

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

In the Matter of Allocation of Conserved)
 Water Application CW-107,)
 Douglas County)
)
) PRELIMINARY DETERMINATION
) PROPOSING ON COMPLETION AND
) FINALIZATION ALLOCATION OF
) CONSERVED WATER CW-107 AND CHANGE
) IN POINT OF DIVERSION FOR CERTIFICATE
) 5033

Applicant

Hempterra
 Attn: Rulsan Pop
 501 Addy Lane
 Roseburg, OR 97417

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.

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.

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 not subject to repayment. 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 11, 2019, Hempterra filed an allocation of conserved water application under Certificate 5033. The Department assigned the application number CW-107.
2. The conservation project involves moving the point of diversion approximately 900 feet downstream and converting from flood irrigation to a drip irrigation system. The conversion from flood to drip irrigation is a proven technology for conserving water.
3. Application CW-107 proposes a rate reduction of approximately 0.11 cubic foot per second (cfs) and proposes to reduce the annual volume by approximately 53.36 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
5033	0.19	1/80	92.3	6.15	0.08	1/185	38.88	2.59	0.11	53.36

4. The portion of the right to be modified by CW-107 is as follows:
 - Certificate:** 5033 in the name of G.W. Burt (perfected under Permit S-5857)
 - Use:** IRRIGATION of 15.0 ACRES
 - Priority Date:** April 17, 1923
 - Rate:** 0.19 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-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
 - Source:** SOUTH UMPQUA RIVER, tributary of the UMPQUA RIVER
 - Authorized Point of Diversion:** NONE LISTED

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	6 W	WM	3	SW SW	10.0
28 S	6 W	WM	3	SE SW	5.0

5. Certificate 5033 does not list an authorized point of diversion. However, based on the application and permit map, the Certified Water Right Examiner, and the Department's records, the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
28 S	6 W	WM	3	SW SW	NORTH 89 DEGREES 24 MINUTES EAST 427.0 FEET FROM THE SW ¼ CORNER OF SECTION 3

6. Certificate 5033 does not list a period of use; therefore, pursuant to OAR 690-250-0070, the irrigation season of use is March 1 through October 31.
7. The Applicant proposes to move the point of diversion approximately 900 feet downstream to the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	6 W	WM	3	SW SW	402 FEET NORTH AND 1268 FEET EAST FROM THE SW ¼ CORNER OF SECTION 3

8. 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.
9. 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.
10. The Applicant requests that the conserved water be allocated 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
5033	25%	0.027	13.10	75%	0.083	40.26	100%	0.110	53.36

11. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Sections 3, 4, 9, and 10, Township 28 South, Range 6 West, W.M.
12. The Applicant requests that the priority date for any conserved water be the same as the originating right.
13. The Applicant funded 100% of the conservation project.

14. The Applicant submitted a completed Land Use Form from Douglas County which indicated the proposed use was allowed outright or is not regulated by Douglas County's comprehensive plan.
15. The implementation of the conservation measures began June 1, 2018. By filing this application, the Applicant is attempting to resolve any known concerns of the water right holders in the area, governmental entities, other organizations, and the Watermaster.
16. 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.
17. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 5033 in the South Umpqua River at the original authorized point of diversion.
18. On February 11, 2019, the Applicant submitted a Notice of Completion with the application indicating the project was complete. In addition, the Applicant also submitted a Request for Finalization of the allocation. The application meets the requirements of OAR 690-018-0040.
19. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) to ascertain whether the proposed instream flows are necessary to support instream flow uses. ODFW reports the proposed instream water right is necessary to replace existing instream water rights with an earlier priority date.
20. Notice of the proposed conservation project was published in the Department's weekly notice on April 2, 2019, and in The News-Review newspaper on March 28, and April 4, 2019, 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]

21. 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 #3).
22. On February 19, 2019, the District #15 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).
23. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #14). OAR 690-018-0050(4)(c).

24. 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-107 under Certificate 5033 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
5033	0.08	1/185	38.88	2.59

(Finding of Fact #3).

25. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is as follows:

Maximum Rate	Maximum Duty (Volume)
0.027 cfs	13.10 AF

(Finding of Fact #10).

26. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. (Finding of Fact #19).
27. 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 #13). The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
April 17, 1923	0.083 cfs	40.26 AF

(Finding of Fact #10).

