

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

In the Matter of Allocation of Conserved)
Water Application CW-27,)
Umatilla County)
)
)

FINAL ORDER OF APPROVAL ON
COMPLETION AND FINALIZATION
ALLOCATION OF CONSERVED WATER
CW-27

Applicant

Earl Brown & Sons, Inc.
PO Box 249
Milton-Freewater, OR 97862

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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

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 July 30, 2003, Earl Brown and Sons, Inc. filed an application for an allocation of conserved water under Certificates 12682, 31669, 12676, 12677, 12565, 12687, T-7642, 49219, 88073, and 49565. The Department assigned the application number CW-27.
2. Allocation of Conserved Water Application CW-27 was placed on hold pending the completion of the HB-3201 District mapping process. The HB-3201 process was completed in May 2017.
3. On May 5, 2017, the following confirming Certificates were issued to replace portions of or the entirety (as indicated) of the following Certificates:

Orig. Cert.	Portion	Entirety	Priority	New Cert.	Name on Certificate
12676		X	1893	92412	Evelyn & Virginia Feigner
12565	X		1890	92440	Earl Brown & Sons
12687		X	1893	92440	Earl Brown & Sons
12687		X	1901	92440	Earl Brown & Sons
31669	X		1901	92440	Earl Brown & Sons
88073		X	1904	92440	Earl Brown & Sons
88073		X	1890	92440	Earl Brown & Sons
T-7642	X (13128)		1871	92440	Earl Brown & Sons
49219		X	1886	92481	L & E Family Partnership
12682		X	3/1/1901	92489	Loraine Brown
12677		X	1886	92523	Ron & Gretchen Brown
12677	X		1893	92523	Ron & Gretchen Brown
49565	X		5/10/1977	92622	L & E Family Partnership

4. On April 20, 2018, Earl Brown & Sons, Inc. filed an amended application under Certificates 92412, 92440, 92481, 92489, 92523, and 92622.
5. On July 5, 2018, the Applicant submitted Consent by Deeded Landowner forms signed by Gretchen and Ronald Brown, and Evelyn and Virginia Feigner. In addition, documentation at the Secretary of State's office indicates Lorraine and Earl Brown were partners in L & E Partnership, LLP.
6. The source of water under Certificate 49565/92622 is Wastewater. On July 16, 2018, the Applicant withdrew Certificate 92622 from consideration as part of this conserved water application.
7. The conservation project involved piping of open ditches to eliminate seepage losses and converting to efficient impact and micro-sprinkler irrigation. The piping of open ditches and conversion to impact and micro-sprinkler irrigation are proven technologies for conserving water.
8. Application CW-27 proposes rate reductions of approximately 1.015 cfs under various priority dates as follows:

Conserved Water Description						
		Certificate		Needed		Conserved Water
Originating/New Certificate	Priority	Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS
12676/92412	1893	0.368	0.0375	0.245	0.025	0.123
12565/92440	1890	0.120	0.0375	0.080	0.025	0.040
12687/92440	1893	0.266	0.0375	0.180	0.025	0.086
12687/92440	1901	0.085	0.0375	0.058	0.025	0.027
31669/92440	1901	0.667	0.0375	0.451	0.025	0.216
88073/92440	1904	0.055	0.0375	0.038	0.025	0.017
88073/92440	1890	0.222	0.0375	0.150	0.025	0.072
T-7642/92440	1871	0.037	0.0375	0.025	0.025	0.012
49219/92481	1886	0.188	0.0375	0.125	0.025	0.063
12682/92489	3/1/1901	0.713	0.0375	0.475	0.025	0.238
12677/92523	1886	0.338	0.0375	0.225	0.025	0.113
12677/92523	1893	0.026	0.0375	0.018	0.025	0.008
Totals		3.085		2.070		1.015

9. The first right to be modified by CW-27 is as follows:
 - Certificate:** 92412 in the names of Carrie, Evelyn and Virginia Feigner (confirmed by the Walla Walla Decree)
 - Use:** IRRIGATION of 9.8 ACRES
 - Priority Date:** 1893
 - Rate:** 0.368 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to 1.5 MINER'S INCHES PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	NE NE	500	9.8	12676

10. The portion of the second right to be modified by CW-27 is as follows:

Certificate: 92440 in the name of Earl Brown & Sons, Inc. (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 39.22 ACRES

Priority Dates: 1871, 1890, 1893, 1901, and 1904

Rate: 1.45 CUBIC FEET PER SECOND (CFS)

