

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

In the Matter of Allocation of Conserved)
Water Application CW-38,)
Umatilla County)
)
)
)
)

FINAL ORDER APPROVING
MODIFICATION AND FINALIZATION
OF ALLOCATION OF CONSERVED
WATER CW-38

Applicant

Hudson Bay District Improvement Co., Inc.
PO Box 110
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 proposed measures; (b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities; (c) The amount of water that will be needed for the original, authorized use after implementation of the conservation measures; (d) The amount of conserved water expected from implementation of the conservation measures; (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; (g) The applicant's choice of priority date for the conserved water; and (h) Any other information the commission considers necessary to evaluate the effectiveness of the proposal. 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. ORS 537.470(3).

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.

If an application for the allocation of conserved water is approved, the Department shall issue orders covering the changes in the original water rights and once the conservation project is completed new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process in 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 June 6, 2005, the Hudson Bay District Improvement Co. (District) filed an allocation of conserved water application under Certificate 67205 (subsequently superseded by Certificate 83941) and Transfer T-5938. The Department assigned the application number CW-38.
2. The District operates and maintains the water delivery system for the benefit of the landowners in the area.
3. The conservation project involves piping approximately 4.56 miles of the Richartz Irrigation Ditch and 2.52 miles of the Huffman Ditch, and a new pressurized line allows reduced flows to be used. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
4. The applicant originally proposed the following quantity of water to be conserved.

Conserved Water Description			
	Certificate	Needed	Conserved Water
Priority Date	Maximum Rate (cfs)	Maximum Rate (cfs)	Rate (cfs)
Feb. 16, 1903	75.00	65.39	9.61

5. In the original application, the applicant asserted that 100% of the funding for the project was coming from non-reimbursable public funds. The applicant requested that 8% of the conserved water be allocated to the applicant, and 92% of the water conserved be allocated to the State.
6. The application indicated that the proposed allocation of conserved water project was completed on January 1, 2003. The amount of water proposed to be conserved has been modified since the application was originally submitted. On April 3, 2008, the District requested not to finalize the project immediately, and requested a five-year period after project approval to determine if the project worked as anticipated.
7. On April 14, 2008, a Final Order Approving (But Not Finalizing) Allocation of Conserved Water and Approving Diminution of a Water Right was issued, and recorded at Special Order Volume 74, Pages 598 to 609.

8. The above Order set forth the following amounts of conserved water to be allocated to the applicant for new out-of stream use (8%) and to the State for an instream water right (92%) based on the amount and type of funding for the project:

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)
92%	9.610	2,876.95	8%	0.878	263.82	100%	10.488	3,140.77

9. The April 14, 2008 Order also set forth that upon submittal of a notice of a request to finalize the project or within five years of approval of the order, whichever occurred first, if the applicant indicated that the project funding was different than anticipated and the applicant requested a different allocation of the conserved water, then the Department would review the new allocation request and issue a Notice of Determination consistent with OAR 690-018-0050(5).

10. On April 12, 2013, the applicant submitted a Request for Finalization notifying the Department that the funding of the project was different than anticipated, and requested an allocation different than that proposed in Finding of Fact #8 above. The applicant requested that 51% of the conserved water be allocated to the State and 49% of the conserved water be allocated to the applicant as follows:

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)
51%	5.349	1,601.79	49%	5.139	1,538.98	100%	10.488	3,140.77

11. On September 9, 2009, Certificate 83941 was superseded by Certificate 85805 which corrected the place of use.
12. The entirety of the right involved in the allocation of conserved water is as follows:

Certificate: 85805 in the name of HUDSON BAY DISTRICT IMPROVEMENT COMPANY (confirmed by Walla Walla River decree)
Use: IRRIGATION of 2655.56 ACRES, STOCK AND DOMESTIC
Priority Date: FEBRUARY 16, 1903
Rate: Not described on Certificate.
Limit/Duty: ONE AND ONE-HALF MINER'S INCHES PER ACRE measured at the point of diversion (3/80 cfs/ac)
Source: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries of the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

Authorized Place of Use:

