

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. 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 October 6, 2017, Toft-Kaser Farm, LLC filed an allocation of conserved water application under Certificate 26123. The Department assigned the application number CW-100.
2. The conservation project involved converting from handlines and sprinklers to drip irrigation. The conversion to drip irrigation is a proven technology for conserving water.
3. On February 23, 2018, the Department issued a Final Order Approving Allocation of Conserved Water CW-100 ("February 23, 2018 Final Order"). The Findings of Fact and Conclusions of Law of the February 23, 2018 Final Order are incorporated as if set forth fully herein.
4. The February 23, 2018 Final Order allocated the conserved water 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 |
| 26123 | 25% | 0.05 | 8.66 | 75% | 0.17 | 25.99 | 100% | 0.22 | 34.65 |

5. The February 23, 2018 Final Order also identified the following areas within which the conserved water is proposed to be used for out-of-stream uses are within Sections 9, 10, 15, and 16, Township 6 South, Range 1 East, W.M.
6. The February 23, 2018 Final Order identified the following attributes for the conserved water:

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 6 S | 1 E | WM | 15 | SW NW | 39 | 50 FEET NORTH AND 240 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 15 |

Rate / Volume: 0.17 CFS / 25.99 Acre Feet
Period of Use: March 1 through October 31
Priority Date: July 25, 1952, *plus one minute*

7. The Department has determined that the instream right created from the State's portion of conserved water will support public benefits. The proposed instream water right will be a net benefit to the aquatic species of Butte Creek and will assist the temperature reduction requirements of the Molalla-Pudding Subbasin total maximum daily load.
8. The new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-100 under Certificate 26123 are as follows:

| Certificate | Rate | | Duty |
|-------------|-------------|--------|------------|
| | Maximum CFS | CFS/AC | Maximum AF |
| 26123 | 0.03 | 0.0015 | 14.85 |

9. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is as follows:

| Priority Date | Maximum Rate (cfs) | Maximum Duty / Volume (AF) |
|---------------------------------------|--------------------|----------------------------|
| July 25, 1952, <i>plus one minute</i> | 0.05 | 8.66 |

10. The new instream water right created will be protected in Butte Creek at the authorized point of diversion as described in Finding of Fact #6.
11. 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 season, the conserved water may be protected at the full rate without enlarging the right.
12. The instream right shall allow the use and protection of flows as follows:

| Priority Date | Period | Rate (cfs) | Volume (acre-feet) |
|-----------------------------------|--------------------------|------------|--------------------|
| 7/25/1952, <i>plus one minute</i> | June 1 through August 26 | 0.05 | 8.66 |

13. On February 26, 2018, the Applicant submitted a Notice of Completion and a Notice of Use and Disposition for the Applicant's Portion of Conserved Water.
14. The Notice of Use and Disposition set forth the following use of the Applicant's portion of conserved water:

Use: IRRIGATION of 40.1 ACRES
Priority Date: JULY 25, 1952
Rate: 0.17 CUBIC FOOT PER SECOND
Limit/Duty: 25.99 ACRE FEET
Source: BUTTE CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 6 S | 1 E | WM | 15 | SW NW | 39 | 50 FEET NORTH AND 240 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 15, WITHIN WHITLOCK DLC #39 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
|-------|-----|-----|-----|-------|-----|-------|
| 6 S | 1 E | WM | 15 | NW NW | 500 | 25.6 |
| 6 S | 1 E | WM | 15 | SW NW | 500 | 7.0 |
| 6 S | 1 E | WM | 15 | NW SW | 500 | 7.5 |
| Total | | | | | | 40.1 |

15. On March 2, 2018, the Applicant submitted a Request for Finalization.
16. The project is complete and no additional time is required for finalization.

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-100, 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.
2. The proposed allocation of conserved water will not harm existing water rights.
3. The approval is consistent with OAR 690-005-0045.
4. The proposed new use is within the area described in the original application.

Now, therefore, it is ORDERED:

1. 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 |
| 26123 | 25% | 0.05 | 8.66 | 75% | 0.17 | 25.99 | 100% | 0.22 | 34.65 |

2. 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 26123 and any related decree.
3. Water Right Certificate 26123 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 19.8 ACRES
Priority Date: JULY 25, 1952
Rate: 0.03 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 0.0015 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 0.75 acre feet per acre

for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume of 14.85 acre feet per year.

Source: BUTTE CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 6 S | 1 E | WM | 15 | SW NW | 39 | 50 FEET NORTH AND 240 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 15, WITHIN WHITLOCK DLC #39 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
|-------|-----|-----|-----|-------|-----|-------|
| 6 S | 1 E | WM | 15 | SW NW | 44 | 10.0 |
| 6 S | 1 E | WM | 15 | SE NW | 44 | 2.2 |
| 6 S | 1 E | WM | 15 | NE SW | 44 | 2.2 |
| 6 S | 1 E | WM | 15 | NW SW | 44 | 5.4 |
| Total | | | | | | 19.8 |

4. Water use measurement conditions:

- a. A totalizing flow meter shall be maintained at the point of diversion on Butte Creek.
- b. 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 project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water shall be used as follows or until such time a notice required under OAR 690-018-0090(1) is filed:

Use: IRRIGATION of 40.1 ACRES
Priority Date: JULY 25, 1952, *plus one minute*
Rate: 0.17 CUBIC FOOT PER SECOND
Limit/Duty: 25.99 ACRE FEET
Source: BUTTE CREEK, tributary to the PUDDING RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 6 S | 1 E | WM | 15 | SW NW | 39 | 50 FEET NORTH AND 240 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 15, WITHIN WHITLOCK DLC #39 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
|-------|-----|-----|-----|-------|-----|-------|
| 6 S | 1 E | WM | 15 | NW NW | 500 | 25.6 |
| 6 S | 1 E | WM | 15 | SW NW | 500 | 7.0 |
| 6 S | 1 E | WM | 15 | NW SW | 500 | 7.5 |
| Total | | | | | | 40.1 |

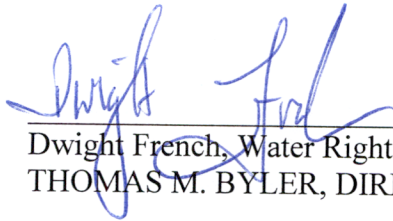
6. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values, and pollution abatement in Butte Creek as follows:

| Priority Date | Period | Rate (cfs) | Volume (acre-feet) |
|----------------------------|--------------------------|------------|--------------------|
| 7/25/1952, plus one minute | June 1 through August 26 | 0.05 | 8.66 |

Source: Butte Creek. Protected at the authorized point of diversion under Certificate 26123 located approximately:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 6 S | 1 E | WM | 15 | SW NW | 39 | 50 FEET NORTH AND 240 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 15 |

Dated at Salem, Oregon this 6th day of March, 2018.



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

Mailing Date: MAR 06 2018