

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

In the Matter of Allocation of Conserved )  
Water Application CW-84, )  
Morrow County )  
 )  
 )

FINAL ORDER APPROVING ON  
COMPLETION AND FINALIZATION  
ALLOCATION OF CONSERVED  
WATER CW-84

**Applicant**

Hale Farms, LLC  
73120 Highway 207  
Echo, OR 97826

**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.

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 covering the changes in the original water rights, and once the conservation project is finalized, the Department shall issue new certificates preserving the previously established priority of rights to cover the unaffected portion of the water rights and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

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 allocation of conserved water applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating proposed instream water rights.

**Findings of Fact**

1. On December 24, 2013, Hale Farms, LLC filed an allocation of conserved water application under Certificate 79482. The Department assigned the application number CW-84. On the same date, Hale Farms, LLC conveyed to Oregon Trail Highway, LLC the property to which the portion of Certificate 79482 involved in CW-84 is appurtenant. However, Hale Farms, LLC retained the right to pursue CW-84 and ownership of the Applicant's portion of any conserved water resulting from CW-84.
2. The conservation project involves modifying the center pivot circle irrigation machines to operate at lower pressures and reduced flows and installation of state-of-the-art new low pressure low flow spray nozzles. The installation of low pressure low flow spray nozzles is a proven technology for conserving water.
3. Allocation of Conserved Water Application CW-84 proposes a rate reduction of approximately 12.19 cubic feet per second (cfs) and proposes to reduce the annual volume by 1766.76 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 | AF/AC |
| 79482                       | 43.68       | 1/40   | 7950.42    | 4.5   | 31.49       | 1/56   | 6183.66    | 3.5   | 12.19           | 1766.76    | 1.0   |

4. The portion of the right to be modified by CW-84 is as follows:
  - Certificate:** 79482 in the name of POTLATCH CORPORATION (perfected under Permit S-36940)
  - Use:** IRRIGATION of 1766.76 ACRES
  - Priority Date:** JUNE 29, 1973
  - Rate:** 43.68 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-FORTIETH 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

**Authorized Point of Diversion:**

| 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 |

**Authorized Place of Use:**

| Twp | Rng  | Mer | Sec | Q-Q   | Acres |
|-----|------|-----|-----|-------|-------|
| 4 N | 26 E | WM  | 15  | NE SW | 16.22 |
| 4 N | 26 E | WM  | 15  | NW SW | 11.41 |
| 4 N | 26 E | WM  | 15  | SW SW | 6.64  |
| 4 N | 26 E | WM  | 15  | SE SW | 24.40 |
| 4 N | 26 E | WM  | 15  | NE SE | 0.01  |
| 4 N | 26 E | WM  | 15  | NW SE | 5.82  |
| 4 N | 26 E | WM  | 15  | SW SE | 28.82 |
| 4 N | 26 E | WM  | 15  | SE SE | 17.62 |
| 4 N | 26 E | WM  | 18  | SW NW | 3.26  |
| 4 N | 26 E | WM  | 18  | SE NW | 2.82  |
| 4 N | 26 E | WM  | 18  | NE SW | 34.48 |
| 4 N | 26 E | WM  | 18  | NW SW | 38.71 |
| 4 N | 26 E | WM  | 18  | SW SW | 29.97 |
| 4 N | 26 E | WM  | 18  | SE SW | 25.16 |
| 4 N | 26 E | WM  | 19  | NE NW | 33.93 |
| 4 N | 26 E | WM  | 19  | NW NW | 27.07 |
| 4 N | 26 E | WM  | 19  | SW NW | 2.44  |
| 4 N | 26 E | WM  | 19  | SE NW | 19.62 |
| 4 N | 26 E | WM  | 19  | NE SW | 32.82 |
| 4 N | 26 E | WM  | 19  | NW SW | 38.81 |
| 4 N | 26 E | WM  | 19  | SW SW | 31.77 |
| 4 N | 26 E | WM  | 19  | SE SW | 25.05 |
| 4 N | 26 E | WM  | 29  | SW SW | 1.70  |
| 4 N | 26 E | WM  | 30  | NW NE | 1.18  |
| 4 N | 26 E | WM  | 30  | SW NE | 40.43 |
| 4 N | 26 E | WM  | 30  | SE NE | 19.84 |
| 4 N | 26 E | WM  | 30  | NE NW | 32.70 |
| 4 N | 26 E | WM  | 30  | NW NW | 38.52 |
| 4 N | 26 E | WM  | 30  | SW NW | 32.15 |
| 4 N | 26 E | WM  | 30  | SE NW | 33.92 |
| 4 N | 26 E | WM  | 30  | NE SW | 37.57 |
| 4 N | 26 E | WM  | 30  | NW SW | 38.35 |
| 4 N | 26 E | WM  | 30  | SW SW | 33.26 |
| 4 N | 26 E | WM  | 30  | SE SW | 34.87 |
| 4 N | 26 E | WM  | 30  | NE SE | 12.77 |
| 4 N | 26 E | WM  | 30  | NW SE | 36.20 |

| Twp   | Rng  | Mer | Sec | Q-Q   | Acres   |
|-------|------|-----|-----|-------|---------|
| 4 N   | 26 E | WM  | 30  | SW SE | 40.22   |
| 4 N   | 26 E | WM  | 30  | SE SE | 19.82   |
| 4 N   | 26 E | WM  | 31  | NE NE | 34.96   |
| 4 N   | 26 E | WM  | 31  | NW NE | 37.08   |
| 4 N   | 26 E | WM  | 31  | SW NE | 39.69   |
| 4 N   | 26 E | WM  | 31  | SE NE | 34.40   |
| 4 N   | 26 E | WM  | 31  | NE NW | 36.63   |
| 4 N   | 26 E | WM  | 31  | NW NW | 37.75   |
| 4 N   | 26 E | WM  | 31  | SW NW | 35.37   |
| 4 N   | 26 E | WM  | 31  | SE NW | 34.74   |
| 4 N   | 26 E | WM  | 31  | NE SW | 35.31   |
| 4 N   | 26 E | WM  | 31  | NW SW | 38.09   |
| 4 N   | 26 E | WM  | 31  | SW SW | 37.95   |
| 4 N   | 26 E | WM  | 31  | SE SW | 34.16   |
| 4 N   | 26 E | WM  | 31  | NE SE | 34.16   |
| 4 N   | 26 E | WM  | 31  | NW SE | 37.04   |
| 4 N   | 26 E | WM  | 31  | SW SE | 37.09   |
| 4 N   | 26 E | WM  | 31  | SE SE | 32.52   |
| 4 N   | 26 E | WM  | 32  | NW NE | 0.30    |
| 4 N   | 26 E | WM  | 32  | SW NE | 4.20    |
| 4 N   | 26 E | WM  | 32  | NE NW | 8.52    |
| 4 N   | 26 E | WM  | 32  | NW NW | 39.11   |
| 4 N   | 26 E | WM  | 32  | SW NW | 36.50   |
| 4 N   | 26 E | WM  | 32  | SE NW | 36.57   |
| 4 N   | 26 E | WM  | 32  | NE SW | 34.98   |
| 4 N   | 26 E | WM  | 32  | NW SW | 39.35   |
| 4 N   | 26 E | WM  | 32  | SW SW | 37.21   |
| 4 N   | 26 E | WM  | 32  | SE SW | 36.23   |
| 4 N   | 26 E | WM  | 32  | NW SE | 3.50    |
| 4 N   | 26 E | WM  | 32  | SW SE | 3.00    |
| Total |      |     |     |       | 1766.76 |

5. Certificate 79482 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.
6. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. 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.
8. The Applicant requests that 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 |
| 79482       | 25%             | 3.05               | 441.69                   | 75%                 | 9.14               | 1325.07                  | 100%            | 12.19              | 1766.76                  |

9. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Township 2 North, Ranges 23, 24, 26, 27 and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, and 30 East, W.M.; Township 4 North, Ranges, 23, 24, 25, 26, 27, 28, 29, and 30 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, and 30 East, W.M.
10. The Applicant requests that the priority date for any conserved water be one minute junior to the originating right.
11. The Applicant funded 100% of the conservation project.
12. The Applicant submitted a completed Land Use Form from Morrow County which indicated the proposed use was allowed outright or is not regulated by Morrow County's comprehensive plan pursuant to ordinance MC20, Article 3, Section 3.010.
13. The implementation of the conservation measures began no earlier than March 2009, and was completed in October 2011. The Applicant provided evidence that it attempted to identify and resolve the concerns of water right holders in the area, governmental entities and other organizations.
14. 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.
15. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 79482 from the authorized point of diversion to the mouth of the Columbia River.
16. The Applicant submitted a Notice of Completion with the application indicating the project was complete. The Applicant will request finalization of the allocation on or before March 1, 2016.
17. 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.
19. Notice of the proposed conservation project was published in the Department's weekly notice on February 25, 2014, and in the East Oregonian newspaper on February 22, and March 1, 2014, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.
20. On March 25, 2014, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-84, and mailed a copy to the Applicant and Applicant's attorney. 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).

21. On March 26, 2014, the Applicant requested finalization of the allocation by submission of a Request for Finalization.

**Allocation of Conserved Water Review Criteria [OAR 690-018-0050]**

22. 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 #3).

