

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

In the Matter of Proposed Allocation of)	FINAL ORDER APPROVING
Conserved Water Application)	ALLOCATION OF CONSERVED
CW-45, Umatilla County)	WATER and CHANGES IN POINT OF
)	DIVERSION

Authority

ORS 537.455 to 537.500 as amended by 2003 HB 2456, 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 018 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Bill and Eileen Leibbrand
84262 Highway 339
Milton-Freewater, Oregon 97862

Findings of Fact

1. On June 15, 2006, Bill and Eileen Leibbrand filed an allocation of conserved water application. The Department assigned the application number CW-45.
2. The application requests an allocation of conserved water involving all of Certificates 44131, 44116, 12611, 12528, and 13144 and a portion of Certificate 39602.
3. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
4. A diversion structure and ditch or a pump, pipeline and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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, you may either 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.

5. The first right involved in the allocation of conserved water is as follows:
Certificate: 44131 in the name of ROBERT W LEIBRAND (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 1.16 ACRES
Priority Date: 1885
Rate: One and one-half miner's inches per acre measured at the point of diversion
Source: WEST BRANCH OF WEST CROCKETT, tributary to LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	35	NW NE	1960 FEET NORTH & 210 FEET EAST FROM CENTER 1/4 CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	1.16

6. The second right involved in the allocation of conserved water is as follows:
Certificate: 44116 in the name of ROBERT W LEIBBRAND (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 6.0 ACRES
Priority Date: 1879
Rate: One and one-half miner's inches per acre measured at the point of diversion
Source: WEST BRANCH OF WEST CROCKETT, tributary to LITTLE WALLA WALLA RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	35	NW NE	1960 FEET NORTH & 210 FEET EAST FROM CENTER 1/4 CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	6.0

7. The third right involved in the allocation of conserved water is as follows:
Certificate: 39602 in the name of C J KARKER (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 2.76 ACRES
Priority Date: 1885
Rate: One and one-half miner's inches per acre measured at the point of diversion
Source: WEST BRANCH OF WEST BRANCH OF CROCKETT, tributary to LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	35	NE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	2.76

8. The fourth right involved in the allocation of conserved water is as follows:

Certificate: 12611 in the name of Estate of MRS KATIE HERR CORKERY, by Nelius Corkery, Admr.; TIMOTHY JOE and BERNARD CORKERY, Minors (confirmed by Walla Walla River Decree)

Use: IRRIGATION of 1.0 ACRE

Priority Date: 1885

Rate: One and one-half miner's inches per acre measured at the point of diversion

Source: WEST BRANCH OF WEST BRANCH OF CROCKETT CREEK

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	1.0

9. The fifth right involved in the allocation of conserved water is as follows:

Certificate: 12528 in the name of ML BALTEZORE (confirmed by Walla Walla River Decree)

Use: IRRIGATION of 6 ACRES

Priority Dates: 1885 (3 acres), 1894 (3 acres)

Rate: One and one-half miner's inches per acre measured at the point of diversion

Source: FORD BRANCH OF LITTLE WALLA WALLA RIVER

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	6.0

10. The sixth right involved in the allocation of conserved water is as follows:

Certificate: 13144 in the name of FRED RAUSCHKOLB (confirmed by Walla Walla River Decree)

Use: IRRIGATION OF 9.7 ACRES and STOCK

Priority Date: 1887

Rate: One and one-half miner's inches per acre measured at the point of diversion

Source: WEST BRANCH OF CROCKETT BRANCH OF LITTLE WALLA WALLA RIVER

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q-Q	Acres
6 N	35 E	WM	35	SW NE NW	9.7

11. The place of use associated with Certificate 44131 is clarified on the conserved water application map as: From the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 East, W.M., running 150 feet south to the place of beginning. Thence running 20 rods west, thence south 180 feet; thence 20 rods east, thence 180 feet north to the place of beginning.
12. Certificates 39602 and 44131 described their respective water right as being within the following described tract: Beginning at the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running thence west 44 rods; thence south 20 rods; thence east 44 rods; thence north 20 rods to the place of beginning. There are four tax lots within this described area. Tax lots 100, 102, and 400 are owned by the Liebbrand's. Tax lot 101 is owned by Alice and James Wilson. Teresa Yeager, Manager of Walla Walla River Irrigation District, has indicated that the District does not serve water to Tax lot 101.
13. The place of use associated with those lands in Certificate 39602 involved in the allocation of conserved water is clarified on the conserved water application map as: From the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running 44 rods west to the place of beginning. Thence running 20 rods south, thence east 24 rods; thence 20 rods north, thence 24 rods west to the place of beginning.
14. The place of use associated with those lands in Certificate 39602 not involved in the allocation of conserved water is clarified on the conserved water application map as: From the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running 20 rods west; thence running 150 feet south; thence east 20 rods; thence 150 feet north, to the place of beginning. This area describes Tax lots 100 and 101.
15. Certificate 44116 is appurtenant to the following described tract: Commencing at a point 20 rods due south of the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running thence west 52 rods; thence south 20 rods; thence east 52 rods; thence north 20 rods to the place of beginning. On December 20, 2006, the Walla Walla River Irrigation District, the Norma Anspach Estate, and Bill and Eileen Liebbrand entered into an agreement to clarify that no portion of Certificate 44116 is appurtenant to the strip of land that lies between the Leibbrand's property (located at Section 35, Township 6 North, Range 35 E, W.M., Tax lot 300) and the Norma Anspach Estate property (located at Section 35, Township 6 North, Range 35 E, W.M., Tax lot 2100). This property is within the following described tract: From the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running thence 40 rods due south to the place of beginning; thence west 13 chains; thence south 9 links; thence easterly 13 chains; thence north 21 links to place of beginning.
16. The place of use associated with those lands in Certificate 12528 has been clarified by priority date. The place of use is described on the certificate as being within the following described tract: Commencing 52 rods west of the northeast corner of the NW¼ of Section 35, Township 6 North, Range 35 E, W.M., running thence west about 28 rods to the northwest corner of the NE¼ NW¼ of said Section 35; thence south 40 rods; thence east about 28 rods

