

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

In the Matter of Allocation of Conserved) ORDER APPROVING DISPOSITION OF
Water Application CW-84,) CONSERVED WATER UNDER
Morrow County) OAR 690-018-0090

Receiving Holder of CW-84

Farmland Reserve, Inc.
c/o AgriNorthwest
Attn: Matt Vickery
6716 West Rio Grande
Kennewick, WA 99336

Applicable Law

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 conserved water applications and for implementing the use of the conserved water.

Pursuant to ORS 537.470(3), the Department determined the allocation of conserved water under Conserved Water Application CW-84. Any person or agency allocated conserved water under ORS 537.470 may reserve the water instream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the Commission of any change in the type of use, place of use, or point of diversion. The notice must be submitted 60 days before the actual the change.

ORS 537.490(1) provides any person or agency to whom conserved water is allocated shall notify the Commission of the dispensation of the right to the conserved water. Pursuant to ORS 537.490(3) and OAR 690-018-0090(4), when a right to the use of conserved water is sold or given to an agency or political subdivision of the state or to a person: (a) the right shall become appurtenant to the premises upon which the use is made; (b) a certificate of water shall be issued upon satisfactory proof of use; and (c) unless dedicated to instream use, the right shall be subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

Pursuant to ORS 537.490(4), when the commission receives notice of the sale of the right to the use of conserved water, the commission shall issue to the purchaser a new water right certificate covering the right to the use of conserved water that was sold. The certificate shall indicate the priority of the water right according to the provisions of ORS 537.485.

Findings of Fact

1. On May 27, 2014, the Department issued a Final Order Approving on Completion and Finalization Allocation of Conserved Water CW-84 (Finalization Order), recorded at Special Order Volume 92, Pages 615-623.
2. The Finalization Order allocated the Applicant the following quantity of conserved water:

Priority Date	Maximum Rate	Maximum Duty (Volume)
6/29/1973, <i>plus one minute</i>	9.14 cfs	1325.07 AF

3. The Finalization Order also included the proposed areas for future out-of-stream use.
4. On November 1, 2016, the Applicant submitted a 60-Day Notice of Use or Disposition for Applicant’s Portion of Conserved Water (Notice). The Notice identified the entire quantity of the Applicant’s portion of conserved water was to revert from the place of use previously identified in Special Order Volume 92, Pages 624-626 to being managed instream.
5. To prevent enlargement of the right, the Department reduced the rate to 2.7 cubic feet per second (cfs) from 9.14 cfs so the annual volume limitation was not exceeded while it is being managed instream. The water to be managed instream was identified as follows:

Source: **Columbia River**

Priority Date	Period of Use	Rate (cfs)	Volume (acre-feet)
June 29, 1973 <i>plus one minute</i>	March 1 through October 31	2.7	1325.07

Reach: From the authorized point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

To the mouth at river mile 0.0.

6. On November 15, 2016, an Order Approving Use and Disposition of Applicant’s Portion of Conserved Water was issued and recorded at Special Order Volume 103, Pages 417-419.
7. On November 17, 2016, a Request for Assignment was submitted by Hale Farms, LLC notifying the Department of the dispensation of all interest in and to CW-84 (i.e., 9.14 cfs

of conserved water) to Farmland Reserve, Inc., c/o AgriNorthwest (Attn: Matt Vickery), 6716 West Rio Grande, Kennewick, WA 99336.

8. On November 30, 2016, the Department issued an Order Approving Disposition of Applicant's Portion of Conserved Water, recorded at Special Order Volume 103, Page 473. The Order required the Applicant to submit a 60-Day Notice of Use and Disposition form for the entire use of the acquired conserved water prior to the use of water.
9. On March 10, 2017, Farmland Reserve, Inc. (hereafter "Farmland") submitted a 60-Day Notice of Use or Disposition.
10. Farmland proposes to change the point of diversion for a portion of the conserved water upstream to an existing point of diversion in Section 2, Township 4 N, Range 25 East, W.M. to the following location:

Source: COLUMBIA RIVER, tributary to Pacific Ocean

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	POD 2: 2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8

11. Farmland proposes to use the water from the original point of diversion (POD 1) as follows:

Use: IRRIGATION of 497.83 ACRES

Priority Date: JUNE 29, 1973

Rate: 5.09 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation is limited to 1/100 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 1.49 acre-feet per acre for each acre irrigated during the irrigation season of each year, and limited to an annual volume limitation of 737.90 Acre Feet.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	POD 1: SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2

Place of Use:

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
2 N	28 E	5	NE NE	900	31.39	1
2 N	28 E	5	NW NE	900	30.43	1
2 N	28 E	5	SW NE	900	31.35	1
2 N	28 E	5	SE NE	900	30.43	1
2 N	28 E	5	NE SW	900	31.75	1
2 N	28 E	5	NW SW	900	30.77	1

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
2 N	28 E	5	SW SW	900	31.71	1
2 N	28 E	5	SE SW	900	30.77	1
2 N	28 E	5	NE SE	900	31.38	1
2 N	28 E	5	NW SE	900	30.44	1
2 N	28 E	5	SW SE	900	31.34	1
2 N	28 E	5	SE SE	900	30.44	1
2 N	28 E	8	SW NE	1600	1.13	1
2 N	28 E	8	NE SW	1700	14.33	1
2 N	28 E	8	SE SW	1700	12.07	1
2 N	28 E	8	NE SE	1700	12.74	1
2 N	28 E	8	NW SE	1700	39.83	1
2 N	28 E	8	SW SE	1700	35.70	1
2 N	28 E	8	SE SE	1700	9.83	1
Total					497.83	

Farmland proposes to use water from the changed point of diversion (POD 2) as follows:

Use: IRRIGATION of 396.12 ACRES

Priority Date: JUNE 29, 1973

Rate: 4.05 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation is limited to 1/100 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 1.49 acre-feet per acre for each acre irrigated during the irrigation season of each year, and limited to an annual volume limitation of 587.17 Acre Feet.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	POD 2: 2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8

Place of Use:

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
3 N	29 E	1	NE NW	100	4.34	2
3 N	29 E	1	NW NW	100	38.32	2
3 N	29 E	1	SW NW	100	19.44	2
3 N	29 E	1	SE NW	100	0.99	2
3 N	29 E	1	SW SW	100	2.41	2
3 N	29 E	2	NE NE	100	29.45	2
3 N	29 E	2	NW NE	100	35.32	2
3 N	29 E	2	SW NE	100	28.55	2

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
3 N	29 E	2	SE NE	100	16.44	2
3 N	29 E	2	NE SE	100	20.52	2
3 N	29 E	2	NW SE	100	37.53	2
3 N	29 E	2	SW SE	100	25.39	2
3 N	29 E	2	SE SE	100	29.84	2
3 N	29 E	11	NE NE	300	40.14	2
3 N	29 E	11	NW NE	300	37.08	2
3 N	29 E	11	SW NE	300	8.30	2
3 N	29 E	11	SE NE	300	13.30	2
3 N	29 E	12	NW NW	3600	8.73	2
3 N	29 E	12	SW NW	3600	0.03	2
Total					396.12	

12. Farmland submitted a Land Use Information Form from Umatilla County. Umatilla County Planning Department confirmed the land uses to be served are allowed outright or are not regulated by Umatilla County pursuant to UCDC, Section 152.056 (A).
13. The District #5 Watermaster reviewed the proposed location and uses of water and determined, with the installation of measuring devices, the proposed location and uses of water from the identified points of diversion would not harm existing water rights and would not constitute an expansion of the original water right.

Review Criteria

14. The Department shall review the 60-Day Notice under the following criteria to determine if:
 - a. The proposed new use is within the following area:

Township	Range	Mer.
2 North	23, 24, 26, 27, and 28 East	WM
3 North	23, 24, 26, 27, 28, 29 and 30 East	WM
4 North	23, 24, 25, 26, 27, 28, 29, and 30 East	WM
5 North	26, 27, 28, 29 and 30 East	WM
 - b. The proposed new use would not injure or harm existing water rights;
 - c. The proposed change would not constitute an expansion of the original water right.
 - d. The proposed use of conserved water is consistent with the requirements established in OAR 690-005-0545 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

15. When a right to the use of conserved water is sold, the right shall become appurtenant to the premises upon which use is made. OAR 690-018-0090(4)(a).
16. OAR 690-018-0090(4)(b) provides a certificate of water right shall be issued upon satisfactory proof of use.

