

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

In the Matter of Allocation of Conserved) FINAL ORDER ON FINALIZATION OF
Water Application CW-131,) ALLOCATION OF CONSERVED WATER
Washington, County) CW-131

Applicants:

Casparian Angel Crest, LLC
20980 NE Niederberger Rd
Dundee, OR 97115

AgWest Farm Credit, PCA
380 Farm Credit Drive SE
Salem, OR 97301-5501

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 and the proposed location of use; (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.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is 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 not subject to repayment. 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 and new certificates reflecting the changes for the portions of the water rights involved in the conserved water application. 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 July 8, 2022, Berchtold Farming LLC filed an allocation of conserved water application under Certificate 75881. The Department assigned the application number CW-131.
2. On November 3, 2022, Allocation of Conserved Water Application CW-131 was assigned from Berchtold Farming, LLC to N Ore Pinot, LLC.
3. On May 17, 2023, the Department approved an assignment of Allocation of Conserved Water Application CW-131 from N Ore Pinot, LLC to Casparian Angel Crest, LLC and AgWest Farm Credit, PCA.
4. The conservation project involved converting from hand watering with garden hoses to using drip emitters.
5. A Final Order of Approval of Allocation of Conserved Water CW-131 (Approval Order) was issued on June 16, 2023. The order is recorded at Special Order Volume 128, Pages 495-504.
6. On August 24, 2023, Casparian Angel Crest, LLC submitted a Notice of Completion.

7. On September 12, 2023, the Department issued a Final Order on Completion of Allocation of Conserved Water CW-131 (Completion Order), recorded at Special Order Volume 129, Pages 65-70.
8. On September 26, 2023, the Department issued a Correcting Order for Allocation of Conserved Water CW-131, recorded at Special Order Volume 129, Pages 124-125. The completion order issued on September 12, 2023, incorrectly identified the percentage of water allocated to the State. The Correcting Order confirmed the following quantities of conserved water:

Originating 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
75881	25%	0.011	4.0	75%	0.034	11.9	100%	0.045	15.9

9. The Completion Order established the reduced rates and duties for the existing uses under Certificate 75881 as follows:

Originating Certificate	Priority	Rate		Duty		Acres
		Maximum CFS	CFS/AC	Maximum AF	AF/AC	
75881	July 12, 1963	0.035	1/186	0.4	0.06	6.5

10. The Approval Order established the priority date for the conserved water to be the same as the originating right.
11. The Approval Order established the following areas the Applicant's portion of conserved water may be used for out-of-stream uses as follows:

Twp	Rng	Mer	Section	Q-Q
2 S	2 W	WM	26	SW SW
2 S	2 W	WM	26	SE SW
2 S	2 W	WM	26	SW SE

12. The Completion Order established a deadline of December 15, 2023, for the Request for Finalization form to be submitted.
13. On December 19, 2023, the Applicant submitted a Request for Finalization.

Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order Approving Allocation of Conserved Water CW-131, recorded at Special Order Volume 128, Pages 495 to 504, are incorporated as if set forth fully herein. The Findings of Fact and Conclusions of Law set forth in the Final Order on Completion of Allocation of Conserved Water CW-131, recorded at Special Order Volume 129, Pages 65 to 70, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-131, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

Now, therefore, it is ORDERED:

1. The project is complete, and no additional time is needed for finalization.
2. The Applicant's portion of conserved water shall be used as described below until such time as a subsequent Notice of Use and Disposition form is submitted pursuant to ORS 537.490.

Use: IRRIGATION of 66.4 ACRES
Priority Date: JULY 12, 1963
Rate: 0.034 CUBIC FEET PER SECOND
Limit: The amount of water used for irrigation is limited to a diversion of an annual volume limitation of 11.9 acre feet per year
Source: AN UNNAMED CREEK AND RESERVOIR CONSTRUCTED UNDER APPLICATION NO. R-38892, PERMIT NO. R-3420, tributary of CHICKEN CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2S	2W	WM	26	SE SW	1090 FEET NORTH AND 340 FEET WEST FROM THE S1/4 CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2S	2W	WM	26	SE SW	1301	37.9
2S	2W	WM	26	SW SE	1301	28.5
Total						66.4

3. Water Right Certificate 75881 is cancelled. A new certificate will be issued for that portion of Certificate 75881 not affected by CW-131. 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 6.5 ACRES
Priority Date: JULY 12, 1963
Rate: 0.035 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 0.035 (1/186) 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 0.06 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 0.4 acre-feet, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.
Source: AN UNNAMED CREEK AND RESERVOIR CONSTRUCTED UNDER APPLICATION NO. R-38892, PERMIT NO. R-3420, tributary of CHICKEN CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 W	WM	26	SE SW	1090 FEET NORTH AND 340 FEET WEST FROM THE S1/4 CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2S	2W	WM	26	SE SW	1.7
2S	2W	WM	26	SW SE	4.8
Total					6.5

4. Water use measurement conditions:
 - a. The water user shall maintain the meters or measuring devices in good working order.
 - b. 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.

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

Source: an unnamed creek and reservoir constructed under Application No. R-38892, Permit No. R-3420, tributary a tributary of Chicken Creek

Priority Date	Originating Certificate	Period	Rate (cfs)	Volume (acre-feet)
July 12, 1963	75881	May 1 through September 30	0.011	4.0

From the authorized point of diversion:

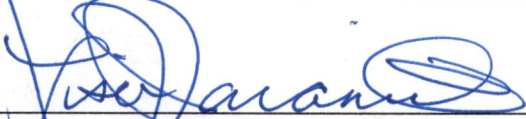
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2S	2W	WM	26	SE SW	1090 FEET NORTH AND 340 FEET WEST FROM THE S1/4 CORNER OF SECTION 26

To: the confluence with the unnamed stream in the SW SE of Section 26, T2S, R2W, WM.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this allocation of conserved water shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon: JAN 22 2024



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing date: JAN 23 2024