28. The new instream water right created will be protected in the South Umpqua River at the authorized point of diversion as described in Finding of Fact #5, at approximately river mile 130.5. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

29. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
April 17, 1923	3/1 through 10/31	0.027	13.10

At the original authorized point of diversion at approximately river mile 130.5 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
28 S	6 W	WM	3	SW SW	NORTH 89 DEGREES 24 MINUTES EAST 427.0 FEET FROM THE SW ¼ CORNER OF SECTION 3

30. 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).
31. The protection of flows at the authorized point of diversion is appropriate, considering:
- The instream water use is at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.

- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. 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).

- 32. The combination of instream rights for the proposed reach on the South Umpqua River does not exceed the amount needed to provide increased public benefits, and do not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
- 33. Instream water right Certificates 59701, 59544, and 59954 exist on the South Umpqua River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process). The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), at the proposed point on the South Umpqua River are sufficient to protect the monthly quantities of water necessary for supporting aquatic life, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a result of this conserved water application will provide protection of stream flows identified as necessary for supporting aquatic life under an earlier priority date.
- 34. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this transfer would provide protection for additional flows identified as necessary for supporting aquatic fish life. OAR 690-077-0015(11).
- 35. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Sections 3, 4, 9, and 10, Township 28 South, Range 6 West, W.M. (Finding of Fact #11). OAR 690-018-0050(4)(h).
- 36. The project is complete and the applicant has requested the project be finalized. (Finding of Fact #18). OAR 690-018-0050(4)(i).
- 37. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #22). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-107 is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. The change in point of diversion is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. *If protests are not filed pursuant to OAR 690-018-0050(6), the conserved water application and change in point of diversion will be approved.*

If Allocation of Conserved Water Application CW-107 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 #3 and #24.
2. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #22.
3. The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #14 and #23.
4. The changes proposed in CW-107, including the change in point of diversion, are approved.
5. The quantities of water 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
5033	25%	0.027	13.10	75%	0.083	40.26	100%	0.110	53.36

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 5033 and any related decree.
7. Water Right Certificate 5033 is cancelled. Upon approval of the Claim of Beneficial Use, a superseding Certificate will be issued for the existing uses and place of use at the reduced rate and duty as follows:

Use: IRRIGATION of 15.0 ACRES

Priority Date: APRIL 17, 1923

Rate: 0.080 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 ONE-HUNDRED EIGHTIETH-FIFTH (1/185) 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 2.59 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation 38.88 acre-feet per year.

Source: SOUTH UMPQUA RIVER, tributary of the UMPQUA RIVER

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	6 W	WM	3	SW SW	402 FEET NORTH AND 1268 FEET EAST FROM THE SW ¼ CORNER OF SECTION 3

8. Full beneficial use of water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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 the completion of the point of diversion change and full beneficial use of water.
9. The water user shall maintain and operate the existing measurement device(s) and shall make such improvements as may be required by the Department.
10. The project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water (0.083 cfs, 40.26 AF) may be used as described below, until a subsequent Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090 is received. The following lands are within the area designated by the Applicant for out-of-stream uses in Findings of Fact #11 and #36.

Use: IRRIGATION of 15.0 ACRES
Priority Date: April 17, 1923
Rate: 0.083 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 ONE-HUNDRED EIGHTIETH (1/180) of one cubic foot per second per acre, and is further limited to an annual volume limitation of 40.26 acre-feet.
Source: SOUTH UMPQUA RIVER, tributary of the UMPQUA RIVER

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	6 W	WM	3	SW SW	402 FEET NORTH AND 1268 FEET EAST FROM THE SW SECTION CORNER OF SECTION 3

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	6 W	WM	3	SW SW	11.5
28 S	6 W	WM	4	SE SE	3.5
Total					15.0

11. The areas within which the conserved water may be used for out-of-stream uses are within Township within Sections 3, 4, 9, and 10, Township 28 South, Range 6 West, W.M.
12. 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 as follows:

Priority Date	Period of Use	Rate (cfs)	Volume (AF)
April 17, 1923	3/1 through 10/31	0.027	13.10

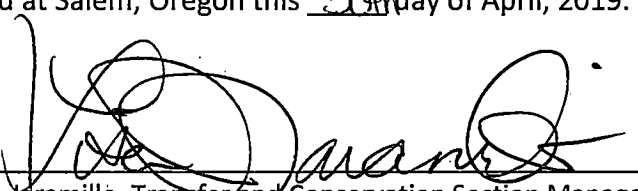
At the original authorized point of diversion at approximately river mile 130.5 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
28 S	6 W	WM	3	SW SW	NORTH 89 DEGREES 24 MINUTES EAST 427.0 FEET FROM THE SW SECTION CORNER OF SECTION 3

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon this 30th day of April, 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date: MAY 02 2019

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 at 800-452-8260, the Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.