



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 June 27, 2018, HAZELGROVE FARMS, LLC filed an allocation of conserved water application under Certificates 31722 and 62149. The Department assigned the application number CW-104.
2. The conservation project involves modifying the irrigation system from big gun sprinklers and wheel lines to drip irrigation for efficiency. The conversion to drip irrigation is a proven technology for conserving water.
3. Application CW-104 proposes a rate reduction of approximately 0.23 cubic foot per second (cfs) and proposes to reduce the annual volume by 46.69 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
31722	0.36	1/80	72.5	2.5	0.20	0.007	39.15	1.35	0.16	33.35	1.15
62149	0.15	1/80	29.0	2.5	0.08	0.007	15.66	1.35	0.07	13.34	1.15
Totals	0.51		101.5		0.28		54.81		0.23	46.69	

4. The first right to be modified by CW-104 is as follows:
  - Certificate:** 31722 in the name of Frank B. Doll (perfected under Permit S-19349)
  - Use:** IRRIGATION of 29.0 ACRES
  - Priority Date:** MARCH 8, 1950
  - Rate:** 0.36 CUBIC FOOT 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-EIGHTIETH (1/80) 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
  - Source:** LUCKIAMUTE RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
9 S	6 W	WM	24	NW SE	3

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
9 S	6 W	WM	24	NW SE	3	24.2
9 S	6 W	WM	24	NE SE		4.8
Total						29.0

5. Certificate 31722 does not give the measured distances of the point of diversion. Information from the Watermaster and the Department's records indicate the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	1160 FEET SOUTH AND 840 FEET EAST FROM THE NE CORNER OF DLC 49

6. The second right to be modified by CW-104 is as follows:

**Certificate:** 62149 in the name of Frank B. Doll (perfected under Permit S-45906)

**Use:** IRRIGATION of 11.6 ACRES

**Priority Date:** August 18, 1980

**Rate:** 0.15 CUBIC FOOT 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-EIGHTIETH (1/80) 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** LUCKIAMUTE RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	1160 FEET SOUTH AND 840 FEET EAST FROM THE NE CORNER OF DLC 49

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC or Lot	Acres
9 S	6 W	WM	24	SW NE	48	2.2
9 S	6 W	WM	24	SW NE	2	5.5
9 S	6 W	WM	24	SE NE	1	0.6
9 S	6 W	WM	24	NE SE		1.0
9 S	6 W	WM	24	NW SE	3	2.3
Total						11.6

7. Certificates 31722 and 62149 do not list a period of use; however, the Luckiamute Decree identifies the irrigation season as April 1 through September 30.

8. 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.
9. 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.
10. 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
31722	25%	0.04	8.34	75%	0.12	25.01	100%	0.16	33.35
62149	25%	0.02	3.34	75%	0.05	10.00	100%	0.07	13.34
Totals		0.06	11.68		0.17	35.01		0.23	46.69

11. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Townships 8 and 9 South, Ranges 5 and 6 West, W.M.
12. The Applicant requests that the priority date for any conserved water be the same as originating right.
13. The Applicant funded 100% of the conservation project.
14. The Applicant submitted a completed Land Use Form from Polk County indicated the proposed use was allowed outright or is not regulated by Polk County's comprehensive plan.
15. The implementation of the conservation measures began no earlier than June 1, 2018, and was completed in June 2018. There are no water right holders in the area, governmental entities and other organizations who have asked to be consulted regarding the allocation of conserved water.
16. 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, and pollution abatement.
17. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificates 31722 and 42169 at the authorized point of diversion on the Luckiamute River.
18. The Applicant indicated the project was complete and submitted a Request for Finalization with the application.
19. The application meets the requirements of OAR 690-018-0040.

20. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) and Oregon Department of Environmental Quality to ascertain whether the proposed instream flows are necessary to support instream flow uses.
21. Notice of the proposed conservation project was published in the Department's weekly notice on July 10, 2018, and in the Polk County Itemizer newspaper on July 11 and 18, 2018, as required under OAR 690-018-0050(1)(a) and (2). There were no commenters to the public notice required under OAR 690-018-0050(3). On August 20, 2018, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-104, and mailed a copy to the Applicant on August 21, 2018. No protests were filed within 60 days from the date of mailing the Preliminary Determination. OAR 690-018-0050(6).

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

22. The proposed allocation of conserved water will result in reduced diversions of the uses allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Findings of Fact #4 and #6).
23. On July 5, 2018, the District #16 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster has indicated the quantity of water to be protected instream is not a measurable quantity in the Luckiamute River; therefore, the instream water right should be protected at the authorized point of diversion as requested by the Applicant. The Watermaster has also determined that at this time, the Department lacks sufficient data to quantify the return flows that likely return to the Luckiamute River below the authorized point of diversion. Therefore, the Department is unable to determine the quantity of conserved water, if any, needed to mitigate for harm to other water rights. Thus, no quantity of conserved water will be allocated 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 #14). 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-104 under Certificates 31722 and 62149 are as follows:

Originating Certificate	Priority	Rate		Duty	
		Maximum CFS	CFS/AC	Maximum AF	AF/AC
31722	3/8/1950	0.20	0.007	39.15	1.35
62149	8/18/1980	0.08	0.007	15.66	1.35
Totals		0.28		54.81	

(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:

Originating Certificate	Priority	Maximum Rate (CFS)	Maximum Duty/ Volume (AF)
31722	3/8/1950	0.04	8.34
62149	8/18/1980	0.02	3.34
Totals		0.06	11.68

Finding of Fact #10.

