

**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,                         )   APPLICANT'S PORTION OF  
Morrow County                                    )   CONSERVED WATER

**Applicant**  
Hale Farms, LLC  
73120 Highway 207  
Echo, OR 97826

**Receiving Holder of CW-84**  
Farmland Reserve, Inc.  
c/o AgriNorthwest  
Attn: Matt Vickery  
671 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 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

4. On May 27, 2014, the Department signed an Order Approving Use and Disposition of Applicant’s Portion of Conserved Water authorizing the use of the conserved water at the place of use identified. The Order was recorded in Special Order Volume 92, Pages 624-626.
5. 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.
6. 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.

7. 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.
8. 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.

### Review Criteria

9. 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).
10. OAR 690-018-0090(4)(b) provides a certificate of water right shall be issued upon satisfactory proof of use.
11. Unless the water right is 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. OAR 690-018-0090(4)(c).

### Conclusions of Law

The proposed change in the holder of CW-84 is consistent with the requirements of OAR 690-018-0090.

### Now, therefore, it is ORDERED:

1. Sixty days prior to the use of water under CW-84, Farmland Reserve, Inc., c/o AgriNorthwest, shall submit a 60-Day Notice of Use and Disposition form for the entire use of conserved water. The Notice shall set forth the acreage to which the conserved water shall become appurtenant along with the point of diversion to be utilized.
2. 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 (Stands for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans).
3. To prevent expansion of the original right, Farmland Reserve, Inc., shall install such measuring devices deemed appropriate by the District #5 Watermaster.
4. On or before October 1, 2017, Farmland Reserve, Inc. c/o AgriNorthwest, shall apply the full quantity (9.14 cfs) of conserved water to beneficial use. 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.

DATED at Salem, Oregon this 30 day of November, 2016.

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

Mailing date: DEC 02 2016