

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

In the Matter of Allocation of Conserved	)	PRELIMINARY DETERMINATION
Water Application CW-122,	)	PROPOSING APPROVAL ON COMPLETION
Washington County	)	AND FINALIZATION OF ALLOCATION OF
	)	CONSERVED WATER CW-122; and
	)	APPROVING A CHANGE IN POINT OF
	)	DIVERSION AND CHANGE IN PLACE OF USE

**Applicant**  
Willamette Valley Land, LLC  
c/o Paul Keuhne  
PO Box 99  
Lafayette, OR 97127  
paul@creeksidevalleyfarms.com

**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

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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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.

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 and new certificates reflecting the changes for the portions of the water rights involved in the conserved water application. ORS 537.470(6).

Oregon Revised Statutes (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.

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

## **Findings of Fact**

1. On January 29, 2021, Willamette Valley Land, LLC, c/o Paul Kuehne (WVL) filed an allocation of conserved water application under Certificate 16677. In addition, the Applicant requested to change the point of diversion and the place of use under Certificate 16677. The Department assigned the application number CW-122.
2. The conservation project involves changing from overhead sprinklers and big-gun type irrigation to irrigation using strips of drip emitters placed at the base of rows of crop trees, being 5.03 feet wide strips 20 feet apart. The conversion from sprinkler irrigation to drip irrigation is a proven technology for conserving water.

3. On May 4, 2021, WVL amended its application to more accurately reflect the volume of water conserved.
4. Application CW-122 proposes a rate reduction of approximately 0.266 cubic foot per second (cfs) and proposes to reduce the annual volume by 53.25 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
16677	0.32	0.0125	64.0	2.5	0.054	0.00211	10.75	0.42	0.266	53.25

5. The right to be modified by CW-122 is as follows:

**Certificate:** 16677 in the name of R. F. CLARKE (perfected under Permit S-15038)

**Use:** IRRIGATION of 25.6 ACRES

**Priority Date:** AUGUST 4, 1941

**Rate:** 0.32 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:** TUALATIN RIVER, a tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	4 W	WM	31	SW NE	58

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	31	NW NE	56	17.9
1 S	4 W	WM	31	NW NE	58	1.0
1 S	4 W	WM	31	SW NE	58	0.3
1 S	4 W	WM	31	NE NW	56	6.4

6. Certificate 16677 does not identify a specific location for the authorized point of diversion. Based on the Department records, information from the Applicant and the Certified Water Right Examiner, the location of the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	4 W	WM	31	SW NE	58	1590 FEET SOUTH AND 1485 FEET WEST FROM THE NE CORNER OF SECTION 31

7. The applicant proposes to change the point of diversion approximately 1.7 miles downstream from the original point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	4 W	WM	32	SW SE	59	820 FEET NORTH AND 2200 FEET WEST OF THE SE CORNER OF SECTION 32

8. The applicant also proposes to change the place of use to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	32	SE SW	59	25.6

9. Certificate 16677 does not list a period of use; therefore, pursuant to Tualatin River Decree, the irrigation season of use is May 1 through September 30.
10. 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.
11. 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.
12. WVL 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
16677	25%	0.066	13.31	75%	0.200	39.94	100%	0.266	53.25

13. WVL proposed that its portion of the conserved water be allocated for an out-of-stream use within Section 32, Township 1 South, Range 4 West, W.M.
14. WVL requests that the priority date for any conserved water be one minute junior to the originating right.
15. The Applicant funded 100% of the conservation project.
16. WVL submitted a completed Land Use Form from Washington County that indicated the proposed use was allowed outright or is not regulated by Washington County's comprehensive plan.
17. The implementation of the conservation measures began no earlier than April 2017.
18. WVL proposed 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.

19. WVL requested the Department protect the new instream water right created from the conserved water under Certificate 16677 at the authorized point of diversion on the Tualatin River.
20. The Applicant submitted a Notice of Completion with the application indicating the project was complete. In addition, the Applicant submitted a Request for Finalization of the allocation. On March 4, 2021, WVL amended the Request for Finalization clarifying the proposed place of use.
21. The application meets the requirements of OAR 690-018-0040.
22. 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. ODFW asserted the proposed instream water right is in an ODFW flow restoration priority watershed.
23. Notice of the proposed conservation project was published in the Department's weekly notice on April 6, 2021, and in *The News Times* (Forest Grove) newspaper on April 8 and 15, 2021, 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]***

24. 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).
25. On May 4, 2021, the District #18 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).
26. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #16). OAR 690-018-0050(4)(c).
27. 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-122 under Certificate 16677 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
16677	0.054	0.00211	10.75	0.42

(Finding of Fact #4).

28. 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)
0.066 cfs	13.31 AF

(Finding of Fact #12).

29. 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 #22).

30. 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 #15). The rate and volume allocated to the Applicant is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
8/4/1941	0.20 cfs	39.94 AF

(Finding of Fact #12).

