



Oregon

Kate Brown, Governor

Water Resources Department

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June 18, 2015

Applicant

Timothy Foley
429 Country Hill Drive
Roseburg, OR 97471
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SUBJECT: Allocation of Conserved Water Application CW-88

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-88.

If no protest is filed, the Department will issue a Final Order consistent with this Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest periods for both the transfer and conserved water applications.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position to the Water Resources Commission.

Please do not hesitate to contact me at 503-986-0881 or teri.k.hranac@wrđ.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Allocation of Conserved Water
Transfer and Conservation Section

Enclosure

cc: CW-88
District #15 Watermaster (via e-mail)
Nathan Reed, Agent, 1113 SE Cass Ave., Roseburg, OR 97470 (email @ nreed68@hotmail.com)



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

In the Matter of Allocation of Conserved)	PRELIMINARY DETERMINATION
Water Application CW-88,)	PROPOSING APPROVAL OF
Douglas County)	ALLOCATION OF CONSERVED
)	WATER CW-88

Applicant

Timothy Foley
429 Country Hill Drive
Roseburg, OR 97471

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.

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).

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.

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. 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 April 8, 2015, the Applicant filed an allocation of conserved water application under Certificate 45888. The Department assigned the application number CW-88.
2. The conservation project involves converting from a standard pipe and impact sprinkler system for 3.0 acres to a drip irrigation system with each row of the block having a 3/4 inch drip line with 1 gallon-per-hour drip emitters at approximately 726 emitters per acre supplying 100 gallons of water at each emitter per irrigation season. The conversion to a drip irrigation season is a proven technology for conserving water.
3. Allocation of Conserved Water Application CW-88 proposes a rate reduction of approximately 0.034 cubic foot per second (cfs) and proposes to reduce the annual volume by 6.84 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
45888	0.036	0.012	7.5	2.5	0.0014	0.0005	0.66	0.22	0.034	6.84	2.28

4. The portion of the right to be modified by CW-84 is as follows:

Certificate: 45888 in the name of WALTER L. CROSIER (perfected under Permit S-37976)

Use: IRRIGATION of 3.0 ACRES

Priority Date: April 13, 1973

Rate: 0.036 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, is 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: North Umpqua River, tributary to the UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
26 S	6 W	WM	22	NE SE	43	740 FEET SOUTH AND 220 FEET WEST FROM THE NE CORNER OF EVANS DLC 43

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
26 S	6 W	WM	22	NE SE	43	3.0

5. Certificate 45888 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
45888	25%	0.009	1.71	75%	0.025	5.13	100%	0.034	6.84

9. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within the NWSE and NESE, DLC 43, of Section 22, Township 26 South, Range 6 West, W.M
10. The Applicant requests that the priority date for any conserved water be the same as the originating right.
11. The Applicant funded 100% of the conservation project.
12. The Applicant submitted a completed Land Use Form from Douglas County which indicated the proposed use was allowed outright or is not regulated by Douglas County's comprehensive plan.
13. 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.

14. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 45888 from the authorized point of diversion at approximately River Mile 4.0 of the North Umpqua River to the confluence with the South Umpqua River.
15. The Applicant requested the deadline for submitting the Notice of Completion of June 30, 2020. The Applicant will submit a Request for Finalization of the allocation on or before June 30, 2025.
16. The application meets the requirements of OAR 690-018-0040.
17. 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.
18. Notice of the proposed conservation project was published in the Department's weekly notice on May 5, 2015, and in the News Review newspaper on May 5 and 12, 2015, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

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

19. 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).
20. On May 27, 2015, the District #15 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).
21. 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).
22. 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-88 under Certificate 45888 are as follows:

Certificate	Acres	Rate		Duty	
		Maximum CFS	CFS/AC	Maximum AF	AF/AC
45888	3.0	0.0014	0.0005	0.66	0.22

(Finding of Fact #3).

23. 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)
0.009 cfs	1.71

Finding of Fact #8.

24. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. (Finding of Fact #17).
25. 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)
4/13/1973	0.025 cfs	5.13 AF

Finding of Fact #8.

26. The new instream water right created will be protected in the North Umpqua River from the authorized point of diversion as described in Finding of Fact #4, at approximately River Mile 4.0, to the confluence with the South Umpqua River. OAR 690-018-0050(4)(h); OAR 690-077-0015(8). (Finding of Fact #23.)
27. 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.
28. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period of Use	Rate (cfs)	Volume (acre-feet)
4/13/1973	3/1 through 10/31	0.004	1.71

29. 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).
30. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. 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 reach of the instream water right.
 OAR 690-077-0015(8).

31. The combination of instream rights for the proposed reach on the North Umpqua 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).

32. Existing Instream water right Certificates 59800, 59939, and 81500, established under ORS 537.341 (minimum flow conversion) and ORS 537.336 (state agency process) within the proposed reach on the North Umpqua River are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of Certificates 59939 and 81500, any instream water right created as a result of this allocation of conserved water will provide protection of stream

flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.

33. 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).
34. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within NWSE and NESE, DLC 43 of Section 22, Township 26 South, Range 6 West, W.M. (Finding of Fact #9). OAR 690-018-0050(4)(h).
35. The deadline for submitting a Notice of Completion is June 30, 2020. The deadline for submitting a Request for Finalization is June 30, 2025. (Finding of Fact #15). OAR 690-018-0050(4)(i).
36. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #20). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-88, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. If protests are not filed pursuant to OAR 690-018-0050(b), the conserved water application will be approved.

If Allocation of Conserved Water Application CW-88 is approved, the Order Approving will include the following:

1. The proposed change will result in a reduced diversion for the uses allowed under the original water right. (Findings of Fact #3 and 22).
2. The proposed allocation of conserved water will not harm existing water rights. (Finding of Fact #20).
3. The application is consistent with the requirements established in OAR 690-005-0045. (Finding of Fact #21).
4. The changes proposed in CW-88 are approved.
5. 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
45888	25%	0.009	1.71	75%	0.025	5.13	100%	0.034	6.84

6. The deadline for submitting the Notice of Completion is June 30, 2020.

Upon filing the Notice of Completion, the Completion Order will include the following:

7. 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 45888 and any related decree.
8. Water Right Certificate 45888 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application. In addition, 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 3.0 ACRES

Priority Date: APRIL 13, 1973

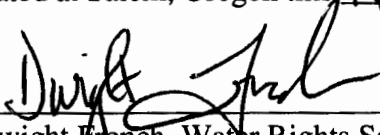
Rate: 0.0014 CUBIC FEET PER SECOND

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 TWO-THOUSANDTH (1/2000) 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 0.22 acre-foot per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 0.66 acre-foot per year.

Source: NORTH UMPQUA RIVER, tributary to the UMPQUA RIVER

9. 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. In addition, the Applicant shall install a 12 gpm flow restrictor at the point of diversion on the North Umpqua River.
 - 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.
10. The proposed areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within NWSE and NESE, DLC 43, of Section 22, Township 26 South, Range 6 West, W.M.
11. The deadline for submitting the Request for Finalization is June 30, 2025.

Dated at Salem, Oregon this 16 day of June, 2015.



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

Mailing Date: JUN 18 2015

NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415.

The Commission shall notify the applicant and any other person requesting notice, of the action the Commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the Commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant to OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty service members have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.