

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

In the Matter of Allocation of Conserved)	RECONSIDERATION OF A FINAL ORDER
Water Final Order for CW-64, Recorded in)	RECORDED IN SPECIAL ORDER VOLUME
Special Order Volume 122, Pages 518-522,)	122, PAGES 518-522, WITHDRAWING A
Morrow County)	FINAL ORDER APPROVING USE AND
)	DISPOSITION OF A PORTION OF
)	APPLICANT'S PORTION OF CONSERVED
)	WATER

Applicant

Superior Farms
J B Land, LLC
c/o Gregg Juul
PO Box 130
Hermiston, OR 97838

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).

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.

OAR 137-004-0080(5) states that within 60 calendar days after the date of the order, the agency may, on its own initiative, reconsider the final order. The procedural and substantive effect of granting reconsideration under this subsection shall be identical to the effect of granting a party's petition for reconsideration.

Findings of Fact

1. On January 27, 2015, the Department issued a Superseding Final Order Approving and Finalizing Allocation of Conserved Water Project CW-64, Partial Cancellation of Certificate 80773, and Approval of Use under OAR 690-018-0090 (Superseding Final Order), recorded in Special Order Volume 93, Pages 1171-1192.
2. The proposed areas for the Applicants' portion of conserved water to be used for out-of-stream uses were identified in the Superseding Final Order as follows:

Township	Range
2 North	26, 27, and 28 East
3 North	26, 27, 28, 29, and 30 East
4 North	26, 27, 28, 29, and 30 East
5 North	26, 27, 28, 29, and 30 East

3. On January 30, 2020, the Applicants submitted a 60-Day Notice of Use and Disposition of a portion of the Applicant's portion of conserved water.
4. On February 6, 2020, the Department issued an Order on Submission of Claim of Beneficial Use and Approving Use and Disposition of the Applicant's Portion of Conserved Water ("Prior Order"), recorded at Special Order Volume 116, Pages 52 – 64.
5. The Prior Order identified the allocation of the Applicant's portion of conserved water as follows:

Applicants' Portion Conserved Water				Applied (Proof Submitted) 107.83 Acres		Use on Other Lands 20.30 Acres		Reserved Instream for Future Out-Of-Stream Use	
Orig. Certificate	Priority	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)
80773	3/13/1972*	3.52	729.54	1.647	323.49	0.340	68.61	1.533	337.44
85285	3/13/1972*	0.27	56.19	---	---	---	---	0.270	56.19
Totals		3.79	785.73	1.647	323.49	0.340	68.61	1.803	393.63

* - plus one minute

6. On January 28, 2021, the Applicants submitted a 60-Day Notice of Use and Disposition of the portion of the Applicant's portion of conserved water reserved instream.
7. On March 5, 2021, the Department issued an Order Approving Use and Disposition of a Portion of Applicant's Portion of Conserved Water ("Existing Order"), recorded at Special

Order Volume 118, Pages 651 - 654.

8. As of March 5, 2021, the current allocation of the Applicant's portion of conserved water is as follows:

Applicants' Portion Conserved Water				Applied (Proof Submitted) 107.83 Acres		Use on Other Lands 20.30 Acres		Use on Other Lands 832.90 Acres	
Orig. Certificate	Priority	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)	Rate (cfs)	Volume (AF)
80773	3/13/1972*	3.520	729.54	1.647	323.49	0.340	68.61	1.533	337.44
85285	3/13/1972*	0.270	56.19	--	--	--	--	0.270	56.19
Totals		3.790	785.73	1.647	323.49	0.340	68.61	1.803	393.63

* - plus one minute

9. On December 10, 2021, the Applicants submitted a 60-Day Notice of Use or Disposition for a portion of the Applicants' Portion of Conserved Water for CW-64 along with the required documentation. This request is to relocate the 0.34 cfs of conserved water approved under the Prior Order recorded at Special Order Volume 116, Pages 52-64 for irrigation of 20.3 acres.
10. On March 7, 2022, the Department issued a Final Order (Special Order Volume 122, Pages 518 - 522), approving the use or disposition of a portion of applicant's portion of conserved water under the terms of an order approving Allocation of Conserved Water application CW-64.
11. The Department reconsidered the March 7, 2022, Final Order within 60 calendar days of issuance pursuant to OAR 137-004-0080(5) for the following two reasons. On April 6, 2022, the Department identified the applicant submitted a Groundwater Allocation of Conserved Water Notice of Use rather than the appropriate Surface Water Allocation of Conserved Water Notice of Use, as Certificate 80773 authorizes the use of water from the Columbia River. Additionally, the applicant was requesting an additional point of diversion but did not submit a Land Use Information form, as required under OAR 690-018-0090(2)(c), and 690-005-0045.
12. On April 13, 2022, the Department corresponded with the applicant's agent by telephone, informing them that the Department was reconsidering the Final Order issued on March 7, 2022, and that the notice of use needed to be submitted on the correct form along with a completed Land Use Information form.
13. On April 18, 2022, the applicant's agent submitted a Surface Water Allocation of Conserved Water Notice of Use or Disposition and the completed Land Use Information form, resolving the deficiencies.

