** 91008 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-43935)

**Use:** IRRIGATION of 58.4 ACRES

**Priority Date:** APRIL 6, 1977

**Rate:** 1.46 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 4.0 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
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 N	26 E	WM	13	SW SW		1.5
4 N	26 E	WM	13	SE SW		0.9
4 N	26 E	WM	24	NE NW	3	34.3
4 N	26 E	WM	24	NW NW	4	21.7
Total						58.4

9. Certificates 91005, 91006, 91007, and 91008 do not list a period of use. However, the Umatilla decree states the irrigation season ordinarily is between March 1 and November 1.
10. 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 rights are subject to forfeiture under ORS 540.610. In addition, confirming certificates 91005, 91006, 91007, and 91008 were issued on December 1, 2015.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of the application.
12. The Applicant requests that the priority dates for any conserved water be the one minute junior to the priority dates of the originating rights.

13. The Applicant requests the conserved water be allocated as follows:

Priority	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
8/15/1967*	91005	25%	3.66	658.54	75%	10.97	1975.61	100%	14.63	2634.15
3/9/1979*	91006	25%	2.69	483.80	75%	8.06	1451.20	100%	10.75	1935.00
9/23/1983*	91007	25%	0.41	73.43	75%	1.22	220.27	100%	1.63	293.70
4/6/1977*	91008	25%	0.12	14.60	75%	0.37	43.80	100%	0.49	58.40
Totals			<b>6.88</b>	<b>1230.37</b>		<b>20.62</b>	<b>3690.88</b>		<b>27.50</b>	<b>4921.25</b>

\* - plus one minute

14. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Township 2 North, Ranges 23, 24, 26, 27, and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, and 30 East, W.M.; Township 4 North, Ranges 23, 24, 25, 26, 27, 28, 29, and 30 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, and 30 East, W.M.
15. On October 26, 2017, the Applicant requested the areas for proposed out-of-stream use include Township 3 North, Range 31; Township 4 North, Range 31; and Township 5 North Range 31.
16. The Applicant funded 100% of the conservation project.
17. The Applicant submitted a completed Land Use Form from Morrow County which indicated the proposed use was allowed outright or is not regulated by Morrow County's comprehensive plan.
18. The implementation of the conservation measures began no earlier than April 1, 2017. The Applicant provided evidence that it attempted to identify and resolve the concerns of water right holders in the area, governmental entities and other organizations.
19. 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.
20. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificates 91005, 91006, 91007, and 91008 from the authorized points of diversion to the mouth of the Columbia River.
21. The Applicant submitted a Notice of Completion with the application indicating the project was complete. In addition, the Applicant indicated it would submit a Request for Finalization of the allocation on or before April 30, 2022.
22. The application meets the requirements of OAR 690-018-0040.
23. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) to ascertain whether the proposed instream flows are necessary to support public benefits.

24. Notice of the proposed conservation project was published in the Department’s weekly notice on June 13, 2017, and in the East Oregonian newspaper on June 13 and 20, 2017, 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]***

25. The proposed allocation of conserved water will result in reduced diversions of the uses allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #3).
26. On September 25, 2017, 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. However, the Watermaster has indicated the quantity of water to be protected instream is not a measurable quantity in the Columbia River; therefore, the instream water right will only be protected at the authorized point of diversion. OAR 690-018-0050(4)(b) and (d).
27. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #17). OAR 690-018-0050(4)(c).
28. 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-98 are as follows:

Priority	Originating Certificate	Acres	Rate		Duty	
			Maximum CFS	CFS/AC	Maximum AF	AF/AC
8/15/1967	91005	1756.1	29.27	1/60	5,268.3	3.0
3/9/1979	91006	1290.0	21.50	1/60	3,870.0	3.0
9/23/1983	91007	195.8	3.27	1/60	587.4	3.0
4/6/1977	91008	58.4	0.97	1/60	175.2	3.0

(Finding of Fact #3).

29. Pursuant to OAR 690-018-0050(4)(e), the rates and volumes allocated to the State for instream use are as follows:

Priority	Originating Certificate	Maximum Rate	Maximum Duty (Volume)
8/15/1967, <i>plus one minute</i>	91005	3.66	658.54
3/9/1979, <i>plus one minute</i>	91006	2.69	483.80
9/23/1983, <i>plus one minute</i>	91007	0.41	73.43
4/6/1977, <i>plus one minute</i>	91008	0.12	14.60
<b>Totals</b>		<b>6.88</b>	<b>1230.37</b>

Finding of Fact #13.

30. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed instream water right will provide an additional protected instream water right for 13 threatened and/or endangered species in the Columbia River basin. Species include upper Columbia River spring Chinook, Snake River

spring/summer Chinook, lower Columbia River Chinook, upper Willamette Chinook, Snake River fall Chinook, Columbia River Chum, lower Columbia River Chinook, Snake River sockeye, upper Columbia River Steelhead, middle Columbia River Steelhead, Snake River basin Steelhead, lower Columbia River Steelhead, and upper Willamette Steelhead. The period of April 15 to September 30 has been identified in Division 33 for no additional water diversions; therefore, additional flows during this period would be beneficial to the species listed above for rearing, passage and habitat value. (Finding of Fact #23).

31. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of conserved water allocated to the Applicant does not need to be adjusted because the Applicant funded 100% of the project. (Finding of Fact #16). The rate and volume allocated to the Applicant is as follows:

Priority Date	Originating Certificate	Maximum Rate (CFS)	Maximum Duty/Volume (AF)
8/15/1967, <i>plus one minute</i>	91005	10.97	1975.61
3/9/1979, <i>plus one minute</i>	91006	8.06	1451.20
9/23/1983, <i>plus one minute</i>	91007	1.22	220.27
4/6/1977, <i>plus one minute</i>	91008	0.37	43.8
<b>Totals</b>		<b>20.62</b>	<b>3690.88</b>

(Finding of Fact #13).

32. The new instream water right created will be protected in the Columbia River at the common authorized point of diversion as described in Findings of Fact #4, #5, #7, and #8, at approximately River Mile 278.3. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
33. To prevent enlargement, the rate of water to be protected instream must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be protected throughout the entire irrigation season.
34. The instream right shall allow the use and protection of flows as follows:

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
8/15/1967, <i>plus one minute</i>	91005	March 1 through October 31	1.36	658.54
3/9/1979, <i>plus one minute</i>	91006	March 1 through October 31	1.00	483.80
9/23/1983, <i>plus one minute</i>	91007	March 1 through October 31	0.15	73.43
4/6/1977, <i>plus one minute</i>	91008	March 1 through October 31	0.03	14.60
<b>Totals</b>			<b>2.54</b>	<b>1230.37</b>

35. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).
36. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
- OAR 690-077-0015(8).

37. The combination of instream rights for the proposed point 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(4) and (11).
38. There are no existing instream water rights on the Columbia River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process). 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 rights 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).
39. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Township 2 North, Ranges 23, 24, 26, 27, and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, 30, and 31 East, W.M.; Township 4 North, Ranges 23, 24, 25, 26, 27, 28, 29, 30, and 31 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, 30, and 31 East, W.M. (Findings of Fact #14 and #15). OAR 690-018-0050(4)(h).
40. The project is complete. The applicant submitted a Notice of Completion with the application. The Notice of Completion form indicates the Applicant will file a Request for Finalization on or before April 30, 2022. (Finding of Fact #21). OAR 690-018-0050(4)(i).
41. Based on the submitted Notice of Completion form, the deadline for submitting a Request for Finalization would be April 30, 2022. However, on page 21 of the application, the Applicant indicated the implementation of the conservation measures began no earlier than April 1, 2017. Based on this statement, the deadline for submitting a Request for Finalization is April 1, 2022, being no more than five years from implementation of the conservation measures. OAR 690-018-0050(4)(i).
42. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #26). OAR 690-018-0050(4)(j).

### **Determination and Proposed Action**

The project described in Allocation of Conserved Water Application CW-98, 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-98 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 rights. Findings of Fact #3 and #28.*
2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #26.*

3. *The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #17 and #27.*
4. *The changes proposed in CW-98 are approved.*
5. *The quantities of water conserved and allocated are as follows:*

Priority	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
8/15/1967*	91005	25%	3.66	658.54	75%	10.97	1975.61	100%	14.63	2634.15
3/9/1979*	91006	25%	2.69	483.80	75%	8.06	1451.20	100%	10.75	1935.00
9/23/1983*	91007	25%	0.41	73.43	75%	1.22	220.27	100%	1.63	293.70
4/6/1977*	91008	25%	0.12	14.60	75%	0.37	43.80	100%	0.49	58.40
<b>Totals</b>			<b>6.88</b>	<b>1230.37</b>		<b>20.62</b>	<b>3690.88</b>		<b>27.50</b>	<b>4921.25</b>

\* - plus one minute

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 Certificates 91005, 91006, 91007, 91008, and any related decree.*
7. *Water Right Certificates 91005, 91006, 91007, and 91008 are cancelled. New certificates will be issued for the portions of Certificates 91005 and 91006 not affected by this conserved water application.*
8. *All conserved water shall be managed instream until a Request for Finalization is filed and approved. To prevent enlargement, the rate of water to be managed instream must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be managed throughout the entire irrigation season, as follows:*

*Columbia River: At the common authorized point of diversion under Certificates 91005, 91006, 91007, and 91008 located at approximately River Mile 278.3:*

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
8/15/1967, plus one minute	91005	March 1 through October 31	5.42	2634.15
3/9/1979, plus one minute	91006	March 1 through October 31	3.98	1935.00
9/23/1983, plus one minute	91007	March 1 through October 31	0.60	293.70
4/6/1977, plus one minute	91008	March 1 through October 31	0.12	58.40
<b>Totals</b>			<b>10.12</b>	<b>4921.25</b>