to a point south of the place of beginning; thence north 40 rods to the place of beginning containing 7 acres more or less. The 1885 priority date lands are the most northerly and the southerly rights have the 1894 priority date.

17. The point of diversion associated with Certificate 39602 is more accurately described in Special Order Volume 23, Page 216 as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	35	NE NW	GENT DITCH: 2320 FEET NORTH & 30 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 35

18. The point of diversion associated with Certificates 12528 and 13144 has been identified by the watermaster and is described as:

Twp	Rng	Mer	Sec	Q	Survey Coordinates
6 N	35 E	WM	35	NW	670 FEET NORTH & 650 FEET WEST FROM THE CENTER OF SECTION 35

19. Certificates 44131, 44116, 39602 and 12611 have the same source, which is the WEST BRANCH OF WEST CROCKETT, tributary to LITTLE WALLA WALLA RIVER.
20. The source for Certificate 13144 is identified as the WEST BRANCH OF CROCKETT BRANCH OF LITTLE WALLA WALLA RIVER. However, the POD described in Finding of Fact #13 is actually located and verified by the Watermaster to be on the WEST FORD BRANCH, tributary to LITTLE WALLA WALLA RIVER.
21. The source for Certificate 12528 is more accurately identified as the WEST FORD BRANCH, tributary to LITTLE WALLA WALLA RIVER.

22. Water is diverted into the Little Walla Walla River at the headgate-diversion from the Walla Walla River at approximately River Mile 46 further described as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	12	SW NE	7,091 FEET SOUTH AND 3,450 FEET EAST OF THE NW CORNER OF SECTION 1

Water from the Little Walla Walla River may then be diverted to either the Ford Branch of the Walla Walla River or the West Branch of the Crockett.

23. As part of the allocation of conserved water project, the point of diversion for all certificates involved in the project will be:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	35	NW NE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 35

This involves a point of diversion change for Certificates 39602, 12611, 12528 and 13144.

24. The Oregon Department of Fish and Wildlife has indicated that fish screening is not needed at the new point of diversion.

25. The maximum rates and priority dates for the water rights described in Findings of Fact # 5 - 10 are more commonly described as:

Certificate	Priority Date	Acres	Rate (cfs)
44131	1885	1.16	0.044
44116	1879	6.0	0.225
39602	1885	2.76	0.104
12611	1885	1.0	0.038
12528	1885	3.0	0.113
	1894	3.0	0.113
13144	1887	9.7	0.364
<i>Total</i>		26.62	1.001

26. The conservation project involved installing an underground sprinkler system.
27. Public notice was published in the Department's weekly notice on September 19, 2006, and in the Valley Herald newspaper on September 29, October 6 and 13, 2006, as required under OAR 690-018-0050. No comments were received.
28. Pursuant ORS 537.485, the applicant's request that the priority dates of the conserved water be one minute junior to the original right.
29. The proposed allocation of conserved water project was completed on May 1, 2005, and results in conserving the following amounts of water:

Certificate	Priority Date	Acres	Before Project Maximum Rate (cfs)	Conserved Water Rate (cfs)	After Project Maximum Rate (cfs)
44131	1885	1.16	0.044	0.015	0.029
44116	1879	6.0	0.225	0.075	0.150
39602	1885	2.76	0.104	0.035	0.069
12611	1885	1.0	0.038	0.013	0.025
12528	1885	3.0	0.113	0.038	0.075
	1894	3.0	0.113	0.038	0.075
13144	1887	9.7	0.364	0.121	0.243
<i>Total</i>		26.62	1.001	0.335	0.666

30. The proposed allocation of conserved water would harm existing rights if water were to be protected without accounting for channel losses below the Little Walla Walla River POD at the headgate-diversion described in Finding of Fact #22, and if the right was exercised every day of the year. There are no return flows which return to either the Walla Walla or Little Walla Walla Rivers in Oregon, thus no mitigation is needed pertaining to return flows.
31. The application includes land use information forms completed and signed by representatives of Umatilla County demonstrating that the application is compatible with the local comprehensive land use plan.

