

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

In the Matter of the Proposed Allocation of) FINAL ORDER APPROVING ALLOCATION
Conserved Water by Jim Burns for) OF CONSERVED WATER
Certificate 12892, Umatilla County, Oregon)

Application History

On March 11, 2003, Jim Burns filed an application for the allocation of conserved water under water right certificate 12892. The Department assigned this conserved water application number C-25.

The applicant installed an underground sprinkler system and is constructing a new weir to limit diversions. The application proposes to allocate 100 percent of the conserved water to the state for instream use. The Walla Walla River Irrigation District is supportive of this project.

On November 11 and 18, 2003, the Department published a public notice inviting public comments on the application. On November 7, 14, and 21, 2003, the Valley Herald published a public notice inviting public comments on the application. No public comments were received.

Applicable Law

Under chapter 726, Oregon Laws 1997, Sec. 2, any person holding a water right certificate issued under ORS 537.250, 537.630 or 539.140 or a decree may submit a conservation measure or a conservation measure implemented not more than five years prior to submitting the request. 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, may be 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.

Under chapter 726, Oregon Laws 1997, Sec. 3, 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.

If an application for the allocation of conserved water is approved, the Department shall issue orders for proposed new certificates covering the changes in the original water rights and once the conservation project is completed separate new certificates preserving the previously

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 and OAR 690-001-0005 you may either petition for judicial review or petition the Director for reconsideration of this order.

established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights to cover the right to the use of the allocated water. ORS 537.470(6).

Under ORS 537.455 to 537.500; chapter 726, Oregon Laws 1997, as amended by chapter 394, Oregon Laws 1999; and OAR 690-018-0010 to 690-018-0090, the Department has considered the application and the public comments received and makes the following:

Findings of Fact

1. Water right certificate 12892 was issued in the name of F.E. McSherry with priority dates of 1878 for 3.5 acres and 1908 for 1.3 acres, respectively, for use of water from the Ford Branch of the Little Walla Walla River for irrigation of 4.8 acres of land. The 1908 right is limited to the use of surplus water only.
2. The capacity of the existing facilities is sufficient to divert the full rate of 0.18 cfs allowed under certificate 12892.

The applicant undertook a conservation project that consisted of replacing a high-impact above-ground irrigation system with a new underground micro-sprinkler system and installed a new weir. The project was completed in March 2002.

3. The proposed allocation of conserved water will result in reduced diversions for the uses allowed under the original rights. The reduced rates and rates conserved are:

Certificate	Priority Date	Acres	Rate Before Project (cfs)	Rate After Project (cfs)	Rate Conserved (cfs)
12892	1878	3.5	0.13125	0.0875	0.04375
	1908	1.3	0.04875	0.0325	0.01625
	Total	4.8	0.18	0.12	0.06

The applicant has provided the Department a map that clarifies the lands, according to priority date, to which this right is appurtenant.

4. The proposed allocation will not harm existing out-of-stream rights in the Ford Branch of the Little Walla Walla River or the Walla Walla River because the diversions will be reduced and the downstream return flows are not available to the Ford Branch of the Little Walla Walla River or the Walla Walla River in Oregon.

The proposed allocation will add flow in the Walla Walla River from the Little Walla Walla diversion to the state line, and therefore will not harm the in-stream water rights in this reach, certificates 77006 and 77009.

5. The applicant has obtained the required land use approval.
6. The proposed allocation of conserved water will not harm other water rights who have a call upon the source and, therefore, no reduction in the quantity of conserved water will be needed to mitigate for harm to existing water rights.

The conservation project was funded under a cost-share agreement with the Walla Walla Basin Watershed Council. Under the agreement, 50% of the project costs were non-reimbursable state funds. The remaining 50% of the project costs were paid by the applicant. The applicant proposes to allocate 100 percent of the conserved water to the state for instream use, so there will be no additional out-of-stream use of the conserved water.

7. In consultation with the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation, the Department has determined that conserved water is needed to support instream uses. Additional stream flows are needed in the Walla Walla River to achieve water quality standards and provide improved habitat for incubation, rearing and migration of steelhead and bull trout.
8. There are existing instream water rights in the Walla Walla River that are within the reach for which the State's portion of the conserved water is proposed to be dedicated instream. These rights are shown below.

Certificate	Priority Date	CFS	Rights Usually Met
77006	12/31/1886	0.018	Year-round
77006	12/31/1898	0.018	Year-round
77006	12/31/1903	0.04	October 16 – June 30
77007	12/31/1886	0.04	Year-round
77007	12/31/1903	0.049	October 16 – June 30
76779	03/25/1912 plus one minute	0.01116	October 16 – June 30
76779	01/16/1959 plus one minute	0.0233	October 16 – June 30

The instream water right shall replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. Therefore, flows established by this order are in addition to the other instream rights existing at this time.

9. Under chapter 726, Oregon Laws 1997, Sec. 3, 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. The applicant funded 50 percent of the project. However, the applicant requests that 100 percent of the conserved water go to the state.

10. The state's portion of the conserved water shall be allocated in the following manner.

Certificate	Priority Date	Rate (cfs)	Time Period and Location
12892	1878 plus one minute	0.04375	April 1 – October 31, and at other times when the originating right is being exercised; Little Walla Walla diversion on the Walla Walla River to the state line
	1908 plus one minute	0.01625	
	Total	0.06	

11. Under chapter 726, Oregon Laws 1997, Sec. 4, the priority of any right to the use of conserved water, including an in-stream water right, shall be either the same as or one minute after the priority of the water right held by the person implementing the conservation measures. The applicant has requested that the conserved water be assigned a priority date one minute after the existing rights.
12. The applicant has completed the conservation project and has not requested additional time to finalize the allocation under OAR 690-018-0050(3)(i).
13. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Ultimate Findings of Fact

The ultimate findings of fact that the Department must make are described in OAR 690-018-0050.

- A. The allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights.
- B. The proposed allocation of conserved water will not harm existing water rights.
- C. The application is consistent with local land use plans.
- D. No water is needed to mitigate for harm to existing water rights.
- E. The new rate for the existing water right, certificate 12892, held by the applicant is 1/40 cfs/acre (11.22 gallons/minute).

Certificate	Priority Date	Acres	Rate After Project
12892	1878	3.5	0.0875 cfs (39.27 gpm)
	1908	1.3	0.0325 cfs (14.58 gpm)
Total		4.8	0.12 cfs (53.85 gpm)

The place of use to which this right is appurtenant, based on priority date, is described in the map that the applicant submitted.

- F. The conserved water allocated to the state is needed to support instream uses.
- G. One hundred percent of the conserved water will be allocated to the state as shown below.

Certificate	Priority Date	Rate (cfs)	Time Period and Location
12892	1878 plus one minute	0.04375	April 1 – October 31, and at other times when the originating right is being exercised; Little Walla Walla diversion on the Walla Walla River to the state line
	1908 plus one minute	0.01625	

Regulation to satisfy the quantity of water granted under this right will be based on flow available at the original point of diversion, the Little Walla Walla diversion. Additional regulation below this point within the designated reach may occur based on other water rights being exercised, stream reach losses, and stream flow gains which are quantified beyond that point.

- H. The applicant has completed the conservation project and has requested finalization of the allocation.
- I. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

Conclusion of Law

The project described in the application C-25 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, chapter 726, Oregon Laws 1997, as amended by chapter 394, Oregon Laws 1999; and OAE Chapter 690, Division 018.

Now, therefore, it is ORDERED:

- 1. Certificate 12892 is cancelled. A new superceding certificate shall be issued for the following:

Priority Date	Rate (cfs)	Irrigation of	Legal Description
1878	0.0875 cfs	3.5 acres	NW1/4 SE1/4 Section 35, T 6 N, R 35 E W.M.
1908	0.0325 cfs	1.3 acres	NW1/4 SE1/4 Section 35, T 6 N, R 35 E W.M

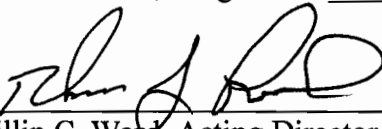
The place of use to which this right is appurtenant, based on priority date, shall be further clarified based on the map that that the applicant submitted. All other conditions and limitations of the existing water right shall be included in the superseding certificate.

2. A new certificate for an instream water right shall be issued which will replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right shall be issued for the Little Walla Walla River Diversion on the Walla Walla River located 7,091 ft South and 3,450 ft East of the NW corner of Section 1, T 5 N, R 35 E, W.M. Detailed as follows:

Priority Date	Rate (cfs)	Time Period and Location
1878 plus one minute	0.04375	April 1 – October 31, and at other times when the originating right is being exercised; Little Walla Walla diversion on the Walla Walla River to the state line
1908 plus one minute	0.01625	
Total	0.06	

Regulation to satisfy the quantity of water granted under this right will be based on flow available at the original point of diversion, the Little Walla Walla diversion. Additional regulation below this point within the designated reach may occur based on other water rights being exercised, stream reach losses, and stream flow gains which are quantified beyond that point.

Dated at Salem, Oregon this 27th day of September, 2004



 Phillip C. Ward, Acting Director