

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

In the Matter of Allocation of Conserved) ORDER APPROVING USE AND DISPOSITION
Water Application CW-85,) OF APPLICANT'S PORTION OF CONSERVED
Morrow County) WATER

Applicant

Windy River
1000 Highway 395 South #423
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-85. 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 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 April 2, 2015, the Department issued a Final Order on Finalization of Allocation of Conserved Water CW-85, (Final Order), recorded at Special Order Volume 95, Pages 395-400.

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. The proposed areas for the Applicant's portion of conserved water to be used for out-of-stream uses were identified in the Final Order as follows:

| 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 |

3. The Final Order identified the Applicant's portion of conserved water as follows:

| Originating Certificate | Priority | Maximum Rate (CFS) | Maximum Duty (Volume) AF |
|-------------------------|------------|--------------------|--------------------------|
| 89304 | 6/29/1973* | 6.62 | 1205.0 |

* - plus one minute

4. On February 3, 2020, the Applicant submitted a 60-Day Notice of Use or Disposition for Applicant's Portion of Conserved Water (60-Day Notice) along with the required documentation. The 60-Day Notice requested a change in the location for the place of use of the conserved water.
5. The Applicant proposes to use a portion of their conserved water reserved instream for future out-of-stream use as follows:

Originating Certificate: 89304
Person/Entity Using the Water: Applicant
Use: IRRIGATION of 3284.95 ACRES
Priority Date: June 29, 1973, *plus one minute*
Rate/Volume: 6.62 CUBIC FEET PER SECOND (CFS), Limited to 1205.0 ACRE FEET PER YEAR
Source: COLUMBIA RIVER, tributary to the PACIFIC OCEAN

Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 4 N | 25 E | WM | 2 | NE NW | 150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2 |

Place of Use:

| Twp | Range | Sec | 1/4 | 1/4 | Tax Lot | Acres |
|-----|-------|-----|-----|-----|---------|-------|
| 2 N | 28 E | 4 | NE | NE | 800 | 34.00 |
| 2 N | 28 E | 4 | NW | NE | 800 | 33.90 |
| 2 N | 28 E | 4 | SW | NE | 800 | 29.20 |
| 2 N | 28 E | 4 | SE | NE | 800 | 29.20 |
| 2 N | 28 E | 4 | NE | NW | 800 | 34.20 |
| 2 N | 28 E | 4 | NW | NW | 800 | 34.30 |
| 2 N | 28 E | 4 | SW | NW | 800 | 28.90 |
| 2 N | 28 E | 4 | SE | NW | 800 | 28.90 |
| 2 N | 28 E | 4 | NE | SW | 800 | 33.70 |