Limit/Duty: The use is limited to 1.5 MINER'S INCHES PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority	Prior Cert.
6N	35E	WM	34	SE NE	1600	3.20	1890	12565
6N	35E	WM	34	SE NE	1600	7.20	1893	12687
6N	35E	WM	34	SE NE	1600	2.30	1901	12687
6N	35E	WM	34	NW NE	700	18.02	1901	31669
6N	35E	WM	34	NW SE	301	1.50	1904	88073
6N	35E	WM	34	NW SE	301	6.00	1890	88073
6N	35E	WM	34	NW SE	301	1.00	1871	T-7642 (13128)
Total						39.22		

11. The third right to be modified by CW-27 is as follows:

Certificate: 92481 in the name of L and E Family Partnership (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 5.0 ACRES

Priority Date: 1886

Rate: 0.188 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to 1.5 MINER'S INCHES PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	SW NE	1400	5.0	49219

12. The fourth right to be modified by CW-27 is as follows:

Certificate: 92489 in the name of Loraine Brown (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 19.0 ACRES

Priority Date: MARCH 1, 1901

Rate: 0.713 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to 1.5 MINER'S INCHES PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	SW NE	1200	19.0	12682

13. The fifth right to be modified by CW-27 is as follows:

Certificate: 92523 in the name of Ronald E. and Gretchen Brown (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 9.7 ACRES

Priority Dates: 1886 and 1893

Rate: 0.364 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to 1.5 MINER'S INCHES PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.	Priority
6 N	35 E	WM	34	NE NE	600	9.0	12677	1886
6 N	35 E	WM	34	NE NE	600	0.7	12677	1893

14. Certificates 92412, 92440, 92481, 92489, and 92523 do not list a period of use. Based on the Walla Walla River Decree, the existing water right has a year-round season of use without a specified duty limitation. However the existing rights are subject to beneficial use without waste in accordance with ORS 536.310. Use of the existing rights at the full amounts allowed year-round would exceed the amount necessary to accomplish the existing beneficial uses. Consistent with recent practices by water users and irrigation districts within the basin, a maximum of 8.4 acre-feet per acre (AF/acre) can beneficially be diverted for the existing use.
15. For purposes of this allocation of conserved water application the season of use is April 1 through October 31, and such other times when agricultural diversion are being exercised.
16. 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.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of the application.
18. The Applicant requested the conserved water be allocated as follows:

Certificate	Priority	State's Portion		Applicant's Portion		Conserved Water	
		Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
92412	1893	67%	0.082	33%	0.041	100%	0.123
92440	1890	67%	0.027	33%	0.013	100%	0.040
92440	1893	67%	0.058	33%	0.028	100%	0.086
92440	1901	67%	0.018	33%	0.009	100%	0.027
92440	1901	67%	0.145	33%	0.071	100%	0.216
92440	1904	67%	0.012	33%	0.005	100%	0.017
92440	1890	67%	0.048	33%	0.024	100%	0.072
92440	1871	67%	0.008	33%	0.004	100%	0.012
92481	1886	67%	0.042	33%	0.021	100%	0.063
92489	3/1/1901	67%	0.159	33%	0.079	100%	0.238
92523	1886	67%	0.075	33%	0.038	100%	0.113
92523	1893	67%	0.005	33%	0.003	100%	0.008
		Totals	0.679		0.336		1.015

19. The Applicant proposed its portion of the conserved water be allocated for an out-of-stream uses within Sections 34 and 35, Township 6 North, Range 35 East, W.M.
20. The Applicant requested the priority date for any conserved water be the same as the originating right.
21. The Applicant funded 100% of the conservation project.
22. The Applicant submitted a completed Land Use Form from Umatilla County with the original application, which indicated the proposed use was allowed outright or is not regulated by Umatilla County's comprehensive plan.
23. The implementation of the conservation measures began no earlier than 2002. The original application was filed within 5 years of implementation of the conservation measures. The Applicant requested finalization of the allocation upon approval of this application.
24. The Applicant proposed 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.
25. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificate 92540 from the authorized point of diversion where water is diverted for the Little Walla Walla River from the Walla Walla River at approximately River Mile (RM) 50 to the Oregon-Washington state line at approximately RM 44.5. The topographic map the Department currently utilizes shows the authorized point of diversion located at approximately RM 45.4 and the Oregon-Washington state line at approximately RM 40.0
26. The project is complete and no additional time is needed for finalization.
27. The application meets the requirements of OAR 690-018-0040.
28. The original application included a letter from the Oregon Department of Fish and Wildlife (ODFW) supporting the application stating the water allocated to instream use will benefit sensitive fish species in the Walla Walla basin.
29. Notice of the proposed conservation project was published in the Department's weekly notice on November 18, 2003, and in the Valley Herald newspaper on November 7, 14, and 21, 2003, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

On October 11, 2018, the Department issued a Preliminary Determination proposing to approve Allocation of Conserved Water application CW-15, and mailed a copy to the Applicant on October 12, 2018. No protests were filed within 60 days from the date of mailing the Preliminary Determination. OAR 690-018-0050(6).

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

- 30. The proposed allocation of conserved water will result in a reduced diversion of the uses allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #8).
- 31. On August 31, 2018, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster’s review indicated the existence of seepage losses from the authorized PODs, commonly referred to as the Little Walla Walla River diversion headgate, at approximately RM 45.4 to the Oregon-Washington state line at approximately RM 40.0. Enlargement could occur unless the instream water right allows for this seepage loss. In addition, the Watermaster determined the conservation project could harm other water rights if it was not conditioned to limit the maximum amount of water necessary to accomplish the existing beneficial uses.

Harm to other water rights can be mitigated by not protecting more water in the Walla Walla River than is legally available at the point of diversion. Harm can also be mitigated by limiting the period when water is being protected instream to April 1 through October 31 of each year, and other times when agricultural diversion are being exercised. Therefore, as conditioned, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(d).

- 32. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #18). OAR 690-018-0050(4)(c).
- 33. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates for the existing uses involved in Allocation of Conserved Water Application CW-27 under Certificates 92412, 92440, 92481, 92489, and 92523 are as follows:

Originating Certificate	Priority	Rate	
		Maximum CFS	CFS/AC
12676/92412	1893	0.245	0.025
12565/92440	1890	0.080	0.025
12687/92440	1893	0.180	0.025
12687/92440	1901	0.058	0.025
31669/92440	1901	0.451	0.025
88073/92440	1904	0.038	0.025
88073/92440	1890	0.150	0.025
T-7642/92440	1871	0.025	0.025
49219/92481	1886	0.125	0.025
12682/92489	3/1/1901	0.475	0.025
12677/92523	1886	0.225	0.025
12677/92523	1893	0.018	0.025
Total		2.070	

(Finding of Fact #8).

34. Pursuant to OAR 690-018-0050(4)(e), the rates allocated to the State for instream use is as follows:

Originating Certificate	Priority	Rate Maximum CFS
12676/92412	1893	0.082
12565/92440	1890	0.027
12687/92440	1893	0.058
12687/92440	1901	0.018
31669/92440	1901	0.145
88073/92440	1904	0.012
88073/92440	1890	0.048
T-7642/92440	1871	0.008
49219/92481	1886	0.042
12682/92489	3/1/1901	0.159
12677/92523	1886	0.075
12677/92523	1893	0.005
	Total	0.679

Or, the combined conserved water rates allocated to the State by priority dates are listed as follows:

Priority	Rate Maximum CFS
1871	0.008
1886	0.117
1890	0.075
1893	0.145
1901	0.163
3/1/1901	0.159
1904	0.012
Total	0.679

(Finding of Fact #18).

35. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed flows are necessary as they will benefit sensitive fish species. (Finding of Fact #28).
36. 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 #21).
37. The conserved water rates allocated to the Applicant are as follows:

Originating Certificate	Priority	Rate Maximum CFS
12676/92412	1893	0.041
12565/92440	1890	0.013
12687/92440	1893	0.028

Originating Certificate	Priority	Rate Maximum CFS
12687/92440	1901	0.009
31669/92440	1901	0.071
88073/92440	1904	0.005
88073/92440	1890	0.024
T-7642/92440	1871	0.004
49219/92481	1886	0.021
12682/92489	3/1/1901	0.079
12677/92523	1886	0.038
12677/92523	1893	0.003
Total		0.336

Or, the combined conserved water rates allocated to the Applicant by priority dates are listed as follows:

Priority	Rate Maximum CFS
1871	0.004
1886	0.059
1890	0.037
1893	0.072
1901	0.080
3/1/1901	0.079
1904	0.005
Total	0.336

(Finding of Fact #18)

38. The new instream water right created will be protected in the Walla Walla River from the authorized POD as described in Findings of Fact #9, #10, #11, #12 and #13, where water is diverted into the Little Walla Walla, at approximately RM 45.4 to the Oregon-Washington state line at approximately RM 40. OAR 690-018-0050(4)(h); OAR 690-077-0015(8). The instream right shall allow the use and protection of flows as follows:

Instream Reach:

Source: Walla Walla River, tributary to the Columbia River

From the authorized POD as described below, where water is diverted into the Little Walla Walla, at approximately River Mile (RM) 45.4.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SWNE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

To the Oregon-Washington state line at approximately RM 40.0 as follows:

Priority Date	Period	Rate (CFS)
1871	April 1 through October 31	0.008
1886	April 1 through October 31	0.117
1890	April 1 through October 31	0.075
1893	April 1 through October 31	0.145
1901	April 1 through October 31	0.163
3/1/1901	April 1 through October 31	0.159
1904	April 1 through October 31	0.012
Totals		0.679

39. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right. OAR 690-077-0015(10).
40. 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 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).
41. The combination of instream rights for the proposed reach on the Walla Walla 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).
42. There are no existing instream water rights on the Walla Walla River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process) within the proposed reach to be protected. 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).
43. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within the Sections 34 and 35, Township 6 North, Range 35 East, W.M. (Finding of Fact #19). OAR 690-018-0050(4)(h).

44. The Applicant proposes to utilize its portion of conserved water for irrigation on the following lands:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	34	NE NE	501	9.5
6 N	35 E	WM	35	SW NW	1400	0.5

Review of the Umatilla County Assessor's records show tax lot 501 contains a total of 8.91 acres, of which approximately 0.2 acre is covered by outbuildings. Therefore, the maximum number of acres to be covered under tax lot 501 is 8.7 acres.

45. The project is complete. No additional time is required for finalization. (Finding of Fact #26). OAR 690-018-0050(4)(i).
46. As conditioned in Finding of Fact #31, no other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #27). OAR 690-018-0050(4)(j).

Conclusions of Law:

The project described in Allocation of Conserved Water Application CW-27, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

1. The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #8 and #33.
2. The proposed allocation of conserved water, as conditioned, will not harm existing water rights. Findings of Fact #31 and #46.
3. The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #22 and #32.

Now, therefore, it is ORDERED:

1. The changes proposed in CW-27 are approved.
2. The quantities of water conserved and allocated are as follows:

Certificate	Priority	State's Portion		Applicant's Portion		Conserved Water	
		Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
92412	1893	67%	0.082	33%	0.041	100%	0.123
92440	1890	67%	0.027	33%	0.013	100%	0.040
92440	1893	67%	0.058	33%	0.028	100%	0.086
92440	1901	67%	0.018	33%	0.009	100%	0.027
92440	1901	67%	0.145	33%	0.071	100%	0.216
92440	1904	67%	0.012	33%	0.005	100%	0.017
92440	1890	67%	0.048	33%	0.024	100%	0.072
92440	1871	67%	0.008	33%	0.004	100%	0.012

Certificate	Priority	State's Portion		Applicant's Portion		Conserved Water	
		Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
92481	1886	67%	0.042	33%	0.021	100%	0.063
92489	3/1/1901	67%	0.159	33%	0.079	100%	0.238
92523	1886	67%	0.075	33%	0.038	100%	0.113
92523	1893	67%	0.005	33%	0.003	100%	0.008
		Totals	0.679		0.336		1.015

- The rights 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 Certificates 92412, 92440, 92481, 92489, 92523, and any related decree.
- Water Right Certificate 92412 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate as follows:

Originating

Certificate: 92412 in the names of Carrie, Evelyn and Virginia Feigner (confirmed by the Walla Walla Decree)
Use: IRRIGATION of 9.8 ACRES
Priority Dates: 1893
Rate: 0.245 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: The use is limited to ONE MINER'S INCH (0.025 cfs) per acre, or its equivalent in case of rotation, measured at the point of diversion from the source.
Source: Little Walla Walla River, tributary of the Walla Walla River
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	NE NE	500	9.8	12676

- Water Right Certificate 92440 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 as follows:

Originating

Certificate: 92440 in the name of Earl Brown and Sons, Inc. (confirmed by the Walla Walla Decree)
Use: IRRIGATION of 39.22 ACRES
Priority Dates: 1871, 1890, 1893, 1901, and 1904

Rate: 0.982 CUBIC FOOT PER SECOND (CFS), being 0.025 CFS under 1871 priority, 0.230 CFS under 1890 priority, 0.180 CFS under 1893 priority, 0.509 CFS under 1901 priority, and 0.038 CFS under 1904 priority

Limit/Duty: The use is limited to ONE MINER'S INCH (0.025 cfs) per acre, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority	Prior Cert.
6N	35E	WM	34	SE NE	1600	3.20	1890	12565
6N	35E	WM	34	SE NE	1600	7.20	1893	12687
6N	35E	WM	34	SE NE	1600	2.30	1901	12687
6N	35E	WM	34	NW NE	700	18.02	1901	31669
6N	35E	WM	34	NW SE	301	1.50	1904	88073
6N	35E	WM	34	NW SE	301	6.00	1890	88073
6N	35E	WM	34	NW SE	301	1.00	1871	T-7642 (13128)
Total						39.22		

- 6. Water Right Certificate 92481 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate as follows:

Originating Certificate: 92481 in the name of L and E Family Partnership (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 5.0 ACRES

Priority Date: 1886

Rate: 0.125 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to ONE MINER'S INCH (0.025 cfs) PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	SW NE	1400	5.0	49219

7. Water Right Certificate 92489 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate as follows:

Originating

Certificate: 92489 in the name of Loraine Brown (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 19.0 ACRES

Priority Date: MARCH 1, 1901

Rate: 0.475 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: The use is limited to ONE MINER'S INCH (0.025 cfs) PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.
6 N	35 E	WM	34	SW NE	1200	19.0	12682

8. Water Right Certificate 92523 is cancelled. A new certificate will be issued for the existing use and place of use at the reduced rate as follows:

Originating

Certificate: 92523 in the name of Ronald and Gretchen Brown (confirmed by the Walla Walla Decree)

Use: IRRIGATION of 9.7 ACRES

Priority Dates: 1886 and 1893

Rate: 0.243 CUBIC FOOT PER SECOND (CFS), being 0.225 cfs under 1886 priority and 0.008 cfs under 1893 priority

Limit/Duty: The use is limited to ONE MINER'S INCH (0.025 cfs) PER ACRE, or its equivalent in case of rotation, measured at the point of diversion from the source.

Source: Little Walla Walla River, tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Prior Cert.	Priority
6 N	35 E	WM	34	NE NE	600	9.0	12677	1886
6 N	35 E	WM	34	NE NE	600	0.7	12677	1893

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 and where water is diverted into the bulge.
- 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. The project is complete and no additional time is needed for finalization.

11. The proposed areas within which the Applicant’s portion of conserved water is to be used for out-of-stream uses are within Sections 34 and 35, Township 6 North, Range 35 East, W.M.

12. The Applicant’s portion of conserved water may be utilized at the following locations and quantity until such time as a subsequent Notice of Use and Disposition form is filed, as follows:

Use: Irrigation of 9.2 acres

Priority and

Rates: 0.336 CFS measured at the point of diversion from the source, being:

Priority	Maximum CFS	Acres
1871	0.004	0.11
1886	0.059	1.61
1890	0.037	1.02
1893	0.072	1.97
1901	0.080	2.19
3/1/1901	0.079	2.16
1904	0.005	0.14
Total	0.336	9.20

Limit: Use of water is limited to 1.5 MINER’S INCHES or THREE-EIGHTIETHS (3/80) of one cubic foot per second per acre, or its equivalent in case of rotation measured at the point of diversion from the source.

Source: Little Walla Walla River, Tributary of the Walla Walla River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SWNE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	34	NE NE	501	8.7
6 N	35 E	WM	35	SW NW	1400	0.5
Total						9.2

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 in the Walla Walla River from the authorized POD as described below, also known as the Little Walla Walla headgate diversion at approximately River Mile (RM) 45.4.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SWNE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

To the Oregon-Washington state line at approximately RM 40.0. The instream right shall allow the use and protection of flows as follows:

Priority Date	Period	Rate (CFS)
1871	April 1 through October 31	0.008
1886	April 1 through October 31	0.117
1890	April 1 through October 31	0.075
1893	April 1 through October 31	0.145
1901	April 1 through October 31	0.163
3/1/1901	April 1 through October 31	0.159
1904	April 1 through October 31	0.012
Totals		0.679

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

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 point of diversion. The stream channel losses and gains will be calculated based on available data and the use of water by senior appropriators will determine the amount of water to which the right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this conserved water application shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by a subsequent order establishing a new instream water right.

Dated at Salem, Oregon this 20th day of December, 2018.



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

Mailing date: DEC 21 2018