DOMESTIC, STOCK AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Name
5 N	35 E	WM	2	NW NW	9.55	STACY
5 N	35 E	WM	2	NW NW	8.32	FUCHS
5 N	35 E	WM	4	NE NE	6.00	FUJI ORCHARDS
5 N	35 E	WM	4	NE NW	15.20	WALLA WALLA V. APP.LLC
5 N	35 E	WM	4	NW NW	15.30	WALLA WALLA V. APP.LLC
5 N	35 E	WM	5	NE NE	2.00	WALLA WALLA V. APP.LLC
5 N	35 E	WM	5	NE NE	5.00	SURFACE
6 N	34 E	WM	13	SW NE	23.60	BOSTWICK, (Trustees)
6 N	34 E	WM	13	SE NE	14.50	BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE NW	21.30	HUESBY
6 N	34 E	WM	13	NW NW	31.50	HUESBY
6 N	34 E	WM	13	SW NW	14.00	HUESBY
6 N	34 E	WM	13	SW NW	24.10	HELLBERG
6 N	34 E	WM	13	SE NW	13.70	HUESBY
6 N	34 E	WM	13	SE NW	24.50	R. & J. BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE SW	16.00	RICHARTZ BROS.
6 N	34 E	WM	13	NW SW	1.50	HELLBERG
6 N	34 E	WM	13	SE SW	6.06	RICHARTZ BROS.
6 N	34 E	WM	13	NW SE	11.20	RICHARTZ BROS.
6 N	34 E	WM	13	SW SE	16.20	RICHARTZ BROS.
6 N	34 E	WM	13	SE SE	10.20	RICHARTZ BROS.
6 N	34 E	WM	14	SW SE	12.00	HELLBERG
6 N	34 E	WM	18	NESE.	11.53	WHITE
6 N	34 E	WM	21	SW NE	20.50	DERUWE, T.
6 N	34 E	WM	21	SE NE	1.10	DERUWE, T.
6 N	34 E	WM	21	SW NW	0.20	WILLIAMS DAIRY
6 N	34 E	WM	21	SE NW	0.80	WILLIAMS DAIRY
6 N	34 E	WM	21	NE SW	9.80	WILLIAMS DAIRY
6 N	34 E	WM	21	NW SW	1.00	WILLIAMS DAIRY
6 N	34 E	WM	21	SE SW	3.90	WILLIAMS DAIRY
6 N	34 E	WM	21	NE SE	27.60	DERUWE, T.
6 N	34 E	WM	21	NW SE	17.00	DERUWE, T.
6 N	34 E	WM	21	SW SE	10.90	DERUWE, T.
6 N	34 E	WM	21	SE SE	29.20	DERUWE, T.
6N	34 E	WM	23	NE NE	21.20	WILLIAMS
6N	34 E	WM	23	NW NE	39.30	WILLIAMS
6N	34 E	WM	23	NE NW	33.30	WILLIAMS
6N	34 E	WM	23	NW NW	17.50	WILLIAMS
6 N	34 E	WM	24	NE NE	38.00	E. HUFFMAN
6 N	34 E	WM	24	NW NE	27.80	BEAUCHAMP
6 N	34 E	WM	24	SW NE	21.80	MURPHY, T.
6 N	34 E	WM	24	SE NE	21.70	T. MURPHY
6 N	34 E	WM	24	NE NW	28.90	RICHARTZ, J.
6 N	34 E	WM	24	NW NW	38.00	RICHARTZ, J.
6 N	34 E	WM	24	SW NW	36.00	RICHARTZ, J.
6 N	34 E	WM	24	SE NW	33.20	RICHARTZ, J.
6 N	34 E	WM	24	NE SW	38.30	WEBSTER, J.
6 N	34 E	WM	24	SW SW	18.00	KEY, EUGENE
6 N	34 E	WM	24	SE SW	9.60	WEBSTER, J.
6 N	34 E	WM	24	SE SW	10.00	DEMARIS
6 N	34 E	WM	24	NE SE	18.90	SALGADO, T.

