

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

In the Matter of Allocation of Conserved)	FINAL ORDER OF APPROVAL ON
Water Application CW-96,)	COMPLETION AND FINALIZATION
Douglas County)	ALLOCATION OF CONSERVED
)	WATER CW-96

Applicant
EGM, LLC
c/o Greg Fries, Member
PO Box 429
Dundee, OR 97115

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; (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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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 January 11, 2017, EGM, LLC filed an allocation of conserved water application under Certificate 91450. The Department assigned the application number CW-96.
2. On May 17, 2017, the Applicant submitted amended application pages 8-11, clarifying the proposed area for the applicant’s portion of conserved water to be used, and addressed other questions left blank in the original application. In addition, the Applicant submitted a new place of use table to be attached to the 60-Day Notice of Use and Disposition.
3. The conservation project involves modifying the pivot system to drip irrigation with emitters spaced at 24-inches on center. The conversion to a drip irrigation system is a proven technology for conserving water.
4. Application CW-96 proposes a rate reduction of approximately 1.01 cubic feet per second (cfs) and proposes to reduce the annual volume by 202.2 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
91450	1.64	1/80	328.25	2.5	0.63	0.005	126.05	0.96	1.01	202.2

5. The portion of the right to be modified by CW-96 is as follows:
 - Certificate:** 91450 in the name of EGM, LLC (perfected under Permit S-24008)
 - Use:** IRRIGATION of 131.3 ACRES
 - Priority Date:** December 21, 1955
 - Rate:** 1.64 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, is limited to ONE-

EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	30	SW SW	38	305 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF DLC 38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	7 W	WM	35	SE NE	2		8.4
25 S	7 W	WM	35	SE NE		45	2.1
25 S	7 W	WM	35	SE NE		46	0.2
25 S	7 W	WM	35	NE SE	3		4.7
25 S	7 W	WM	35	NE SE		46	1.6
25 S	7 W	WM	36	SW NW		45	14.2
25 S	7 W	WM	36	SW NW		46	1.4
25 S	7 W	WM	36	SE NW		46	1.7
25 S	7 W	WM	36	NE SW		46	26.0
25 S	7 W	WM	36	NW SW		46	13.7
26 S	7 W	WM	1	NE NE		39	35.3
26 S	7 W	WM	1	NW NE		39	4.6
26 S	7 W	WM	1	SW NE		39	1.9
26 S	7 W	WM	1	SE NE		39	15.5
Total							131.3

6. Certificate 91450 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. Confirming Certificate 91450 was issued on May 9, 2016. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. 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.
9. The Applicant requests 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
91450	25%	0.25	50.55	75%	0.76	151.65	100%	1.01	202.2

10. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Sec. 31, T25S, R6W, W.M.; Sec. 36, T25S, R7W, W.M.; Sec. 6, T26S, R6W, W.M.; and Sec. 1, T26S, R7W, W.M.
11. The Applicant requests the priority date for any conserved water be the same as the originating right.
12. The Applicant funded 100% of the conservation project.
13. 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.
14. The implementation of the conservation measures began no earlier than October 1, 2013. The Applicant indicated it was unaware of any water right holders in the area, governmental entities or other organizations that expressed concerns regarding the impact of the conservation measure.
15. 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.
16. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 91450 from the authorized point of diversion at approximately River Mile (RM) 103 to the head of tide at approximately RM 27.2 of the Umpqua River.
17. The Applicant submitted a Notice of Completion with the application indicating the project was complete. In addition, the Applicant submitted a Request for Finalization of the allocation. The application meets the requirements of OAR 690-018-0040.
18. 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, pursuant to AOR 690-018-0050(4)(f).
19. Notice of the proposed conservation project was published in the Department's weekly notice on February 21, 2017, and in The News Review newspaper on February 18 and 25, 2017, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
20. On May 31, 2017, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-96, and mailed a copy to the Applicant on June 1, 2017. There were no commenters to the public notice required under OAR 690-018-0050(3). No protests were filed within 60 days from the date of mailing the Preliminary Determination. OAR 690-018-0050(6).

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 #4).
- 22. On February 8, 2017, 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 #13). 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-96 under Certificate 91450 are as follows:

Originating Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
91450	0.63	0.005	126.05	0.96

(Finding of Fact #4).