14. On May 2, 2022, the Department issued a Notice of Reconsideration of Final Order on Notice of Use or Disposition of a Portion of Applicant's Portion of Conserved Water, for Allocation of Conserved Water Application CW-64.
15. The Applicants propose to relocate the use of the 0.34 cfs of conserved water as listed below. This is the same place of use for the 832.9 acres described in the Existing Order recorded at Special Order Volume 118, Pages 651-654. The 0.34 cfs of conserved water is proposed to be used in addition to the 1.803 cfs of conserved water authorized under the Existing Order.

Originating Certificates: 80773
Person/Entity Using the Water: Cold Springs Canyon, LLC
 PO Box 387
 Helix, OR 97835

Use: IRRIGATION of 832.9 ACRES
Priority Dates: March 13, 1972, *plus one minute*
Rate/Volume: 0.34 CUBIC FOOT PER SECOND (CFS), Limited to 68.61 ACRE FEET (AF)
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	7	SE SW	POD #3 (SUPERIOR FARMS PUMPING STATION) 460 FEET NORTH AND 1680 FEET EAST FROM THE SW CORNER OF SECTION 7
5 N	30 E	WM	8	NE NW	POD #1: (HAWMAN PUMPING STATION) 9360 FEET NORTH AND 3530 FEET WEST FROM THE SE CORNER OF SECTION 17
5 N	30 E	WM	8	SW NW	POD #2: (ROYALE COLUMBIA FARMS PUMPING STATION) 2860 FEET NORTH AND 70 FEET EAST FROM THE SW CORNER OF SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
4 N	30 E	WM	1	SW SW	400	24.1
4 N	30 E	WM	1	SE SW	200	27.0
4 N	30 E	WM	1	SW SE	400	23.0
4 N	30 E	WM	1	SE SE	400	5.5
4 N	30 E	WM	1	SE SE	403	0.5
4 N	30 E	WM	2	SE SE	400	1.8
4 N	30 E	WM	11	NE NE	1300	1.6
4 N	30 E	WM	11	SE NE	1300	4.2
4 N	30 E	WM	11	NE SE	1200	6.0
4 N	30 E	WM	11	SE SE	1200	5.0
4 N	30 E	WM	12	NE NE	1400	24.0
4 N	30 E	WM	12	NW NE	1400	38.5
4 N	30 E	WM	12	SW NE	1400	37.7
4 N	30 E	WM	12	SE NE	1400	32.3

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
4 N	30 E	WM	12	NE NW	1400	36.2
4 N	30 E	WM	12	NW NW	1400	36.7
4 N	30 E	WM	12	SW NW	1400	38.4
4 N	30 E	WM	12	SE NW	1400	36.2
4 N	30 E	WM	12	NE SW	1400	36.0
4 N	30 E	WM	12	NW SW	1400	36.0
4 N	30 E	WM	12	SW SW	1400	37.0
4 N	30 E	WM	12	SE SW	1400	36.5
4 N	30 E	WM	12	NE SE	1400	36.2
4 N	30 E	WM	12	NW SE	1400	36.0
4 N	30 E	WM	12	SW SE	1400	36.5
4 N	30 E	WM	12	SE SE	1400	31.0
4 N	30 E	WM	13	NW NE	1400	16.5
4 N	30 E	WM	13	NE NW	1400	18.5
4 N	30 E	WM	13	NW NW	1400	5.0
4 N	30 E	WM	14	NE NE	1400	37.5
4 N	30 E	WM	14	NW NE	1400	31.5
4 N	30 E	WM	14	SW NE	1400	28.5
4 N	30 E	WM	14	SE NE	1400	31.5
Total						832.9

16. The Applicants also propose an additional point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in feet (ft.)		
						POD #1	POD #2	POD #3
5 N	30 E	WM	8	SW NW	POD #4 (EAST IMPROVEMENT DISTRICT PUMPTING STATION) – 2910 FEET NORTH AND 120 FEET EAST FROM THE SW CORNER OF SECTION 8	2228 ft. downstream	70 ft. upstream	4503 ft. upstream

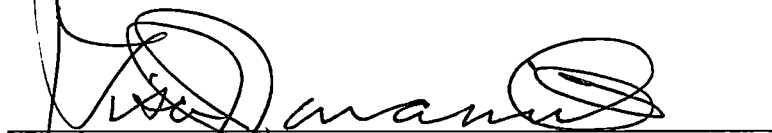
Conclusions of Law

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).
4. The District 5 Watermaster has indicated approval for the use of the additional point of diversion.

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

1. This final order supersedes the "Order Approving Use and Disposition of a Portion of Applicant's Portion of Conserved Water," recorded at Special Order Volume 122, Pages 518-522.
2. The use of water as described in Finding of Fact #15 is approved.
3. The use of 0.34 cfs of water for irrigation of 20.3 acres of water as described in the "Prior Order," recorded at Special Order Volume 116, Pages 52-64, is no longer authorized.
4. 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.
5. The final order on notice of use or disposition recorded at Special Order Volume 122, Pages 518 - 522 is hereby withdrawn, and is of no further force or effect.

DATED at Salem, Oregon this **JUL 08 2022** .



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

Mailing date: **JUL 11 2022**