DOMESTIC, STOCK AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Name
6 N	34 E	WM	24	NW SE	13.50	WEBSTER, J.
6 N	34 E	WM	24	SW SE	18.40	CARROL, F.
6 N	34 E	WM	25	SW NE	5.90	GIVENS, L.
6 N	34 E	WM	25	SW NE	0.20	GIVENS, L.
6 N	34 E	WM	25	SE NW	26.00	RICHARTZ BROS.
6 N	34 E	WM	25	NE SE	16.20	ZWANG
6 N	34 E	WM	25	NE SE	10.00	GIVENS, L.
6 N	34 E	WM	25	NW SE	11.30	GIVENS, L.
6 N	34 E	WM	25	NW SE	21.50	GIVENS, L.
6 N	34 E	WM	26	SE SW	6.00	WILLIAMS DAIRY
6 N	34 E	WM	26	NE SE	3.00	BUROKER, A.
6 N	34 E	WM	26	NW SE	12.50	BUROKER, A.
6 N	34 E	WM	26	SE SE	4.50	BUROKER, A.
6 N	34 E	WM	27	NE NW	32.00	DERUWE, T.
6 N	34 E	WM	27	NW NW	32.10	DERUWE, T.
6 N	34 E	WM	27	SW NW	35.20	DERUWE, T.
6 N	34 E	WM	27	SE NW	32.40	DERUWE, T.
6 N	34 E	WM	27	NE SW	5.50	DERUWE, T.
6 N	34 E	WM	28	NE NE	20.00	DERUWE, T.
6 N	34 E	WM	28	NW NE	6.00	DERUWE, T.
6 N	34 E	WM	28	SW NE	4.30	DERUWE, T.
6 N	34 E	WM	28	SE NE	36.80	DERUWE, T.
6 N	35 E	WM	17	SW NW	17.90	LOCATI, M.
6 N	35 E	WM	17	SW NW	1.40	LOCATI, M.
6 N	35 E	WM	17	NE SW	39.10	LOCATI, A
6 N	35 E	WM	17	NW SW	39.10	LOCATI, M.
6 N	35 E	WM	17	SW SW	37.30	LOCATI, M.
6 N	35 E	WM	17	SE SW	37.30	LOCATI, A
6 N	35 E	WM	17	SW SE	9.40	LOCATI, A
6 N	35 E	WM	18	SW NE	22.50	LOCATI, M.
6 N	35 E	WM	18	SE NE	22.50	LOCATI, M.
6 N	35 E	WM	18	SW NW	22.50	LOCATI, M.
6 N	35 E	WM	18	SE NW	22.50	LOCATI, M.
6 N	35 E	WM	18	NE SW	40.00	CURCIO
6 N	35 E	WM	18	NW SW	38.90	CURCIO
6 N	35 E	WM	18	NE SE	7.00	LOCATI, M.
6 N	35 E	WM	18	NW SE	39.70	LOCATI, M.
6 N	35 E	WM	18	SE SE	38.20	DIXSON, J.
6 N	35 E	WM	18	SE SE	0.70	DIXSON, J.
6 N	35 E	WM	19	NE NE	28.00	CHVATAL
6 N	35 E	WM	19	SW NE	15.00	MCGOWAN
6 N	35 E	WM	19	NE NW	0.30	GRAY, R.
6 N	35 E	WM	19	NW NW	27.60	GRAY, R.
6 N	35 E	WM	19	SW NW	39.10	GRAY, R.
6 N	35 E	WM	19	SE NW	12.30	GRAY, R.
6 N	35 E	WM	19	SE NW	12.30	GRAY, R.
6 N	35 E	WM	19	NE SW	4.80	TOKAS
6 N	35 E	WM	19	NE SW	17.00	TEEMAN
6 N	35 E	WM	19	NE SW	7.00	SIEBOLD
6 N	35 E	WM	19	NE SW	8.20	MOULTRIE, K.
6 N	35 E	WM	19	NW SW	30.80	MOULTRIE, K.
6 N	35 E	WM	19	NW SW	5.30	WILLIAMS, ADA