| Twp | Range | Sec | 1/4 | 1/4 | Tax Lot | Acres | |
|-----|-------|-----|-----|-----|---------|-------|-------|
| 2 | N | 28 | E | 4 | NW SW | 800 | 33.70 |
| 2 | N | 28 | E | 4 | SW SW | 800 | 31.30 |
| 2 | N | 28 | E | 4 | SE SW | 800 | 27.90 |
| 2 | N | 28 | E | 4 | NE SE | 800 | 33.50 |
| 2 | N | 28 | E | 4 | NW SE | 800 | 33.00 |
| 2 | N | 28 | E | 4 | SW SE | 800 | 28.50 |
| 2 | N | 28 | E | 4 | SE SE | 800 | 28.70 |
| 3 | N | 28 | E | 14 | SW SE | 100 | 1.20 |
| 3 | N | 28 | E | 14 | SE SE | 100 | 1.20 |
| 3 | N | 28 | E | 23 | NE NE | 7100 | 33.60 |
| 3 | N | 28 | E | 23 | NW NE | 7100 | 34.20 |
| 3 | N | 28 | E | 23 | SW NE | 7100 | 27.70 |
| 3 | N | 28 | E | 23 | SE NE | 7100 | 27.10 |
| 3 | N | 28 | E | 23 | NE NW | 7100 | 30.20 |
| 3 | N | 28 | E | 23 | NW NW | 7100 | 29.00 |
| 3 | N | 28 | E | 23 | SW NW | 7100 | 36.50 |
| 3 | N | 28 | E | 23 | SE NW | 7100 | 36.95 |
| 3 | N | 28 | E | 23 | NE SW | 7100 | 37.60 |
| 3 | N | 28 | E | 23 | NW SW | 7100 | 35.70 |
| 3 | N | 28 | E | 23 | SW SW | 7100 | 40.20 |
| 3 | N | 28 | E | 23 | SE SW | 7100 | 35.60 |
| 3 | N | 28 | E | 23 | NE SE | 7100 | 30.30 |
| 3 | N | 28 | E | 23 | NW SE | 7100 | 31.30 |
| 3 | N | 28 | E | 23 | SW SE | 7100 | 23.70 |
| 3 | N | 28 | E | 23 | SE SE | 7100 | 21.70 |
| 3 | N | 28 | E | 26 | NE NE | 7300 | 30.20 |
| 3 | N | 28 | E | 26 | NW NE | 7300 | 35.70 |
| 3 | N | 28 | E | 26 | SW NE | 7300 | 35.20 |
| 3 | N | 28 | E | 26 | SE NE | 7300 | 28.10 |
| 3 | N | 28 | E | 26 | NE NW | 7300 | 17.50 |
| 3 | N | 28 | E | 26 | NW NW | 7300 | 22.70 |
| 3 | N | 28 | E | 26 | SW NW | 7300 | 38.80 |
| 3 | N | 28 | E | 26 | SE NW | 7300 | 36.60 |
| 3 | N | 28 | E | 27 | NE NE | 7403 | 36.40 |
| 3 | N | 28 | E | 27 | NW NE | 7403 | 26.80 |
| 3 | N | 28 | E | 27 | SW NE | 7403 | 37.90 |
| 3 | N | 28 | E | 27 | SE NE | 7403 | 21.10 |
| 3 | N | 28 | E | 27 | NE NW | 7403 | 28.40 |
| 3 | N | 28 | E | 27 | NW NW | 7403 | 30.40 |
| 3 | N | 28 | E | 27 | SW NW | 7403 | 30.40 |
| 3 | N | 28 | E | 27 | SE NW | 7403 | 31.80 |
| 3 | N | 28 | E | 27 | NE SW | 7404 | 30.10 |
| 3 | N | 28 | E | 27 | NW SW | 7404 | 27.60 |

| Twp | Range | Sec | 1/4 | 1/4 | Tax Lot | Acres | |
|-----|-------|-----|-----|-----|---------|-------|-------|
| 3 | N | 28 | E | 27 | SW SW | 7404 | 32.00 |
| 3 | N | 28 | E | 27 | SE SW | 7404 | 28.90 |
| 3 | N | 28 | E | 27 | NE SE | 7404 | 38.80 |
| 3 | N | 28 | E | 27 | NW SE | 7404 | 40.00 |
| 3 | N | 28 | E | 27 | SW SE | 7404 | 16.00 |
| 3 | N | 28 | E | 27 | SE SE | 7404 | 13.60 |
| 3 | N | 28 | E | 28 | NE NE | 7500 | 33.00 |
| 3 | N | 28 | E | 28 | NW NE | 7500 | 33.00 |
| 3 | N | 28 | E | 28 | SW NE | 7500 | 29.40 |
| 3 | N | 28 | E | 28 | SE NE | 7500 | 29.40 |
| 3 | N | 28 | E | 28 | NE NW | 7500 | 31.30 |
| 3 | N | 28 | E | 28 | NW NW | 7500 | 31.20 |
| 3 | N | 28 | E | 28 | SW NW | 7500 | 31.00 |
| 3 | N | 28 | E | 28 | SE NW | 7500 | 30.80 |
| 3 | N | 28 | E | 28 | NE SW | 7500 | 30.50 |
| 3 | N | 28 | E | 28 | NW SW | 7500 | 30.20 |
| 3 | N | 28 | E | 28 | SW SW | 7500 | 39.00 |
| 3 | N | 28 | E | 28 | SE SW | 7500 | 39.00 |
| 3 | N | 28 | E | 28 | NE SE | 7500 | 27.20 |
| 3 | N | 28 | E | 28 | NW SE | 7500 | 28.00 |
| 3 | N | 28 | E | 28 | SW SE | 7500 | 35.90 |
| 3 | N | 28 | E | 28 | SE SE | 7500 | 30.90 |
| 3 | N | 28 | E | 29 | NE SW | 8105 | 28.30 |
| 3 | N | 28 | E | 29 | NW SW | 8105 | 29.70 |
| 3 | N | 28 | E | 29 | SW SW | 8105 | 33.70 |
| 3 | N | 28 | E | 29 | SE SW | 8105 | 36.50 |
| 3 | N | 28 | E | 29 | NE SE | 8105 | 30.00 |
| 3 | N | 28 | E | 29 | NW SE | 8105 | 26.20 |
| 3 | N | 28 | E | 29 | SW SE | 8105 | 34.90 |
| 3 | N | 28 | E | 29 | SE SE | 8105 | 36.90 |
| 3 | N | 28 | E | 32 | NE NE | 8105 | 36.70 |
| 3 | N | 28 | E | 32 | NW NE | 8105 | 36.90 |
| 3 | N | 28 | E | 32 | SW NE | 8105 | 32.20 |
| 3 | N | 28 | E | 32 | SE NE | 8105 | 32.00 |
| 3 | N | 28 | E | 32 | NE NW | 8105 | 36.40 |
| 3 | N | 28 | E | 32 | NW NW | 8105 | 31.70 |
| 3 | N | 28 | E | 32 | SW NW | 8105 | 31.90 |
| 3 | N | 28 | E | 32 | SE NW | 8105 | 31.50 |
| 3 | N | 28 | E | 33 | NE NE | 8105 | 31.30 |
| 3 | N | 28 | E | 33 | NW NE | 8105 | 36.50 |
| 3 | N | 28 | E | 33 | SW NE | 8105 | 31.00 |
| 3 | N | 28 | E | 33 | SE NE | 8105 | 31.00 |
| 3 | N | 28 | E | 33 | NE NW | 8105 | 36.90 |

| Twp | Range | Sec | 1/4 | 1/4 | Tax Lot | Acres |
|-------|-------|-----|-----|-----|---------|---------|
| 3 N | 28 E | 33 | NW | NW | 8105 | 36.30 |
| 3 N | 28 E | 33 | SW | NW | 8105 | 32.00 |
| 3 N | 28 E | 33 | SE | NW | 8105 | 32.40 |
| 3 N | 28 E | 33 | NE | SW | 8105 | 29.20 |
| 3 N | 28 E | 33 | NW | SW | 8105 | 30.90 |
| 3 N | 28 E | 33 | SW | SW | 8105 | 32.70 |
| 3 N | 28 E | 33 | SE | SW | 8105 | 30.50 |
| 3 N | 28 E | 33 | NE | SE | 8105 | 31.10 |
| 3 N | 28 E | 33 | NW | SE | 8105 | 31.20 |
| 3 N | 28 E | 33 | SW | SE | 8105 | 32.70 |
| 3 N | 28 E | 33 | SE | SE | 8105 | 32.30 |
| Total | | | | | | 3284.95 |

6. The Applicant shall have sufficient measuring devices installed for reporting and monitoring the water use from CW-85. The reports must be submitted annually by the end of each calendar year to the Watermaster. The Department may request additional data, measuring devices, and more frequent reporting if necessary.

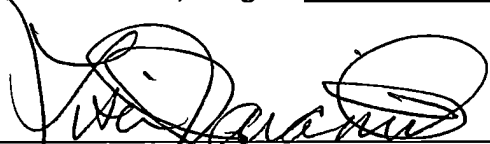
Conclusions of Law

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 Finding of Fact #5 is 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: FEB 06 2020.


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

Mailing date: FEB 07 2020