

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

In the Matter of Allocation of Conserved) FINAL ORDER ON COMPLETION AND
Water Application CW-121,) FINALIZATION OF ALLOCATION OF
Yamhill County) CONSERVED WATER CW-121

Applicant

Cameron and Dorothy Kirsch
PO Box 7912
Bend, OR 97708

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.

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 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 December 30, 2020, Cameron and Dorothy Kirsch, filed an allocation of conserved water application under Certificate 88102. The Department assigned the application number CW-121.
2. On January 21, 2021, the Applicants amended their application to more accurately reflect the quantity allowed under Certificate 88102, the quantity needed after the conservation measures, and the total quantity conserved. In addition, the amendment also clarified the place of use for future out-of-stream use.
3. On June 28, 2021, a Final Order Approving Allocation of Conserved Water CW-121 (Approval Order) was signed and mailed on June 30, 2021. The Approval Order is recorded at Special Order Volume 120, Pages 929-938.

4. The Approval Order allocated the conserved water as follows:

Certificate	State’s Portion			Applicant’s Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF
88102	25	0.015	2.86	75	0.045	8.58	100	0.06	11.44

5. The Approval Order established the reduced rate and duty for the existing uses under Certificate 88102 as follows:

Originating Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
88102	0.17	0.009	34.31	1.875

6. The Approval Order allocated the following rate and volume to the State for instream use:

Priority Date	Rate (cfs)	Volume (acre-feet)
February 21, 1929, <i>plus one minute</i>	0.015	2.86

7. The Approval Order established the amount of conserved water allocated to the Applicant. The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate (cfs)	Maximum Duty (Volume) (AF)
February 21, 1929, <i>plus one minute</i>	0.045	8.58

8. 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	Sec.	Q-Q	G-Lot	DLC
4 S	4 W	WM	3	NW SW		45
4 S	4 W	WM	3	SW NW		45
4 S	4 W	WM	4		1	
4 S	4 W	WM	4		2	

9. The Approval Order established the deadline for submitting a Notice of Completion of December 1, 2022, and the deadline for submitting a Request for Finalization of December 1, 2025.
10. On September 24, 2021, the Applicant submitted a Notice of Completion and 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-121, recorded at Special Order Volume 120, Pages 929 to 938, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-121, 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:

- The project is complete, and no additional time is needed for finalization.
- 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
Priority Date: FEBRUARY 21, 1939, *plus one minute*
Rate: 0.045 CUBIC FEET PER SECOND
Limit: The amount of water used for irrigation is limited to a diversion of an annual volume limitation of 8.58 acre feet per year

Source: NORTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	4 W	WM	4	NW NE	2	325 FEET SOUTH AND 460 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	4 W	WM	4	NE NW	0.49
4 S	4 W	WM	4	SE NW	7.24
4 S	4 W	WM	4	SW NE	21.90
4 S	4 W	WM	4	NE SW	4.50
4 S	4 W	WM	4	NW SE	32.40
4 S	4 W	WM	4	SW SE	5.04
Total					71.57

3. Water Right Certificate 88102 is cancelled. 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 18.3 ACRES

Priority Date: February 21, 1939

Rate: 0.17 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 1/110 of one cubic foot per second (0.009 cfs), or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 1.875 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 34.31 acre-feet per year.

Source: NORTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	3	NW SW		45	NONE GIVEN
4 S	4 W	WM	3	SW NW		45	NONE GIVEN
4 S	4 W	WM	4		1		NONE GIVEN
4 S	4 W	WM	4		2		NONE GIVEN

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	4 W	WM	4	NE NW	3.0
4 S	4 W	WM	4	SE NW	14.4
4 S	4 W	WM	4	NE SW	0.9

4. Water use measurement conditions:
 - a. 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.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. 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 in the North Yamhill River. The instream right shall allow the use and protection of flows as follows:

Source: North Yamhill River, tributary to Yamhill River

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
February 21, 1929, plus one minute	June 26 through September 30	0.015	2.86

At the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 S	4 W	WM	4	NW NE	2	325 FEET SOUTH AND 460 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 4

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 shall replace a portion of instream water rights established pursuant to ORS 537.341 OR 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified in an order approving a new instream water right under these statutes.

Dated at Salem, Oregon: OCT 11 2021



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

Mailing date: OCT 12 2021