DOMESTIC, STOCK AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Name
6 N	35 E	WM	19	SE SW	4.70	SIEBOLD
6 N	35 E	WM	19	NW SE	30.00	LEE
6 N	35 E	WM	19	SW SE	8.00	LEE
6 N	35 E	WM	20	NW NE	1.00	PALMER, B.
6 N	35 E	WM	20	NW NE	4.60	LEE
6 N	35 E	WM	20	SW NE	20.00	LEE
6 N	35 E	WM	20	SE NE	9.50	CHILDERS
6 N	35 E	WM	20	SE NE	10.00	LONAI
6 N	35 E	WM	20	NE NW	15.50	NOBLE
6 N	35 E	WM	20	NE NW	10.80	LEE
6 N	35 E	WM	20	NE NW	1.00	PALMER, B.
6 N	35 E	WM	20	NE NW	6.90	GRAY, R.
6 N	35 E	WM	20	NW NW	1.60	NOBLE
6 N	35 E	WM	20	NW NW	35.60	GRAY, R.
6 N	35 E	WM	20	NW NW	2.60	LEE
6 N	35 E	WM	20	SW NW	6.50	GRAY, R.
6 N	35 E	WM	20	SW NW	16.00	LEE
6 N	35 E	WM	20	SE NW	39.80	LEE
6 N	35 E	WM	20	NE SW	3.00	LEE
6 N	35 E	WM	20	NE SW	20.50	HAMBLÉN
6 N	35 E	WM	20	SW SW	20.40	FOX
6 N	35 E	WM	20	SE SW	19.00	KELLEY
6 N	35 E	WM	20	SE SW	19.50	GOMES
6 N	35 E	WM	20	NE SE	4.30	LONAI
6 N	35 E	WM	20	NE SE	11.00	BOLLING, J
6 N	35 E	WM	20	NW SE	4.00	LEE
6 N	35 E	WM	20	SE SE	2.60	BOLLING, J
6 N	35 E	WM	20	SE SE	4.00	VILLA, A.
6 N	35 E	WM	20	SE SE	7.00	STEPHENS, M.
6 N	35 E	WM	21	NW SW	18.00	HEIDENRICH
6 N	35 E	WM	21	NW SW	1.40	ALLEMAN
6 N	35 E	WM	21	SW SW	15.40	ALLEMAN
6 N	35 E	WM	21	SW SW	13.50	ROFF
6 N	35 E	WM	28	SW NE	11.70	DELAHAYE
6 N	35 E	WM	28	NE NW	9.30	TELLEFSON, K.
6 N	35 E	WM	28	NE NW	12.90	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	12.00	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	1.20	TELLEFSON, K.
6 N	35 E	WM	28	SE NW	5.50	DELAHAYE
6 N	35 E	WM	29	NE NE	7.30	TELLEFSON, K.
6 N	35 E	WM	29	NE NW	2.50	BROADFOOT (Trustee)
6 N	35 E	WM	29	NW NW	8.50	BROADFOOT (Trustee)
6 N	35 E	WM	29	SE NW	7.00	ROLOFF.
6 N	35 E	WM	30	NE NE	18.90	HARDESTY, P.
6 N	35 E	WM	30	SW SW	10.00	HODNEFIELD
6 N	35 E	WM	32	SW NW	20.00	
6 N	35 E	WM	32	SE NW	14.70	BROWN, EARL
6 N	35 E	WM	32	NE SW	32.80	MCCLELLEN, J.
6 N	35 E	WM	32	NW SW	10.00	BROWN, EARL
6 N	35 E	WM	32	NE SE	25.20	PREMIERE PARTNERS
6 N	35 E	WM	32	NE SE	0.80	PREMIERE PARTNERS
6 N	35 E	WM	32	NW SE	20.00	MCCLELLEN, J.

