

**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  
APPLICANT'S PORTION OF  
CONSERVED WATER

**Applicant**

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

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.

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*	7.35	1243.13	5.71	1044.23	1.64	198.90
53118	8/17/1972*	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

\* - plus one minute

- The Applicant's portion of conserved water was reserved instream for future out-of-stream use.
- 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, as follows:

Township	Range
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

- On February 26, 2015, prior to the start of the irrigation season, the Applicant submitted notification of the intent to use its portion of conserved water that was temporarily reserved instream for future out-of-stream use.

6. On April 6, 2015, the Applicant submitted a 60-Day Notice of Use or Disposition for a portion of the Applicant's Portion of Conserved Water for CW-62 along with the required documentation.
7. The Applicant proposes to use a portion of their conserved water reserved instream for future out-of-stream use as follows:

**Originating Certificate:** 53117  
**Person/Entity Using the Water:** Threemile Canyon Farms, LLC and Cold Springs Dairy, LLC  
 Attn: Martin Myers  
 75906 Three Mile Road  
 Boardman, OR 97818

**Use:** IRRIGATION of 132.6 ACRES  
**Priority Date:** August 18, 1970, *plus one minute*  
**Rate/Volume:** 1.64 CUBIC FEET PER SECOND (CFS), Limited to 198.9 ACRE FEET  
**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
4 N	30 E	WM	3	SE SW	401	7.6
4 N	30 E	WM	3	NE SE	401	30.3
4 N	30 E	WM	3	NW SE	401	32.8
4 N	30 E	WM	3	SW SE	401	31.0
4 N	30 E	WM	3	SE SE	401	30.9
<b>Total</b>						<b>132.6</b>

8. The Applicant proposes to use a portion of their conserved water reserved instream for future out-of-stream use as follows:

**Originating Certificate:** 53118  
**Person/Entity Using the Water:** Threemile Canyon Farms, LLC and Cold Springs Dairy, LLC  
 Attn: Martin Myers  
 75906 Three Mile Road  
 Boardman, OR 97818

**Use:** IRRIGATION of 367.4 ACRES  
**Priority Date:** August 17, 1972, *plus one minute*  
**Rate/Volume:** 3.70 CUBIC FEET PER SECOND (CFS), Limited to 551.10 ACRE FEET  
**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
4 N	30 E	WM	3	NE NE	401	26.0
4 N	30 E	WM	3	NW NE	401	28.4
4 N	30 E	WM	3	SW NE	401	23.0
4 N	30 E	WM	3	SE NE	401	22.6
4 N	30 E	WM	3	NE NW	401	27.2
4 N	30 E	WM	3	NW NW	401	29.0
4 N	30 E	WM	3	SW NW	401	22.6
4 N	30 E	WM	3	SE NW	401	21.9
4 N	30 E	WM	3	NE SW	401	30.6
4 N	30 E	WM	3	NW SW	401	32.0
4 N	30 E	WM	3	SW SW	401	30.8
4 N	30 E	WM	3	SE SW	401	24.0
5 N	30 E	WM	34	SW SW	1316	13.2
5 N	30 E	WM	34	SE SW	1316	11.3
5 N	30 E	WM	34	SW SE	1316	13.4
5 N	30 E	WM	34	SE SE	1316	11.4
<b>Total</b>						<b>367.4</b>

9. The irrigators shall have sufficient totalizing measuring devices installed for reporting and monitoring the water use from CW-62. The Reports must be submitted annually by the end of each Calendar year to the Watermaster. The Department reserves the option to request additional data, measuring devices and more frequent reporting if necessary.
10. The balance of the Applicant's Portion of Conserved Water not currently utilized for future out-of-stream use is as follows:

Originating Certificate	Priority date	Rate (cfs)	Volume (AF)
53117	August 18, 1970, <i>plus one minute</i>	0.00	0.00
53118	August 17, 1972, <i>plus one minute</i>	0.38	57.00
<b>Total</b>		<b>0.38</b>	<b>57.00</b>

11. To prevent enlargement, the rate of the balance of the Applicant's portion of Conserved Water to be reserved and managed instream for future out-of-stream use must be modified as follows:

Originating Certificate	Priority date	Period of Use	Rate (cfs)	Volume (AF)
53117	August 18, 1970, <i>plus one minute</i>		0.00	0.00
53118	August 17, 1972, <i>plus one minute</i>	March 1 to October 31	0.12	57.00
<b>Total</b>			<b>0.12</b>	<b>57.00</b>

From the authorized point of diversion located:

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

To the mouth of the Columbia River.

**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 #8 is approved.
2. The use of water as identified in Findings of Fact #7 and #8 is subject to the provisions of OAR 690-0018-0090(6) and ORS 540.610 to 540.660.

DATED at Salem, Oregon this 20 day of April, 2015.

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

Mailing date: APR 22 2015