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 maintain aquatic habitat for native fish. The Luckiamute River is surface water quality limited for not meeting temperature criteria for cold water fish from June through September, and for dissolved oxygen for fish spawning, and biological criteria for aquatic life from January through May 15. (Finding of Fact #20).
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 #13). The rate and volume allocated to the Applicant is as follows:

Originating Certificate	Priority	Maximum Rate (CFS)	Maximum Duty/ Volume (AF)
31722	3/8/1950	0.12	25.01
62149	8/18/1980	0.05	10.00
Totals		0.17	35.01

Finding of Fact #10.

29. The new instream water right created will be protected in the Luckiamute River at the authorized point of diversion as described in Findings of Fact #5 and #6. 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 period of use, the full quantity of conserved water may be protected without enlarging the right.
31. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period of Use	Rate (cfs)	Volume (acre-feet)
March 8, 1950	June 1 through September 9	0.04	8.34
August 18, 1980	June 1 through September 9	0.02	3.34
Totals		0.06	11.68

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 at the authorized point of diversion is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and

- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.  
OAR 690-077-0015(8).
34. The combination of instream rights for the proposed reach on the Luckiamute 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. At the proposed instream point, there are no instream water rights established on the Luckiamute River pursuant to ORS 537.336 (state agency process) or ORS 537.341 (minimum flow conversion) for the purposes of supporting aquatic life. OAR 690-077-0015(11).
36. 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 at the proposed point, 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, and pollution abatement.
37. During the period June 1 through September 9, any instream water right established by this conserved water application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
38. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Townships 8 and 9, South, Ranges 5 and 6 West, W.M. (Finding of Fact #11). OAR 690-018-0050(4)(h).
39. The project is complete and no additional time is requested for completion. The Applicant submitted a Request for Finalization with the application. (Finding of Fact #18). OAR 690-018-0050(4)(i).
40. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Findings of Fact #23 and #30). OAR 690-018-0050(4)(j).

### **Conclusions of Law**

The project described in Allocation of Conserved Water Application CW-104 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 reduced diversions for the uses allowed under the original water rights. Findings of Fact #3 and #25.
2. The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #23 and #40.

- The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #14 and #24.

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

- The changes proposed in CW-104 are approved.
- 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
31722	25%	0.04	8.34	75%	0.12	25.01	100%	0.16	33.35
62149	25%	0.02	3.34	75%	0.05	10.00	100%	0.07	13.34
Totals		0.06	11.68		0.17	35.01		0.23	46.69

- 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 Certificates 31722 and 62149 and any related decree.
- Water Right Certificate 31722 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate and duty as follows:

**Certificate:** 31722 in the name of Frank B. Doll (perfected under Permit S-19349)  
**Use:** IRRIGATION of 29.0 ACRES  
**Priority Date:** MARCH 8, 1950  
**Rate:** 0.20 CUBIC FOOT 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 1/143 of one cubic foot per second (0.007 CFS) per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 1.35 acre-feet (AF) per acre for each acre irrigated during the irrigation season of each year, and an annual volume limitation of 39.15 AF.  
**Source:** LUCKIAMUTE RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	NONE GIVEN

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
9 S	6 W	WM	24	NW SE	3	24.2
9 S	6 W	WM	24	NE SE		4.8
Total						29.0

- Water Right Certificate 62149 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate and duty as follows:

**Certificate:** 62149 in the name of Frank B. Doll (perfected under Permit S-45906)  
**Use:** IRRIGATION of 11.6 ACRES  
**Priority Date:** August 18, 1980



**Rate:** 0.08 CUBIC FOOT 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 1/143 of one cubic foot per second (0.007 CFS) per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 1.35 acre-feet (AF) per acre for each acre irrigated during the irrigation season of each year, and an annual volume limitation of 15.66 AF.

**Source:** LUCKIAMUTE RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	1160 FEET SOUTH AND 840 FEET EAST FROM THE NE CORNER OF DLC 49

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC or Lot	Acres
9 S	6 W	WM	24	SW NE	49	2.2
9 S	6 W	WM	24	SW NE	2	5.5
9 S	6 W	WM	24	SE NE	1	0.6
9 S	6 W	WM	24	NE SE		1.0
9 S	6 W	WM	24	NW SE	3	2.3
Total						11.6

6. 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.
7. The project is complete and no additional time is needed for finalization.
8. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Townships 8 and 9, South, Ranges 5 and 6 West, W.M. (Finding of Fact #11). OAR 690-018-0050(4)(h).
9. The Applicant submitted a Request for Finalization. The Applicant's portion of conserved water shall be used as follows until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090.

**Use:** IRRIGATION of 24.1 ACRES

**Priority Date:** MARCH 8, 1950 and AUGUST 18, 1980

**Rate:** 0.17 CUBIC FOOT PER SECOND (CFS), being 0.12 CFS under March 8, 1950 priority, and 0.05 CFS under August 18, 1980 priority

**Limit:** Annual Volume limitation of 35.01 ACRE FEET (AF), being 25.01 AF under 3/8/1950 priority, and 10.0 AF under 8/18/1950 priority

**Source:** LUCKIAMUTE RIVER, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	1160 FEET SOUTH AND 840 FEET EAST FROM THE NE CORNER OF DLC 49

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	6 W	WM	24	SW NE	6.1
9 S	6 W	WM	24	NE SE	10.7
9 S	6 W	WM	24	NE SW	7.3
Total					24.1

10. 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 as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
March 8, 1950	June 1 through September 9	0.04	8.34
August 18, 1980	June 1 through September 9	0.02	3.34
Totals		0.06	11.68

Luckiamute River: At the authorized point of diversion under Certificates 31722 and 62149 located as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	6 W	WM	24	NW SE	3	1160 FEET SOUTH AND 840 FEET EAST FROM THE NE CORNER OF DLC 49

Dated at Salem, Oregon this 24<sup>th</sup> day of October, 2018.

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

Mailing Date: OCT 25 2018