

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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-112,) PROPOSING APPROVAL OF CONSERVED
Douglas County) WATER CW-112

Applicant

Dustin Jinks
1061 Westside Road
Camas Valley, OR 97416

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 April 26, 2019, Dustin Jinks filed an allocation of conserved water application under Certificate 14664. The Department assigned the application number CW-112.
2. The conservation project involves converting leaking aluminum piping with poly-pipe and replacing impact sprinklers with 2.0 gph drip emitters. The conversion from impact sprinklers to drip emitters is a proven technology for conserving water.
3. On June 11, 2019, the Applicant amended the application to reflect an increase in the quantity of water needed on the existing lands.
4. Application CW-112, as amended, proposes a rate reduction of approximately 0.32 cubic foot per second (cfs) and proposes to reduce the annual volume by 55.6 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
14664	0.35	0.013	69.5	2.5	0.03	0.001	13.9	0.5	0.32	55.6

5. The right to be modified by CW-112 is as follows:

Certificate: 14664 in the name of GEORGE W WOLVERTON and EDWARD GILMAN (perfected under Permit S-13989)
Use: IRRIGATION of 27.8 ACRES
Priority Date: AUGUST 25, 1939
Rate: 0.35 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: MIDDLE FORK COQUILLE RIVER, tributary of the COQUILLE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
29 S	8 W	WM	30	SW NW	44

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
29 S	8 W	WM	30	SW NW	44	15.5
29 S	9 W	WM	25	SE NE	37	12.3

6. Certificate 14664 does not specify the measured distances for the point of diversion. Information is available from the Certified Water Right Examiner, the Department's records, and the Watermaster indicating the point of diversion is more fully described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	8 W	WM	30	SW NW	44	413 FEET NORTH AND 2211 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 30

7. Certificate 14664 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.
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)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF
14664	25%	0.08	13.9	75%	0.24	41.7	100%	0.32	55.6

11. The Applicant proposes that its portion of the conserved water be allocated for an out-of-stream use within Township 29 South, Ranges 8 and 9 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 funded 100% of 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 will begin in June 2019. At the time of filing the application, no funds had been expended.
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 14664 at the authorized point of diversion on the Middle Fork Coquille River.
18. The Applicant requested the deadline for submitting the Notice of Completion of October 31, 2024. The Applicant will submit a Request for Finalization on or before October 31, 2029.
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 to support instream flow uses. The Middle Fork Coquille River is 303d listed for dissolved oxygen, ammonia, and temperature. Increasing summer flows will assist with resolving these water quality issues.
21. Notice of the original conservation project was published in the Department's weekly notice on May 28, 2019, and in the News Review newspaper on May 28, and June 4, 2019, as required under OAR 690-018-0050(1)(a) and (2). Notice of the amended proposed conservation project was published in the Department's weekly notice on June 18, 2019. 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 #4).
23. On May 3, 2019, the District #19 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-112 under Certificate 14664 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
14664	0.03	.001	13.9	0.5

(Finding of Fact #4).

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	Maximum Duty (Volume)
0.08 cfs	13.9

(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. (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:

Priority Date	Maximum Rate	Maximum Duty (Volume)
8/25/1939	0.24 cfs	41.7

(Finding of Fact #10).

29. The new instream water right created will be protected in the Middle Fork Coquille River at the authorized point of diversion as described in Finding of Fact #6, at approximately River Mile 31.7. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
30. To prevent enlargement, the period of use for water State's portion of conserved 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 exceeding the annual volume limitation.

31. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
8/25/1939	May 1 through July 27	0.08	13.9

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 at the proposed point on the Middle Fork Coquille 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. There are instream water rights established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process) on Middle Fork Coquille River at the proposed point of protection.
36. The existing instream water rights, established under ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency application process), within the proposed reach on Middle Fork Coquille 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 these instream water rights, any instream water right created as a result of this allocation will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under an earlier priority date.
37. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process), located within the proposed reach, any new instream water right established by this allocation 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.
38. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Township 29 South, Ranges 8 and 9 West, W.M. (Finding of Fact #11). OAR 690-018-0050(4)(h).
39. The deadline for submitting a Notice of Completion is October 31, 2024. The deadline for submitting a Request for Finalization is October 31, 2029. (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. (Finding of Fact #23). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-112, 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-112 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 #4 and #22.*
2. *The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #23 and #40.*
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-112 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
14664	25%	0.08	13.9	75%	0.24	41.7	100%	0.32	55.6

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 14664 and any related decree.*

Upon filing the Notice of Completion:

7. *Water Right Certificate 14664 is cancelled. A superseding Certificate will be issued for the existing use and place of use (described in Finding of Fact #5) at the reduced rate and duty (as described in Finding of Fact #25) as follows:*

Use: IRRIGATION of 27.8 ACRES
Priority Date: August 25, 1939
Rate: 0.03 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-ONE-THOUSANDTH (1/1000) 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 0.5 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 13.9 acre-feet per year.*
Source: MIDDLE FORK COQUILLE RIVER, tributary of the SOUTH FORK COQUILLE RIVER

8. *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.*

9. *All conserved water, both the Applicant’s portion and the State’s portion shall be managed instream until a Request for Finalization is submitted as follows:*

Source: MIDDLE FORK COQUILLE RIVER, tributary to the SOUTH FORK COQUILLE RIVER

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
8/25/1939	May 1 through July 27	0.32	55.6

At the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	8 W	WM	30	SW NW	44	413 FEET NORTH AND 2211 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 30

Upon filing the Request for Finalization:

10. *The project is complete and no additional time is needed for finalization. The Applicant’s portion of conserved water (0.24 cfs, 41.7 AF) shall be used and managed instream until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090. The water shall be managed instream at the authorized point of diversion located:*

Source: MIDDLE FORK COQUILLE RIVER, tributary to the SOUTH FORK COQUILLE RIVER

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
8/25/1939	May 1 through July 27	0.24	41.7

At the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	8 W	WM	30	SW NW	44	413 FEET NORTH AND 2211 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 30

11. *The proposed areas within which the Applicant’s portion of conserved water is proposed to be used for out-of-stream uses are within Township 29 South, Ranges 8 and 9 West, W.M.*

12. 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 as follows:

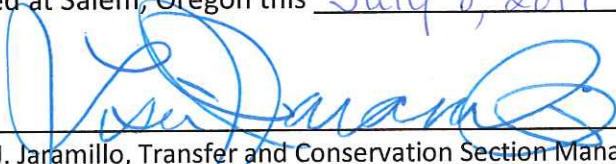
Priority Date	Period	Rate (cfs)	Volume (acre-feet)
8/25/1939	May 1 through July 29	0.08	13.9

Middle Fork Coquille River: At the authorized point of diversion under Certificate 14664 located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	8 W	WM	30	SW NW	44	413 FEET NORTH AND 2211 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 30

The instream right established by this allocation shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.

Dated at Salem, Oregon this July 8, 2019.


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

Mailing Date: July 8, 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.