

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

In the Matter of Allocation of Conserved)
Water Application CW-108,)
Douglas County)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL ON COMPLETION
) AND FINALIZATION ALLOCATION OF
) CONSERVED WATER CW-108

Applicant
Norris Farms, LLC
8181 Oak Hill Road
Roseburg, OR 97471

Agent
Nathan Reed Consulting
157 W. Bodie Street
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 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.

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.

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. 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 March 8, 2019, Norris Farms, LLC filed an allocation of conserved water application under Certificate 86185. The Department assigned the application number CW-108.
2. The conservation project involves converting from pivot systems to drip irrigation lines and emitters along each crop row. The conversion to drip irrigation is a proven technology for conserving water.
3. Application CW-108 proposes a rate reduction of approximately 0.60 cubic foot per second (cfs) and proposes to reduce the annual volume by 118.8 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
86185	1.29	0.0125	258.3	2.5	0.69	0.007	139.5	1.35	0.60	118.8	1.16

4. The portion of the right to be modified by CW-108 is as follows:
 - Certificate:** 86185 in the names of Nancy Iverson Baird; Wayne and Delores Parker, Trustees of the Parker Revocable Community Trust; and EGM LLC (perfected under Permit S-24008)
 - Use:** IRRIGATION of 103.3 ACRES
 - Priority Date:** DECEMBER 21, 1955
 - Rate:** 1.29 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, is limited to a diversion of ONE-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
25 S	6 W	WM	30	SW SW	38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	DLC	Acres
25 S	7 W	WM	25	SW SW	900	45	4.2
25 S	7 W	WM	25	SE SW	900	45	6.1
25 S	7 W	WM	25	SE SW	1000	45	9.7
25 S	7 W	WM	25	SE SW	1000	46	0.4
25 S	7 W	WM	25	SW SE	1000	46	15.5
25 S	7 W	WM	36	NW NW	202	45	0.8
25 S	7 W	WM	36	NE NW	201	45	7.9
25 S	7 W	WM	36	NE NW	202	45	18.3
25 S	7 W	WM	36	NE NW	201	46	2.8
25 S	7 W	WM	36	NE NW	202	46	0.2
25 S	7 W	WM	36	NW NE	201	46	37.4
Total							103.3

5. Certificate 86185 does not list the measured distances for the location of the point of diversion. However, information is available from the Certified Water Right Examiner stating the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
25 S	6 W	WM	30	SW SW	38	250 FEET SOUTH AND 1530 FEET EAST FROM THE NW CORNER OF WILLOUGHBY CHURCHILL DLC NO. 38

6. Certificate 86185 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.
7. The Applicant does not own the entire place of use appurtenant to this conserved water project. However, the Applicant submitted a Consent by Deeded Landowner form signed by Nancy Iverson Baird, consenting to the proposed changes to Certificate 86185.
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
86185	25%	0.15	29.7	75%	0.45	89.1	100%	0.60	118.8

11. The Applicant proposes that its portion of the conserved water be allocated for out-of-stream uses within the SWSW, SESW, NWSW, NESW, NWSE, and SWSE as projected on DLCs 45 and 46 in Section 25, Township 25 South, Range 7 West, W.M.
12. The Applicant requests that the priority date for any conserved water be the same as the originating right.
13. The Applicant did not receive federal or state non-reimbursable funds for the conservation project.
14. 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.
15. The implementation of the conservation measures began no earlier than October 1, 2015. The Applicant asserts no water right holders in the area or governmental entities have expressed concerns regarding the conservation project.
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.
17. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 86185 at the authorized point of diversion on the Umpqua River.
18. On March 8, 2019, the Applicant submitted a Notice of Completion with the application indicating the project was complete. In addition, the Applicant also submitted a Request for Finalization of the allocation.
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) to ascertain whether the proposed instream flows are necessary for a public benefit. ODFW determined additional flows are necessary for protection of anadromous and fish habitat.
21. Notice of the proposed conservation project was published in the Department's weekly notice on April 2, 2019, and in the New Review newspaper on April 3 and 10, 2019, 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]

- 22. 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).
- 23. On March 22, 2019, 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).
- 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-108 under Certificate 86185 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
86185	0.69	0.007	139.5	1.35

(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:

Maximum Rate (cfs)	Maximum Duty (Volume) AF
0.15	29.7

(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 under an earlier priority date. (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 of conserved water allocated to the Applicant is as follows:

Priority Date	Maximum Rate (cfs)	Maximum Duty (Volume) AF
December 21, 1955	0.45	89.1

(Finding of Fact #10).

29. The new instream water right created will be protected in the Umpqua River at the authorized point of diversion as described in Finding of Fact #5, at approximately River Mile 103.1. 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 conserved water may be protected at the full rate without enlarging the right.
31. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
December 21, 1955	July 24 through October 31	0.15	29.7

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:
 - a. The instream water use is 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 point of the instream water right.
 OAR 690-077-0015(8).
34. The combination of instream rights for the proposed reach on the Umpqua River does not exceed the amount needed to provide increased public benefits, and does 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 point of protection, there is one instream water right, certificate 59965, established under ORS 537.346 (minimum streamflow conversion) for the purposes supporting aquatic life and carries a priority date of March 26, 1974. There is also an instream water right, certificate 81501, established under ORS 537.341 (state agency application process) for the purpose of anadromous and resident fish habitat and carries a priority date of April 12, 1993. By replacing a portion of these instream water rights, any instream water right created as a result of this conserved water application will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under an earlier priority date.
36. Instream water right, certificate 93294, located at the proposed point, was established under ORS 537.470 (allocation of conserved water process) and has a priority date of December 21, 1955. 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. OAR 690-077-0015(11).

37. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within the SWSW, SESW, NWSW, NESW, NWSE, and SWSE as projected on DLCs 45 and 46 in Section 25, Township 25 South, Range 7 West, W.M. (Finding of Fact #11). OAR 690-018-0050(4)(h).
38. The project is complete. In conjunction with the application, on March 8, 2019, the Applicant submitted a Request for Finalization. (Finding of Fact #18). OAR 690-018-0050(4)(i).
39. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #23). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-108, 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(6), the conserved water application will be approved.*

If Allocation of Conserved Water Application CW-108 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 #23.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #14 and #24.*
4. *The changes proposed in CW-108 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)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF
86185	25%	0.15	29.7	75%	0.45	89.1	100%	0.60	118.8

6. *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 86185 and any related decree.*
7. *Water Right Certificate 86185 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and 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 103.3 ACRES
Priority Date: DECEMBER 21, 1955
Rate: 0.69 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, is limited to a diversion of ONE-ONE HUNDRED FORTY-SEVENTH (1/147) 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 1.35 acre-feet per acre for each acre irrigated during the irrigation season of each year, further limited to an annual volume of 139.5 acre feet.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
25 S	6 W	WM	30	SW SW	38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	DLC	Acres
25 S	7 W	WM	25	SW SW	900	45	4.2
25 S	7 W	WM	25	SE SW	900	45	6.1
25 S	7 W	WM	25	SE SW	1000	45	9.7
25 S	7 W	WM	25	SE SW	1000	46	0.4
25 S	7 W	WM	25	SW SE	1000	46	15.5
25 S	7 W	WM	36	NW NW	202	45	0.8
25 S	7 W	WM	36	NE NW	202	45	18.3
25 S	7 W	WM	36	NE NW	201	45	7.9
25 S	7 W	WM	36	NE NW	201	46	2.8
25 S	7 W	WM	36	NE NW	202	46	0.2
25 S	7 W	WM	36	NW NE	201	46	37.4
Total							103.3

8. The water user shall maintain and operate the existing measurement device(s) and shall make such improvements as may be required by the Department.
9. The project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water shall be used as follows until a subsequent Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090.

Use: IRRIGATION of 66.1 ACRES
Priority Date: DECEMBER 21, 1955
Rate: 0.45 CUBIC FOOT PER SECOND
Limit: The amount of water used for irrigation shall be limited to ONE-ONE HUNDRED FORTY-SEVENTH (1/147) 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 1.35 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 89.1 acre-feet per year.

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
25 S	6 W	WM	30	SW SW	38	250 FEET SOUTH AND 1530 FEET EAST FROM THE NW CORNER OF WILLOUGHBY CHURCHILL DLC NO. 38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	DLC	Acres
25 S	7 W	WM	25	NW SW	900	40	1.3
25 S	7 W	WM	25	SW SW	900	40	0.3
25 S	7 W	WM	25	NW SW	900	45	1.3
25 S	7 W	WM	25	SW SW	900	45	4.9
25 S	7 W	WM	25	SE SW	900	45	2.2
25 S	7 W	WM	25	NW SW	1000	45	1.5
25 S	7 W	WM	25	SW SW	1000	45	0.5
25 S	7 W	WM	25	NE SW	1000	45	9.1
25 S	7 W	WM	25	SE SW	1000	45	17.9
25 S	7 W	WM	25	NE SW	1000	46	0.7
25 S	7 W	WM	25	SE SW	1000	46	1.8
25 S	7 W	WM	25	NW SE	1000	46	5.8
25 S	7 W	WM	25	SW SE	1000	46	18.8
Total							66.1

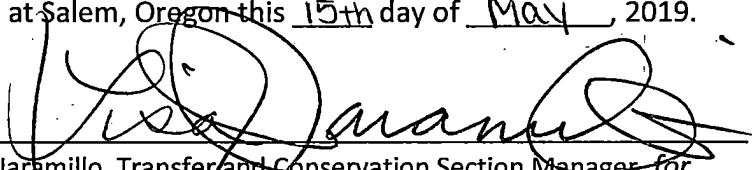
10. The areas within which the conserved water is to be used for out-of-stream uses are within the SWSW, SESW, NWSW, NESW, NWSE, and SWSE as projected on DLCs 45 and 46 in Section 25, Township 25 South, Range 7 West, W.M. (Finding of Fact #11).
11. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Columbia River as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
December 21, 1955	July 24 through October 31	0.15	29.7

Umpqua River: At the authorized point of diversion located at approximately River Mile 130.1:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
25 S	6 W	WM	30	SW SW	38	250 FEET SOUTH AND 1530 FEET EAST FROM THE NW CORNER OF WILLOUGHBY CHURCHILL DLC NO. 38

Dated at Salem, Oregon this 15th day of May, 2019.


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

Mailing Date: MAY 16 2019

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 REGARDING SERVICEMEMBERS: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act 50 U.S.C. App. §§ 501-597b. You may contact the Oregon State Bar at 800-452-8260, the Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.