DOMESTIC, STOCK AND IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Name
6 N	35 E	WM	32	NW SE	20.00	MCCLELLEN, J.
6 N	35 E	WM	32	SW SE	9.40	HENDRICKS, S.
6 N	35 E	WM	32	SW SE	8.40	PREMIERE PARTNERS IV LTD
6 N	35 E	WM	32	SE SE	15.00	PREMIERE PARTNERS IV LTD
6 N	35 E	WM	33	SW SW	6.60	WALLA WALLA VALLEY
6 N	35 E	WM	33	SE SW	16.90	WALLA WALLA VALLEY
6 N	35 E	WM	33	SE SW	8.10	WALLA WALLA VALLEY
6 N	35 E	WM	34	NW NW	8.60	BURRIS, C.
6 N	35 E	WM	34	NW NW	5.00	BURRIS, C.
6 N	35 E	WM	34	NW NW	9.40	WALISER, J.
6 N	35 E	WM	34	NW NW	8.00	WALISER, J.
6 N	35 E	WM	34	SW NW	7.20	CONOR VINEYARD
6 N	35 E	WM	34	SW NW	2.20	LEFORE, G.
6 N	35 E	WM	34	SW NW	9.60	CAYUSE VINEYARDS, LLC
6 N	35 E	WM	34	NE SW	4.00	WONDRA, W.
6 N	35 E	WM	34	SE SE	1.10	HELLING/SHAUER
6 N	35 E	WM	34	SE SE	4.90	CASTLE
6 N	35 E	WM	35	SW SW	9.40	LEFORE, J.

- The original water right is further described in the Walla Walla River Decree on page 58, under contests 64 and 65, as being limited to a maximum rate of 75.00 cfs, serving 2,673.76 acres.
- The maximum rate associated with Certificate 85805 is described in the allocation of conserved water application as 75.0 cfs. The actual maximum rate is less due to modifications to the right as described below.

Special Order Volume 28, Page 89 cancelled 14.00 acres. Special Order Volume 14, Page 463 approved Transfer D-115. However, 4.2 acres involved in Transfer D-115 were not perfected as evidenced by Certificate 52576. Special Order Volume 33, Page 90 approved Transfer T-4356, reducing the right by 20.00 acres. Special Order Volume 46, Page 106 approved Transfer T-5938 reducing the right by 20.00 acres.

Consequently, the starting point for the rate associated with Certificate 85805 is:

Water Right Evidenced by	Originating Certificate	Cancellation: Sp. Order	D-115		T-5938 Certificate	Certificate	Certificate
	13083	V. 28, P. 89	4.2 acres not perfected	T-4356	52576	67205	85805
Rate (cfs)*	75.000	(0.393)	(0.118)	0.561	0.561	73.367	74.489
Acres	2,673.76	(14.0)	(4.2)	20.0	20.0	2,615.56	2,655.56

* - The maximum rate is not listed on the certificates or orders.

Certificate 85805 includes lands from Certificates 67205 and 52576, and Transfer T-4356.

- Based upon the Walla Walla River Decree, Certificate 85805 has a year-round season of use without a specified duty limitation. However, the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Use of the existing right at the full amount allowed would exceed amounts necessary to accomplish the existing beneficial uses. A maximum of 8.4 acre-feet (AF) per acre can be beneficially diverted for the existing use.

16. The starting point for the right involved in the allocation of conserved water is:

Certificate 85805	
Acres	2,655.56 ac
Rate	74.489 cfs
Beneficial Use Volume	22,306.70 AF

17. Water was 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. In addition, confirming Certificate 83941 was issued on March 26, 2008.
18. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of application CW-38.
19. Pursuant to ORS 537.485, the District requested that the priority date of the conserved water right be the same as the originating right, being February 16, 1903. However, on December 18, 2007, the District requested to diminish the remaining right to be subordinate to the instream right created by this allocation of conserved water project.
20. The application, as amended, meets the requirements of OAR 690-018-0040.
21. Notice of the proposed conservation project was published in the Department's weekly notice on November 20, 2007, and in the Valley Herald on November 16, 23, and 30, 2007, as required under OAR 690-018-0050. Walla Walla River Irrigation District commented on the project and indicated that they wanted to be included in discussions relating to the season that the water will be protected and relating to when the proposed conserved water would have been available based on historical use and the Walla Walla River Decree.
22. The District was formed under ORS Chapter 554. Consequently, OAR 690-018-0025 does not apply.
23. On January 31, 2014, a Preliminary Determination was issued reflecting the modified allocation percentages, and a copy was mailed to the applicant and the commenter. No protests were filed to the Preliminary Determination.

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

24. As evidenced by Findings of Fact #4 and #10, the proposed allocation of conserved water will result in a reduced diversion of the uses allowed under the existing right pursuant to OAR 690-018-0050(4)(a).
25. On November 27, 2007, and August 27, 2013, Department staff performed a review of the proposed Allocation of Conserved Water Project. The Department staff determined that the return flows from the lands served by the diversion do not return to the Walla Walla River in Oregon. Therefore, the proposed allocation of conserved water will not harm existing rights so long as the instream use created by the allocation of conserved water project has the following conditions: a) the quantity of water protected in the stream reach does not exceed

the quantity of water legally available at the original point of diversion; b) the stream channel losses and gains are 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; and c) the instream right created by this allocation of conserved water is not additive to the by-pass flow conditions described in Permit S-53662, or other water rights, unless otherwise specified by a subsequent order. OAR 690-018-0050(4)(b).

- 26. The application included land use information forms completed and signed by representatives of Umatilla County planning department demonstrating that the application is compatible with the local comprehensive land use plan. Additionally, the Department provided notification of the proposed action to Umatilla County. The conservation project is consistent with local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c).
- 27. As conditioned by Finding of Fact #25, no harm will occur to other water rights. Therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-0018-0050(4)(d).
- 28. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses under Certificate 85805 are as follows:

Conserved Water Description						
Acres	Before Project		After Project		Conserved Water	
	Maximum Rate (cfs)	Maximum Volume (AF)	Maximum Rate (cfs)	Maximum Volume (AF)	Maximum Rate (cfs)	Maximum Volume (AF)
2,655.56	74,489	22,306.70	64.001	19,165.93	10.488	3,140.77

- 29. In consultation with the Oregon Department of Fish and Wildlife, Department of Environmental Quality, and Oregon Parks and Recreation Department, the Department has determined that the conserved water is needed to support instream uses in the Walla Walla River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-018-0050(4)(f).
- 30. The Oregon Watershed Enhancement Board funded 51 percent of the project. Pursuant to ORS 537.470(3), the following quantities of water are allocated to the State and applicant.

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)
51%	5.349	1,601.79	49%	5.139	1,538.98	100%	10.488	3,140.77

OAR 690-018-0050(g).

31. The stream reach for the State's instream water right is from the previously authorized point of diversion, located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1

To the Oregon – Washington State line. OAR 690-018-0050(h).

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

Priority Date	Period	Rate (cfs)	Volume (AF)
February 16, 1903	May 1 through September 28	5.349	1,601.79

If the full amount of water is not available to be protected under this right for this time period, then the ending date shall be extended until December 15 or when the entire instream volume of 1,601.79 AF is used, whichever occurs first. The amount and timing of the instream flows are allowable within the limits and use of the original water right. OAR 690-007-0015(10).

33. The total monthly quantities of water to be protected under the proposed instream right in the reach will provide for a beneficial purpose and do not exceed the estimated average natural flow.
34. As conditioned in Finding of Fact #25, the protection of flows within the proposed instream reach is appropriate. OAR 690-077-0015(8).
35. The applicant requested the following areas within which the conserved water may be used for out-of-stream purposes:

Township	Range	Mer	Section
5 N	34 E	WM	2
6 N	34 E	WM	14
6 N	34 E	WM	21
6 N	34 E	WM	22
6 N	34 E	WM	23
6 N	34 E	WM	26
6 N	34 E	WM	35
6 N	35 E	WM	18
6 N	35 E	WM	20
6 N	35 E	WM	29
6 N	35 E	WM	30

OAR 690-018-0050(4)(h).

36. Pursuant to OAR 690-018-0062, the applicant notified the Department that the Allocation of Conserved Water Project has been completed and requested the project be finalized. OAR 690-018-0050(4)(i).
37. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

Conclusions of Law

The project described in Allocation of Conserved Water Application CW-38, as modified, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

1. The proposed changes will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #4 and #10.
2. The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #25.
3. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. Finding of Fact #27.
4. The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #26.

Now, therefore, it is ORDERED:

1. The changes proposed in CW-38 are approved.
2. The quantity of water conserved is as follows:

Conserved Water	
Rate	Volume
Max. CFS	Max. AF
10,488	3,140.77

3. The quantity of conserved water is allocated as follows:

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)
51%	5.349	1,601.79	49%	5.139	1,538.98	100%	10.488	3,140.77

4. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 85805 and any related decree.
5. Water Right Certificate 85805 is cancelled. A superseding certificate shall be issued for the existing use and place of use (described in Finding of Fact #12) under Certificate 85805 at the reduced rate and duty as follows:

Use: IRRIGATION of 2655.56 ACRES, STOCK AND DOMESTIC
Priority Date: FEBRUARY 16, 1903*
Rate: 64.001 CUBIC FEET PER SECOND
Limit/Duty: ONE AND ONE-HALF MINER'S INCHES PER ACRE measured at the point of diversion (3/80 cfs/ac)

Source: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

*The District water right shall be subordinate to the State’s instream water right created by the allocation of conserved water project (CW-38) described in this order which has the same priority date. When the instream water right is fully met, the District may divert water under this right.

The water user shall maintain and operate the existing measurement devices at the points of diversion and shall make such improvements as may be required by the Department.

All other conditions and limitations of the existing water right shall be included in the superseding certificate.

6. The project is complete. No additional time is requested for finalization.
7. Until the Department is notified pursuant to OAR 690-018-0090 of the use or disposition of the District’s conserved water right for future out-of-stream use, the District’s conserved water right shall be managed instream 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 point of diversion for Certificate 85805 located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1

To the Oregon-Washington State Line, in the following quantity:

Applicant’s Portion of Conserved Water			
Priority	Maximum Rate (cfs)	Maximum Duty (Volume) (AF)	Period of Use
February 16, 1903	5.139	1,538.98	May 1 through September 28

The instream use shall allow the use and protection of flows for 151 days from May 1 through September 28.

8. The priority date for the conserved water right held by the District is February 16, 1903, and shall be subordinate to the State’s instream water right created by the allocation of conserved water project described in Findings of Fact #31 and #32. When the instream water right is fully met, the District may divert water under this right.

9. The designated area for future out-of-stream use for the District's conserved water right is located within:

Township	Range	Mer	Section
5 N	34 E	WM	2
6 N	34 E	WM	14
6 N	34 E	WM	21
6 N	34 E	WM	22
6 N	34 E	WM	23
6 N	34 E	WM	26
6 N	34 E	WM	35
6 N	35 E	WM	18
6 N	35 E	WM	20
6 N	35 E	WM	29
6 N	35 E	WM	30

The season of use is year around and the conserved water right is subject to beneficial use and other conditions and limitations of the Walla Walla River Decree.

The use of water for out-of-stream uses under this conserved water right is not subject to the layered water right restrictions contained in ORS 540.510(1) and 537.490(3). Subject to the limitations in ORS 537.490, the right to the use of conserved water allocated by this order, may be severed from the land and transferred or sold after notice to the commission as required under ORS 537.490.

10. The Department shall issue a new instream water right certificate for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Walla Walla River as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-feet)
February 16, 1903	May 1 through September 28	5,349	1,601.79

From the authorized point of diversion under Certificate 85805 located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1

To the Oregon – Washington State Line.

11. The new instream right shall replace a portion of any instream water rights established pursuant to ORS 537.341 or ORS 537.346, and shall be in addition to any 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. If the full amount of water is not available to be protected under this right from May 1 through September 28, then the ending date shall be extended until December 15 or when the entire instream volume of 1,601.79 AF is used, whichever occurs first.

The quantity of water protected in the stream reach shall not exceed the quantity of water legally available at the original point of diversion. The stream channel losses and gains are 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 created by the allocation of conserved water is not in addition to the by-pass flow conditions described in Permit 53662, or other water rights, unless otherwise specified by a subsequent order.

Dated at Salem, Oregon this 2 day of April, 2014.



Dwight French, Water Rights Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: APR 11 2014