- 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)
0.25 cfs	50.55 AF

(Finding of Fact #9).

- 26. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values. (Finding of Fact #18).
- 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 #12). The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
December 21, 1955	0.76 cfs	151.65 AF

(Finding of Fact #9).

- 28. The new instream water right created will be protected in the Umpqua River from the authorized point of diversion as described in Finding of Fact #5, at approximately RM 103 to the head of tide at RM 27.2. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

29. To prevent enlargement, the period of use for water to be protected instream must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be protected throughout the entire irrigation season without enlarging the right.

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

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
December 21, 1955	3/1 through 10/31	0.10	50.55

31. 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).

32. The protection of flows within the proposed reach is appropriate, considering:
- a. The instream water use begins at the recorded point of diversion;
 - b. 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 reach of the instream water right.

OAR 690-077-0015(8).

33. The combination of instream rights for the proposed reach on the Umpqua River does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).

34. Within the proposed reach, there are existing instream water rights, Certificate 59801, with an October 24, 1958 priority, and Certificate 59965, with a March 26, 1974 priority, established pursuant to ORS 537.346 (minimum flow conversion) for the purpose of supporting aquatic life.

35. Within the proposed reach, there is an existing water right Certificate 81501, with an April 12, 1993 priority date, established pursuant to ORS 537.341 (state agency process) for the purpose of providing required stream flows for spring and fall chinook salmon, Coho and chum salmon, summer and winter steelhead, white and green sturgeon, pacific lamprey, Umpqua chub, and sea-run cutthroat trout.

36. The existing instream water rights, established under ORS 537.346 (minimum flow conversion) and ORS 537.341 (state agency process) are sufficient to protect the monthly quantities of water necessary for various fish life stages, conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values, but are not always met. By replacing a portion of these instream water rights, any instream water right established as a result of this conserved water allocation will provide for protection of streamflows identified as necessary, under an earlier priority date.

37. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the

proposed reach, any new instream water rights established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).

38. The proposed areas within which the conserved water is to be used for out-of-stream uses are within Sec. 31, T25S, R6W, W.M.; Sec. 36, T25S, R7W, W.M.; Sec. 6, T26S, R6W, W.M.; and Sec. 1, T26S, R7W, W.M. (Finding of Fact #10). OAR 690-018-0050(4)(h).
39. The Notice of Completion of the conservation project, and Request for Finalization were submitted with the application. (Finding of Fact #17). OAR 690-018-0050(4)(i).
40. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #21). OAR 690-018-0050(4)(j).
41. The Applicant submitted a 60-Day Notice of Use and Disposition (Notice of Use) form with the application. The Notice of Use identified the following place of use for the Applicant's portion of conserved water to be utilized at this time.

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	DLC	Acres
25 S	6 W	WM	31	SW NW	200	38	1.3
25 S	6 W	WM	31	NW SW	200	38	4.6
25 S	7 W	WM	36	SW NE	200	46	29.6
25 S	7 W	WM	36	SE NE	200	38	7.6
25 S	7 W	WM	36	SW NW	200	45	6.8
25 S	7 W	WM	36	SW NW	200	46	1.6
25 S	7 W	WM	36	SE NW	200	46	0.3
25 S	7 W	WM	36	SE NW	200	46	1.8
25 S	7 W	WM	36	SE NW	200	45	21.8
25 S	7 W	WM	36	NE SW	200	46	7.3
25 S	7 W	WM	36	NW SW	200	45	16.2
25 S	7 W	WM	36	NE SE	200	38	4.1
25 S	7 W	WM	36	NW SE	200	46	22.0
26 S	6 W	WM	6	NW NW	100	37	7.2
26 S	6 W	WM	6	SW NW	100	37	3.1
26 S	7 W	WM	1	NE NE	100	39	2.2
26 S	7 W	WM	1	NW NE	100	39	12.7
26 S	7 W	WM	1	SW NE	100	39	5.9
26 S	7 W	WM	1	SE NE	100	39	0.8
Total							156.9

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-96, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

1. The proposed change will result in a reduced diversion for the uses allowed under the original water right. (Findings of Fact #4 and #24).

- The proposed allocation of conserved water will not harm existing water rights. (Findings of Fact #22 and #41).
- The application is consistent with the requirements established in OAR 690-005-0045. (Findings of Fact #13 and #23).

Now, therefore, it is ORDERED:

- The changes proposed in CW-96 are approved.
- 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
91450	25%	0.25	50.55	75%	0.76	151.65	100%	1.01	202.2

(Findings of Fact #25 and #27).

- 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 91450 and any related decree.
- Water Right Certificate 91450 is cancelled. 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 131.3 ACRES

Priority Date: December 21, 1955

Rate: 0.63 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 TWO-HUNDREDTH (1/200) 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 0.96 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 126.05 acre-feet per year.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	30	SW SW	38	305 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF DLC 38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	7 W	WM	35	SE NE	2		8.4
25 S	7 W	WM	35	SE NE		45	2.1
25 S	7 W	WM	35	SE NE		46	0.2
25 S	7 W	WM	35	NE SE	3		4.7

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	7 W	WM	35	NE SE		46	1.6
25 S	7 W	WM	36	SW NW		45	14.2
25 S	7 W	WM	36	SW NW		46	1.4
25 S	7 W	WM	36	SE NW		46	1.7
25 S	7 W	WM	36	NE SW		46	26.0
25 S	7 W	WM	36	NW SW		46	13.7
26 S	7 W	WM	1	NE NE		39	35.3
26 S	7 W	WM	1	NW NE		39	4.6
26 S	7 W	WM	1	SW NE		39	1.9
26 S	7 W	WM	1	SE NE		39	15.5
Total							131.3

5. Water use measurement conditions:
 - a. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
 - 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.
6. The project is complete and no additional time is needed for finalization.
7. The Applicant's portion of conserved water (0.76 cfs, 151.65 AF) shall be used on the following place of use until such time a 60-Day Notice of Use or Disposition pursuant to ORS 537.490 and OAR 690-019-0090 is received by the Department.

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	DLC	Acres
25 S	6 W	WM	31	SW NW	200	38	1.3
25 S	6 W	WM	31	NW SW	200	38	4.6
25 S	7 W	WM	36	SW NE	200	46	29.6
25 S	7 W	WM	36	SE NE	200	38	7.6
25 S	7 W	WM	36	SW NW	200	45	6.8
25 S	7 W	WM	36	SW NW	200	46	1.6
25 S	7 W	WM	36	SE NW	200	46	0.3
25 S	7 W	WM	36	SE NW	200	46	1.8
25 S	7 W	WM	36	SE NW	200	45	21.8
25 S	7 W	WM	36	NE SW	200	46	7.3
25 S	7 W	WM	36	NW SW	200	45	16.2
25 S	7 W	WM	36	NE SE	200	38	4.1
25 S	7 W	WM	36	NW SE	200	46	22.0
26 S	6 W	WM	6	NW NW	100	37	7.2
26 S	6 W	WM	6	SW NW	100	37	3.1
26 S	7 W	WM	1	NE NE	100	39	2.2
26 S	7 W	WM	1	NW NE	100	39	12.7
26 S	7 W	WM	1	SW NE	100	39	5.9
26 S	7 W	WM	1	SE NE	100	39	0.8
Total							156.9

8. The proposed areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within Sec. 31, T25S, R6W, W.M.; Sec. 36, T25S, R7W, W.M.; Sec. 6, T26S, R6W, W.M.; and Sec. 1, T26S, R7W, W.M.
9. 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 Umpqua River as follows:

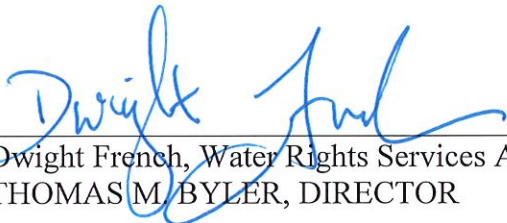
Priority Date	Period	Rate (cfs)	Volume (acre-feet)
December 21, 1955	March 1 through October 31	0.10	50.55

Umpqua River: From the authorized point of diversion under Certificate 91450 located at approximately River Mile 103:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	30	SW SW	38	305 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF DLC 38

To the head of tide at approximately River Mile 27.2.

Dated at Salem, Oregon this 2 day of August, 2017.


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

Mailing Date: AUG 04 2017