Conclusions of Law

The proposed locations and use of the conserved water and the change in point of diversion for a portion of the conserved water are consistent with the requirements of OAR 690-018-0090.

Now, therefore, it is ORDERED:

1. The proposed use of conserved water by Farmland Reserve, Inc. is approved.
2. To prevent expansion of the original right, Farmland Reserve, Inc., shall install such measuring devices deemed appropriate by the District #5 Watermaster.
3. The use of the conserved water shall be as follows:

Use: IRRIGATION of 893.95 ACRES

Priority Date: JUNE 29, 1973

Rate: 9.14 CUBIC FEET PER SECOND, being 5.09 cfs from POD 1, and 4.05 cfs from POD 2

Limit/Duty: The amount of water used for irrigation is limited to 1/100 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 1.49 acre-feet per acre for each acre irrigated during the irrigation season of each year, and limited to an annual volume limitation of 1325.07 Acre Feet.

Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	POD 1: SOUTH 86 DEGREES 22 MINUTES 46 SECONDS WEST, 2829 FEET FROM THE NE CORNER OF SECTION 2
5 N	30 E	WM	8	SW NW		POD 2: 2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
2 N	28 E	5	NE NE	900	31.39	1
2 N	28 E	5	NW NE	900	30.43	1
2 N	28 E	5	SW NE	900	31.35	1
2 N	28 E	5	SE NE	900	30.43	1
2 N	28 E	5	NE SW	900	31.75	1
2 N	28 E	5	NW SW	900	30.77	1

Twp	Rng	Sec	Q-Q	Tax Lot	Acres	POD ID
2 N	28 E	5	SW SW	900	31.71	1
2 N	28 E	5	SE SW	900	30.77	1
2 N	28 E	5	NE SE	900	31.38	1
2 N	28 E	5	NW SE	900	30.44	1
2 N	28 E	5	SW SE	900	31.34	1
2 N	28 E	5	SE SE	900	30.44	1
2 N	28 E	8	SW NE	1600	1.13	1
2 N	28 E	8	NE SW	1700	14.33	1
2 N	28 E	8	SE SW	1700	12.07	1
2 N	28 E	8	NE SE	1700	12.74	1
2 N	28 E	8	NW SE	1700	39.83	1
2 N	28 E	8	SW SE	1700	35.70	1
2 N	28 E	8	SE SE	1700	9.83	1
3 N	29 E	1	NE NW	100	4.34	2
3 N	29 E	1	NW NW	100	38.32	2
3 N	29 E	1	SW NW	100	19.44	2
3 N	29 E	1	SE NW	100	0.99	2
3 N	29 E	1	SW SW	100	2.41	2
3 N	29 E	2	NE NE	100	29.45	2
3 N	29 E	2	NW NE	100	35.32	2
3 N	29 E	2	SW NE	100	28.55	2
3 N	29 E	2	SE NE	100	16.44	2
3 N	29 E	2	NE SE	100	20.52	2
3 N	29 E	2	NW SE	100	37.53	2
3 N	29 E	2	SW SE	100	25.39	2
3 N	29 E	2	SE SE	100	29.84	2
3 N	29 E	11	NE NE	300	40.14	2
3 N	29 E	11	NW NE	300	37.08	2
3 N	29 E	11	SW NE	300	8.30	2
3 N	29 E	11	SE NE	300	13.30	2
3 N	29 E	12	NW NW	3600	8.73	2
3 N	29 E	12	SW NW	3600	0.03	2
Total					893.95	

4. Water use measurement conditions:

- a. **Before water use may begin** under this order, 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 (new and existing).
- 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.
5. The quantity of water diverted at the new point of diversion (POD 2), together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. Within one year of complete application of the conserved water to beneficial use, a Claim of Beneficial Use completed by a Certified Water Right Examiner shall be submitted to the Department.
7. After satisfactory proof of the use is received, a new certificate confirming the conserved water right shall be issued.

DATED at Salem, Oregon this 15 day of March, 2017.


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

Mailing date: MAR 16 2017