23. On January 28, 2014, the District #5 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).

24. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #12). OAR 690-018-0050(4)(c).

25. 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-84 under Certificate 79482 are as follows:

| Certificate | Rate        |        | Duty       |       |
|-------------|-------------|--------|------------|-------|
|             | Maximum CFS | CFS/AC | Maximum AF | AF/AC |
| 79482       | 31.49       | 1/56   | 6183.66    | 3.5   |

(Finding of Fact #3).

26. 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) |
|--------------|-----------------------|
| 3.05 cfs     | 441.69 AF             |

Finding of Fact #8.

27. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed instream water right will help to meet the target flows identified to increase survival of federally listed salmon and steelhead species as well as other native species in the Biological Opinion issued for the Federal Columbia River Power System Operation. (Finding of Fact #18).

28. 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 #11). The rate and volume allocated to the Applicant is as follows:

| Priority Date             | Maximum Rate | Maximum Duty (Volume) |
|---------------------------|--------------|-----------------------|
| 6/29/1973 plus one minute | 9.14 cfs     | 1325.07 AF            |

Finding of Fact #8.

29. The new instream water right created will be protected in the Columbia River from the authorized point of diversion as described in Finding of Fact #4 to the mouth. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
30. 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.
31. The instream right shall allow the use and protection of flows as follows:

| Priority Date             | Period            | Rate (cfs) | Volume (acre-feet) |
|---------------------------|-------------------|------------|--------------------|
| 6/29/1973 plus one minute | 3/1 through 10/31 | 0.91       | 441.69             |

32. 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).
33. The protection of flows within the proposed reach is appropriate, considering:
  - a) The instream water right begins at the recorded point of diversion;
  - b) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - c) There are no known return flows resulting from the exercise of the existing water right. OAR 690-077-0015(8).
34. The combination of instream rights for the proposed reach on the Columbia River does not exceed the amount needed to provide increased public benefits, and do not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
35. There are no existing instream water rights on the Columbia River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process). 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).
36. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Township 2 North, Ranges 23, 24, 26, 27 and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, and 30 East, W.M.; Township 4 North, Ranges, 23, 24, 25, 26, 27, 28, 29, and 30 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, and 30 East, W.M. (Finding of Fact #9). OAR 690-018-0050(4)(h).
37. The Applicant submitted a Request for Finalization on March 26, 2014, as required by OAR 690-018-0050(4)(i). (Finding of Fact #21).
38. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #23). OAR 690-018-0050(4)(j).

**Conclusions of Law**

The project described in Allocation of Conserved Water Application CW-84, 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. Finding of Fact #22.
2. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #23.
3. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #24.

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

1. The changes proposed in CW-84 are approved.
2. 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 |
| 79482       | 25%             | 3.05               | 441.69                   | 75%                 | 9.14               | 1325.07                  | 100%            | 12.19              | 1766.76                  |

3. 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 79482 and any related decree.
4. Water Right Certificate 79482 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and a superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #4) at the reduced rate and duty as follows:

**Use:** IRRIGATION of 1766.76 ACRES  
**Priority Date:** JUNE 29, 1973  
**Rate:** 31.49 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, shall be limited to ONE-FIFTY-SIXTH (1/56) 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 3.5 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 6183.66 acre-feet per year.  
**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN



5. Water use measurement conditions:
- Before the use of the Applicant's portion of conserved water, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
  - The water user shall maintain the meters or measuring devices in good working order.
  - 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. The Applicant's portion of conserved water (9.14 cfs, 1325.07 AF) shall be used and managed instream until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090 is received. The water shall be managed instream from the authorized point of diversion located:

| 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 of the Columbia River at river mile 0.0.

7. The proposed areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within Township 2 North, Ranges 23, 24, 26, 27 and 28 East, W.M.; Township 3 North, Ranges 23, 24, 26, 27, 28, 29, and 30 East, W.M.; Township 4 North, Ranges, 23, 24, 25, 26, 27, 28, 29, and 30 East, W.M.; and Township 5 North, Ranges 26, 27, 28, 29, and 30 East, W.M.
8. 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 Columbia River as follows:

| Priority Date                 | Period                     | Rate (cfs) | Volume (acre-feet) |
|-------------------------------|----------------------------|------------|--------------------|
| June 29, 1973 plus one minute | March 1 through October 31 | 0.91       | 441.69             |

Columbia River: From the authorized point of diversion under Certificate 79482 located at:

| 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.

Dated at Salem, Oregon this 27th day of May, 2014.

  
 Dwight French, Water Rights Services Administrator for  
 PHILLIP C. WARD, DIRECTOR

Mailing Date: MAY 28 2014