31. The new instream water right created will be protected in the Tualatin River at the authorized point of diversion as described in Finding of Fact #5, at approximately River Mile (RM) 67. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
32. To prevent enlargement, the season for water to be protected instream must be adjusted so the annual volume limitation is not exceeded. By reducing the season, the conserved water may be protected at the full rate without enlarging the right.
33. The instream right shall allow the use and protection of flows as follows:

Source: Tualatin River, tributary of Willamette River

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
08/04/1941, <i>plus one minute</i>	June 22 through September 30	0.066	13.31

At the original authorized point of diversion for Certificate 16677 at approximately River Mile 67:

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	4 W	WM	31	SW NE	58

34. 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).
35. 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).
36. The combination of instream rights for the proposed point on the Tualatin 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).
37. Instream water right Certificates 59693 and 59692 exist in the Tualatin River where the proposed point is to be protected. The existing instream water rights established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process), are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, and pollution abatement, 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.
38. 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).
39. The areas within which the conserved water is proposed to be used for out-of-stream uses are within Section 32, Township 1 South, Range 4 West, W.M. (Finding of Fact #13). OAR 690-018-0050(4)(h).
40. The project is complete. No additional time is required for finalization. (Finding of Fact #20). OAR 690-018-0050(4)(i).
41. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #25). OAR 690-018-0050(4)(j).

### **Determination and Proposed Action**

*The project described in Allocation of Conserved Water Application CW-122, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. The changes in the point of diversion and place of use appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. 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-122 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 #24.
2. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #25.
3. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #26.
4. The project is complete, and no additional time is needed for finalization.
5. The changes proposed in CW-122 are approved.
6. 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
16677	25%	0.066	13.31	75%	0.200	39.94	100%	0.266	53.25

7. The right to the use of the water is restricted to beneficial use at the places of use described below and is subject to all other conditions and limitations contained in Certificate 16677 and any related decree.
8. Water Right Certificate 16677 is cancelled. Upon satisfactory proof of beneficial use, a superseding Certificate will be issued for the existing use (irrigation), new point of diversion and place of use (described in Findings of Fact #7 and #8) at the reduced rate and duty as follows:

**Use:** IRRIGATION of 25.6 ACRES

**Priority Date:** AUGUST 4, 1941

**Rate:** 0.054 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 1/474 (0.00211) 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 0.42 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 10.75 acre-feet per year.

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

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	4 W	WM	32	SW SE	59	820 FEET NORTH AND 2200 FEET WEST OF THE SE CORNER OF SECTION 32



**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	32	SE SW	59	25.6

9. **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.

10. Full beneficial use of the water shall be made for the 25.6 acres, consistent with the terms of this order, on or before **October 1, 2021**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

11. The areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within Section 32, Township 1 South, Range 4 West, W.M.

12. The Applicant's portion of conserved water (0.266 cfs, 39.94 AF) may be used as follows until a subsequent Notice of Use or Disposition is received and approved pursuant to ORS 537.490 and OAR 690-019-0090.

**Originating**

**Certificate:** 16677

**Use:** IRRIGATION of 94.9 ACRES

**Priority Date:** AUGUST 4, 1941

**Rate:** 0.20 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for irrigation shall be limited to a diversion of not to exceed 0.42 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 39.94 acre-feet per year.

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

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	4 W	WM	32	SW SE	59	820 FEET NORTH AND 2200 FEET WEST OF THE SE CORNER OF SECTION 32

**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Gov't Lot / DLC	Acres
1 S	4 W	WM	32	SE NW	401	59	2.2
1 S	4 W	WM	32	NE SW	401	59	28.3

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Gov't Lot / DLC	Acres
1 S	4 W	WM	32	NW SW	401/500	59	5.3
1 S	4 W	WM	32	SW SW	500	59	10.1
1 S	4 W	WM	32	SE SW	401/500	59	10.4
1 S	4 W	WM	32	NE SE	401	59	1.2
1 S	4 W	WM	32	NE SE	401	4	2.1
1 S	4 W	WM	32	NW SE	401	59	23.9
1 S	4 W	WM	32	SW SE	401/500	59	7.4
1 S	4 W	WM	32	SE SE	401	59	2.3
1 S	4 W	WM	32	SE SE	401	5	1.7
Total							94.9

13. *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)
08/04/1941, plus one minute	June 22 through September 30	0.066	13.31

*Tualatin River: at the original authorized point of diversion under Certificate 16677 located:*

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	4 W	WM	31	SW NE	58	1590 FEET SOUTH AND 1485 FEET WEST FROM THE NE CORNER OF SECTION 31

*Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.*

*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 in an order approving a new instream water right under these statutes.*

Dated at Salem, Oregon JUN 24 2021



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

Mailing Date: JUN 25 2021

## 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).

If a protest is withdrawn, or any party to a hearing notifies the Department or the administrative law judge that the party will not appear, or if the party fails to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that parties have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

Any party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions

or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active duty service members have a right to stay 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 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.

*Protests should be addressed to the attention of Allocation of Conserved Water Program, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. Mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified.