

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

In the Matter of Allocation of Conserved Water Application CW-62, Morrow County) ORDER APPROVING USE AND DISPOSITION OF A PORTION OF THE APPLICANT'S PORTION OF CONSERVED WATER

Applicant

St. Hilaire Brothers Hermiston Farm, LLC
Attn: Carl St. Hilaire, Manager
84186 Highway 37
Hermiston, OR 97838-6393

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-64. 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.

The Director shall approve a change in the type of use, place of use, or point of diversion for conserved water, if: 1) the proposed new use is within the area described under OAR 690-018-0050(4)(h); 2) the proposed change would not constitute an expansion of the right; and c) the approval is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

Findings of Fact

1. On August 16, 2010, the Department issued a Final Order approving the proposed project, providing the time to complete the project and requiring the applicant to submit a statement identifying a "permanent place of use," recorded at Special Order Volume 81, Pages 706-716.

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.

2. On April 2, 2013, the Department issued a Final Order Correcting and Finalizing the First Portion of Allocation of Conserved Water CW-62 (Correcting Final Order), recorded at Special Order Volume 89, Pages 145-155.
3. The Correcting Final Order identified the entirety of the Applicant's portion of conserved water as follows:

Applicant's Portion of Conserved Water				Applied (Proof Required)		Reserved Instream for Future Out-of-Stream Use	
Originating Certificate	Priority	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)
53117	8/18/1970, plus one minute	7.35	1243.13	5.71	1044.23	1.64	198.90
53118	8/17/1972, plus one minute	9.38	1577.25	5.30	969.15	4.08	608.10
Totals		16.73	2820.38	11.01	2013.38	5.72	807.00

4. The proposed areas for the Applicant's portion of conserved water to be used for out-of-stream uses were identified by the Applicant on February 27, 2015.

Township	Ranges
1 North	11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
2 North	11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
3 North	11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 East
4 North	22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 East
5 North	25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 East
6 North	30, 31, 32, 33, 34, 35, 36, 37, 38, 39
1 South	10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 30.5, 31, 32, 33, 34, 35, 36, 37, and 38 East
2 South	10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 30.5, 31, 32, 33, 34, 35, 36, and 37 East
3 South	9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 30.5, 31, 32, 33, 33.5, and 34 East
4 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 33.5, and 34 East
5 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 33.5, and 34 East
6 South	8, 8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 East
7 South	8, 8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35 East
8 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 East
9 South	8.5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 East

5. On November 27, 2017, the Department issued an Order on Submission of Claim of Beneficial Use and Approving Disposition and Use of a Portion of the Applicant's Portion of Conserved Water.
6. On March 2, 2020, the Applicant submitted a 60-Day Notice of Use or Disposition for Applicant's Portion of Conserved Water. On March 12, 2020, the Applicant submitted an amended application clarifying the quantity of water to be allocated under each certificate.
7. The Applicant proposes to use a portion of its conserved water reserved instream for future out-of-stream use as follows:

Originating Certificate: 53117
Person/Entity Using the Water: Applicant
 St Hilaire Brothers Hermiston Farms, LLC
 84186 Highway 37
 Hermiston, OR 97838

Use: IRRIGATION of 505.70 ACRES
Priority Date: August 18, 1970, *plus one minute*
Rate/Volume: 5.71 CUBIC FEET PER SECOND (CFS), Limited to 1,041.74 ACRE FEET (any difference in the volume is due to rounding)
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	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	13	NE NE	100	31.90
5 N	30 E	WM	13	NW NE	100	1.10
5 N	30 E	WM	13	SW NE	100	1.20
5 N	30 E	WM	13	SE NE	100	34.00
5 N	31 E	WM	18	NW NW	100	26.70
5 N	31 E	WM	18	SW NW	100	28.30
5 N	30 E	WM	22	NE NE	1500	4.90
5 N	30 E	WM	22	SW NE	1500	16.28
5 N	30 E	WM	22	SE NE	1500	28.00
5 N	30 E	WM	22	SE SW	1390	3.67
5 N	30 E	WM	22	NE SE	1380	40.35
5 N	30 E	WM	22	NW SE	1380	32.56
5 N	30 E	WM	22	SW SE	1380	33.78
5 N	30 E	WM	22	SE SE	1380	21.87
5 N	30 E	WM	23	NE NW	1380	20.13

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	23	NW NW	1500	36.55
5 N	30 E	WM	23	SW NW	1500	37.63
5 N	30 E	WM	23	SE NW	1380	20.91
5 N	30 E	WM	23	NE SW	1380	12.05
5 N	30 E	WM	23	NW SW	1380	22.15
5 N	30 E	WM	23	SW SW	1380	40.12
5 N	30 E	WM	23	SE SW	1380	11.55
Total						505.70

Originating Certificate: 53118
Person/Entity Using the Water: Applicant
St Hilaire Brothers Hermiston Farms, LLC
84186 Highway 37
Hermiston, OR 97838

Use: IRRIGATION of 487.30 ACRES
Priority Date: August 17, 1972, *plus one minute*
Rate/Volume: 5.31 CUBIC FEET PER SECOND (CFS), Limited to 969.73 ACRE FEET (any difference in the volume is due to rounding)
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	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	12	SE SW	100	7.80
5 N	30 E	WM	12	SW SE	100	5.50
5 N	31 E	WM	18	NE NW	790	33.80
5 N	31 E	WM	18	NW NE	790	25.60
5 N	31 E	WM	18	SW NE	790	25.30
5 N	31 E	WM	18	SE NW	790	34.30
5 N	30 E	WM	23	SE SW	1380	21.97
5 N	30 E	WM	23	NE SE	1380	18.31
5 N	30 E	WM	23	NW SE	1380	29.56
5 N	30 E	WM	23	SW SE	1380	38.66
5 N	30 E	WM	23	SE SE	1380	27.34
5 N	30 E	WM	26	NE NE	1380	1.17
5 N	30 E	WM	26	NW NE	1380	33.95
5 N	30 E	WM	26	SW NE	1380	20.98
5 N	30 E	WM	26	NE NW	1380	27.72

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
5 N	30 E	WM	26	NW NW	1380	30.91
5 N	30 E	WM	26	SW NW	1380	15.66
5 N	30 E	WM	26	SE NW	1380	14.55
5 N	30 E	WM	26	NW SW	1380	1.96
5 N	30 E	WM	27	NE NE	1380	10.14
5 N	30 E	WM	27	NW NE	1380	8.57
5 N	30 E	WM	27	SW NE	1380	0.39
5 N	30 E	WM	27	SE NE	1380	27.97
5 N	30 E	WM	27	NE NW	1304	4.34
5 N	30 E	WM	27	NE SE	1380	20.55
5 N	30 E	WM	27	NW SE	1380	0.30
Total						487.30

8. The balance of the Applicants' Portion of Conserved Water will continue to be reserved instream for future out-of-stream use:

Priority Date	Originating Certificate	Rate (CFS)	Duty (Volume) AF
8/17/1970, plus one minute	53117	1.64	198.90
8/17/1972, plus one minute	53118	4.08	608.10
Totals		5.72	807.00

9. 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. In addition, the instream rate for the remaining portion of the Applicant's portion of conserved water is not measurable in the Columbia River. Therefore, the instream right shall be protected at the authorized point of diversion and not a reach as follows:

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
8/18/1970, plus one minute	53117	March 1 through October 31	0.41	198.9
8/17/1972, plus one minute	53118	March 1 through October 31	1.25	608.1
Totals			1.66	807.0

At the common authorized point of diversion for Certificates 53117 and 53118 at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2920 FEET NORTH AND 150 FEET EAST FROM THE SW CORNER OF SECTION 8

Conclusions of Law

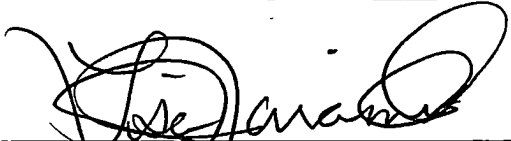
1. The proposed use is within the area described under OAR 690-018-0050(4)(h).
2. The proposed use would not constitute an expansion of the right.

3. The proposed use is consistent with OAR 690-005-0045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).

Now, therefore, it is ORDERED:

1. The use of water as described in Findings of Fact #7 and #9 are approved.
2. The right is subject to the provisions of ORS 540.510 to 540.539, 540.572 to 540.578, and 540.610 to 540.670.

DATED at Salem, Oregon this 16th day of March, 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR

Mailing date: MAR 16 2020