

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

In the Matter of Allocation of Conserved	)	PRELIMINARY DETERMINATION
Water Application CW-110,	)	PROPOSING APPROVAL OF ALLOCATION OF
Lane County	)	CONSERVED WATER CW-110

**Applicant**

Bruce Anderson  
94705 Oklea Drive  
Junction City, OR 97448

**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.
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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 26, 2019, Bruce Anderson filed an allocation of conserved water application under Certificate 40768. The Department assigned the application number CW-110.
2. The conservation project involves converting the existing delivery system from rain bird sprinklers to drip tape emitters. The conversion from sprinklers to drip irrigation is a proven technology for conserving water.
3. Application CW-110 proposes a rate reduction of approximately 0.18 cubic foot per second (cfs) and proposes to reduce the annual volume by approximately 54.0 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
40768	0.27	1/80	54.0	2.5	0.09	0.004	17.82	0.83	0.18	35.64

4. The portion of the right to be modified by CW-110 is as follows:

**Certificate:** 40768 in the name of CLARRY A. OTTOSEN (perfected under Permit G-4489)  
**Use:** IRRIGATION of 21.6 ACRES  
**Priority Date:** JANUARY 17, 1969  
**Rate:** 0.27 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 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:** A WELL within the FLAT CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	4 W	WM	30	NE SW	410 FEET SOUTH AND 790 FEET WEST FROM THE CENTER OF SECTION 30

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	4 W	WM	30	NE SW	21.6

5. Certificate 40768 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
40768	25%	0.045	13.50	75%	0.135	40.50	100%	0.180	54.0

9. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Township 15 South, Range 4 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 Lane County which indicated the proposed use was allowed outright or is not regulated by Lane County's comprehensive plan.
13. The construction of the conservation measures began no earlier than March 2019. At the time of filing, not more than 25% of the project costs had been expended prior to submission of the application.

14. The application meets the requirements of OAR 690-018-0040.
15. The Applicant requested a deadline for filing a Notice of Completion of June 30, 2019. The Applicant also requested a deadline for filing the Request for Finalization of July 31, 2019.
16. Notice of the proposed conservation project was published in the Department's weekly notice on April 16, 2019, and in The Register-Guard newspaper on April 14 and 21, 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]***

17. 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).
18. On May 2, 2019, the District #2 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).
19. 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).
20. 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-110 under Certificate 40768 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
40768	0.09	0.004	17.82	0.83

(Finding of Fact #3).

21. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State to remain in the source aquifer is as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
January 17, 1969	March 1 through October 31	0.045	13.50

(Finding of Fact #8).

22. This conservation project is for groundwater. Therefore, pursuant to OAR 690-018-0050(4)(f), no finding is necessary regarding consultation with the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation.

23. 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)
January 17, 1969	0.135 cfs	40.50 AF

Finding of Fact #8.

24. The areas within which the conserved water is proposed to be used for out-of-stream uses are within Township 15 South, Range 4 West, W.M. (Finding of Fact #9). OAR 690-018-0050(4)(h).
25. The deadline for submitting a Notice of Completion is June 30, 2019. The deadline for submitting a Request for Finalization is July 31, 2019. (Finding of Fact #15). OAR 690-018-0050(4)(i).
26. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #18). OAR 690-018-0050(4)(j).

### Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-110, 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-110 is approved, the Order Approving will include the following:*

- The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #3 and #17.*
- The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #18 and #26.*
- The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #12 and #19.*
- The changes proposed in CW-110 are approved.*
- The quantities of water proposed to be 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
40768	25%	0.045	13.50	75%	0.135	40.50	100%	0.180	54.0

6. The deadline for filing the Notice of Completion is June 30, 2019. The deadline for filing the Request for Finalization is July 31, 2019.

Upon Filing the Notice of Completion

7. 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
40768	25%	0.045	13.50	75%	0.135	40.50	100%	0.180	54.0

8. 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 40768 and any related decree.
9. Water Right Certificate 40768 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:

**Certificate:** 40768 in the name of CLARRY A. OTTOSEN (perfected under Permit G-4489)

**Use:** IRRIGATION of 21.6 ACRES

**Priority Date:** JANUARY 17, 1969

**Rate:** 0.09 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 TWO-HUNDRED FIFTIETH (1/250) 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 0.83 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the FLAT CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	4 W	WM	30	NE SW	410 FEET SOUTH AND 790 FEET WEST FROM THE CENTER OF SECTION 30

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	4 W	WM	30	NE SW	21.6

10. 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.

11. All conserved water, both the State's and Applicant's portions, shall remain in the source aquifer until such time a Request for Finalization is submitted.

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
40768	25%	0.045	13.50	75%	0.135	40.50	100%	0.180	54.0

Upon Filing the Request for Finalization:

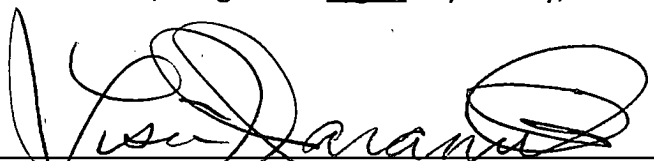
12. The project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water (0.135 cfs, 40.50 AF) shall be used out-of-stream at a location within the area described below until such time a subsequent Notice of Use and Disposition is filed::

Twp	Rng	Mer	Sec
15 S	4 W	WM	30

13. The areas within which the conserved water may be used for out-of-stream uses are within Township 15 South, Range 4 West, W.M. OAR 690-018-0050(4)(h).

14. The State's portion of conserved water (0.045 cfs, 13.50 AF) shall remain in the source aquifer.

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

  
 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
 THOMAS M. BYLER, DIRECTOR  
 Oregon Water Resources Department

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.