

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

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

**Applicants**

Barbara & Fred Foulke  
12145 Elkins Road  
Monmouth, OR 97361

**Applicable Law**

Any person or group of persons holding a water use subject to transfer as defined in ORS 540.505 may submit an application for an Allocation of Conserved Water to the Water Resources Commission for a conservation project that has not yet been implemented or was implemented within five years prior to the submission of the application. ORS 537.465. Under the Allocation of Conserved Water Program, a portion of the water proposed to be conserved by an applicant may be used on additional lands, put to a different use, or be leased or sold to another user. OAR 690-018-0010. A portion of the water conserved is allocated to the state to be converted to an instream water right or to revert to the public for appropriation by other water users. ORS 537.470(3).

An application for an allocation of conserved water shall include: (a) A description of the measure as implemented and the date on which the measure was implemented; (b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented; (c) The amount of water needed to supply existing rights after implementation of the conservation measure; (d) The amount of water conserved by implementing the conservation measure; (e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470; (f) The intended use of any water allocated to the applicant and the proposed location of use; (g) The applicant's choice of priority date for the conserved water; (h) Evidence that the measure was implemented within five years prior to the date of filing the application; and (i) Any other information the commission considers necessary to evaluate the application. ORS 537.465.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

After determining any quantity of water needed to mitigate the effects on other water rights, 25-percent of the conserved water shall be allocated to the state and 75-percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25-percent of the funds used to finance the conservation measures comes from federal or state sources. ORS 537.470(3).

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

ORS 537.455 to 537.500 authorize and establish the process by which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 18, implements the statutes and provides the Department’s procedures and criteria for evaluating allocation of conserved water applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

**Findings of Fact**

1. On February 22, 2017, Barbara and Fred Foulke filed an allocation of conserved water application under Certificate 48577. The Department assigned the application number CW-97.
2. The conservation project involved converting the existing delivery system from rain bird sprinklers to drip irrigation. The conversion from sprinklers to drip irrigation is a proven technology for conserving water.
3. On September 27, 2017, the Department issued a Final Order of Approval of Allocation of Conserved Water CW-97, and mailed a copy to the Applicants and Applicants’ agent on September 28, 2017.
4. The Final Order included the following findings and conclusions:
  - a. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right.
  - b. No quantity of conserved water is needed to mitigate for harm to other water rights.
  - c. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045.
  - d. The new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-97 under Certificate 48577 are as follows:

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

- e. The rate and volume allocated to the State to remain in the source aquifer is as follows:

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

- f. The rate and volume allocated to the Applicants are as follows:

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

- g. The areas within which the conserved water is proposed to be used for out-of-stream uses are within the SENE, SWNE, SENW, NESW, NWSE, and NESE, Section 5, Township 11 South, Range 4 West, W.M.
- h. The priority date for any conserved water is the same as the originating right.
- i. To prevent enlargement of the right, the water user shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water use measurements to the Department annually, or more frequently as may be required by the Director.

5. On May 25, 2018, the Applicants submitted a Notice of Completion and Request for Finalization of the project. The request for finalization requested the Applicant's portion of conserved water be utilized as follows:

**Use:** IRRIGATION of 35.9 ACRES  
**Priority Date:** MARCH 31, 1975  
**Rate:** 0.07 CUBIC FOOT PER SECOND  
**Limit/Duty:** 29.8 ACRE-FEET  
**Source:** WELL NO. 2 within the WILLAMETTE RIVER BASIN

**Authorized Point of Appropriation:**

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

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
11 S	4 W	WM	5	SE NE	41	0.6
11 S	4 W	WM	5	SE NE	44	9.6
11 S	4 W	WM	5	SW NE	44	18.3
11 S	4 W	WM	5	SE NW	44	6.8
11 S	4 W	WM	5	NW SE	44	0.6
Total						35.9

**Conclusions of Law**

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

**Now, therefore, it is ORDERED:**

- The quantities of water to be conserved and allocated are as follows:

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
48577	25%	0.02	9.9	75%	0.07	29.8	100%	0.09	39.7

- The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificate 48577 and any related decree.
- Water Right Certificate 48577 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and a superseding Certificate will be issued for the existing use and place of use at the reduced rate and duty as follows:

**Use:** IRRIGATION of 22.4 ACRES  
**Priority Date:** MARCH 31, 1975  
**Rate:** 0.07 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of ONE THREE HUNDREDTH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 0.73 acre-feet per acre for each acre irrigated during the irrigation season of each year and an annual volume limitation of 16.3 acre-feet. This right shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.  
**Source:** WELL NO. 2 within the WILLAMETTE RIVER BASIN

**Authorized Point of Appropriation:**

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

**Authorized Place of Use:**

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

- Water use measurement conditions:
  - Before the use of the Applicants' portion of conserved water, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.

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

**Use:** IRRIGATION of 35.9 ACRES  
**Priority Date:** MARCH 31, 1975  
**Rate:** 0.07 CUBIC FOOT PER SECOND  
**Limit/Duty:** 29.8 ACRE-FEET  
**Source:** WELL NO. 2 within the WILLAMETTE RIVER BASIN

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**Authorized Place of Use:**

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11 S	4 W	WM	5	SE NE	41	0.6
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11 S	4 W	WM	5	SE NW	44	6.8
11 S	4 W	WM	5	NW SE	44	0.6
Total						35.9

8. The State's portion of conserved water (0.02 cfs, 9.9 AF) shall remain in the aquifer.

Dated at Salem, Oregon this JUN 07 2018.

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

Mailing date: JUN 07 2018