9. The Applicant may continue to use water on the places of use for Certificates 91005, 91006, 91007, and 91008, identified in Findings of Fact #4, #5, #7, and #8 at the reduced rates and duties as follows, until a Request for Finalization is submitted and approved:

Priority	Originating Certificate	Acres	Rate		Duty	
			Maximum CFS	CFS/AC	Maximum AF	AF/AC
8/15/1967	91005	1756.1	29.27	1/60	5,268.3	3.0
3/9/1979	91006	1290.0	21.50	1/60	3,870.0	3.0
9/23/1983	91007	195.8	3.27	1/60	587.4	3.0
4/6/1977	91008	58.4	0.97	1/60	175.2	3.0

10. The proposed areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within Township 2 North, Ranges 23, 24, 26, 27 and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, 30, and 31 East, W.M.; Township 4 North, Ranges 23, 24, 25, 26, 27, 28, 29, 30, and 31 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, 30, and 31 East, W.M.
11. The deadline for submitting a Request for Finalization is on or before April 1, 2022.

**Upon Filing of a Request for Finalization**

12. The project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water (20.62 cfs, 3,690.88 AF) shall be used and managed instream until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090 is received.

The water shall be managed instream at the common authorized point of diversion located at approximately River Mile 278.3:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

13. To prevent enlargement, the rate of Applicant's portion of conserved water to be managed instream must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be managed throughout the entire irrigation season, as follows:

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
8/15/1967, plus one minute	91005	March 1 through October 31	4.07	1975.61
3/9/1979, plus one minute	91006	March 1 through October 31	2.97	1451.20
9/23/1983, plus one minute	91007	March 1 through October 31	0.45	220.27
4/6/1977, plus one minute	91008	March 1 through October 31	0.09	43.80
<b>Totals</b>			<b>7.58</b>	<b>3690.88</b>

14. 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 (described in Finding of Fact #28) as follows:

**Originating**

**Certificate:** 91005 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-32309)

**Use:** IRRIGATION of 1756.1 ACRES

**Priority Date:** AUGUST 15, 1967

**Rate:** 29.7 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-SIXTIETH (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 5,268.3 acre-feet per year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

15. A superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #5) at the reduced rate and duty (described in Finding of Fact #28) as follows:

**Originating**

**Certificate:** 91006 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-44511)

**Use:** IRRIGATION of 1290.0 ACRES

**Priority Date:** MARCH 9, 1979

**Rate:** 21.5 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, shall be limited to ONE-SIXTIETH (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 3,870.0 acre-feet per year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

16. A superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #7) at the reduced rate and duty (described in Finding of Fact #28) as follows:

**Originating**

**Certificate:** 91007 in the name of STANFIELD HUTTERIAN BRETHREN (perfected under Permit S-48119)

**Use:** IRRIGATION of 195.8 ACRES

**Priority Date:** SEPTEMBER 23, 1983

**Rate:** 3.27 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-SIXTIETH (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 587.4 acre-feet per year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

17. A superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #8) at the reduced rate and duty (described in Finding of Fact #28) as follows:

**Originating**

**Certificate:** 91008 in the name of STANFIELD HUTTERIAN BRETHERN (perfected under Permit S-43935)

**Use:** IRRIGATION of 58.4 ACRES

**Priority Date:** APRIL 6, 1977

**Rate:** 0.97 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 ONE-SIXTIETH (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 175.2 acre-feet per year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

18. 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 point of diversion.
- 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.

19. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Columbia River. The instream right shall allow the use and protection of flows as follows:

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
8/15/1967, plus one minute	91005	March 1 through October 31	1.36	658.54
3/9/1979, plus one minute	91006	March 1 through October 31	1.00	483.80
9/23/1983, plus one minute	91007	March 1 through October 31	0.15	73.43
4/6/1977, plus one minute	91008	March 1 through October 31	0.03	14.60
<b>Totals</b>			<b>2.54</b>	<b>1230.37</b>

*Columbia River: At the authorized common point of diversion under Certificates 91005, 91006, 91007, and 91008 located at approximately River Mile 278.3:*

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>GLot</i>	<i>Measured Distances</i>
5 N	26 E	WM	23	SE NE	1	600 FEET NORTH AND 230 FEET WEST FROM EAST 1/4 CORNER OF SECTION 23

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

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

Mailing Date: NOV 28 2017

### 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 REGARDING SERVICEMEMBERS:** Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act 50 U.S.C. App. §§ 501-597b. You may contact the Oregon State Bar or the Military Department for more information. The toll-free telephone number for the Oregon State Bar is (800) 452-8260. The toll-free number for the Oregon Military Department is: (800) 452-7500. The internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is <http://legalassistance.law.af.mil>.