32. Harm to other water rights can be mitigated by not protecting more water in the Walla Walla River than is legally available at the Little Walla Walla River point of diversion and by accounting for stream channel losses and gains. Harm can also be mitigated by limiting the period when water is being protected instream to April 1 through October 31, and at other times when agricultural diversions are being exercised.
33. After the allocation of conserved water, the water right held by the applicant will allow use of the following quantities of water:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)
44131	1885	1.16	0.029
44116	1879	6.0	0.150
39602	1885	2.76	0.069
12611	1885	1.0	0.025
12528	1885	3.0	0.075
	1894	3.0	0.075
13144	1887	9.7	0.243
<i>Total</i>		<i>26.62</i>	<i>0.666</i>

34. 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 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 and fish habitat and other ecological values.
35. Pursuant to OAR 690-018-0012(1), the applicant's propose that 100 percent of the conserved water be allocated to the State for an instream water right.
36. The amount of water to be allocated to the state for an instream water right, with their respective priority dates are:

Certificate	Priority Date	Instream Water Right Rate (cfs)
44131	1885 + 1 minute	0.015
44116	1879 + 1 minute	0.075
39602	1885 + 1 minute	0.035
12611	1885 + 1 minute	0.013
12528	1885 + 1 minute	0.038
	1894 + 1 minute	0.038
13144	1887 + 1 minute	0.121
<i>Total</i>		<i>0.335</i>

37. The stream reach for state's instream water right in the Walla Walla River is from the Little Walla Walla River headgate-diversion at approximately River Mile 46 in:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	12	SW NE	7,091 FEET SOUTH AND 3,450 FEET EAST OF THE NW CORNER OF SECTION 1

to the State Line. The instream use shall allow the use and protection of flows from April 1 through October 31, and at other times when agricultural diversions are being exercised.

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 Little Walla Walla River headgate-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.

38. The applicants request that the allocation of conserved water be finalized pursuant to OAR 690-018-0062.

39. 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 CW-45 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018. Water will be conserved that can be allocated without harming other water rights.

Now, therefore, it is ORDERED:

1. The allocations of conserved water and the associated point of diversion changes proposed in application CW-45, as conditioned above, are approved.
2. Water right Certificate 44131 is cancelled. A new superseding certificate shall be issued to Bill & Eileen Leibbrand for:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
44131	1885	1.16	0.029	1/40 cfs

The right to the use of the water is restricted to beneficial use at the place of use described in Findings of Fact #5 and #11 and is subject to all other conditions and limitations contained in Certificate 44131 and any related decree.

3. Water right Certificate 44116 is cancelled. A new superseding certificate shall be issued to Bill & Eileen Leibbrand for:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
44116	1879	6.0	0.15	1/40 cfs

The right to the use of the water is restricted to beneficial use at the place of use described in Findings of Fact #6 and #15, and is subject to all other conditions and limitations contained in Certificate 44116 and any related decree.

4. Water right Certificate 39602 is cancelled. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion, and as described below:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
39602	1885	2.76	0.069	1/40 cfs

The right to the use of the water is restricted to beneficial use at the place of use described in Findings of Fact #7 and #13, and is subject to all other conditions and limitations contained in Certificates 39602 and any related decree.

5. A remaining right shall be issued for those lands described in Certificate 39602 that are not involved in the allocation of conserved water project. The remaining right will clarify the place of use of these lands as described in Finding of Fact #14.
6. Water right Certificate 12611 is cancelled. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion, and as described below:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
12611	1885	1.0	0.025	1/40 cfs

The point of diversion is that described in Finding of Fact #18. The right to the use of the water is restricted to beneficial use at the place of use described in Finding of Fact #8, and is subject to all other conditions and limitations contained in Certificates 12611 and any related decree.

7. Water right Certificate 12528 is cancelled. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion, and as described below:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
12528	1885	3.0	0.075	1/40 cfs
	1894	3.0	0.075	1/40 cfs

The right to the use of the water is restricted to beneficial use at the place of use described in Finding of Fact #9, and is subject to all other conditions and limitations contained in Certificates 12528 and any related decree.

8. Water right Certificate 13144 is cancelled. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion, and as described below:

Certificate	Priority Date	Acres	After Project Maximum Rate (cfs)	Maximum rate per acres
13144	1887	9.7	0.243	1/40 cfs

The right to the use of the water is restricted to beneficial use at the place of use described in Finding of Fact #10, and is subject to all other conditions and limitations contained in Certificates 13144 and any related decree.

9. The approved point of diversion changes ordered in numbers 4, 6, 7, and 8 above shall be completed and full beneficial use of the water shall be made on or before October 1, 2008. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.
11. The source of water for all rights involved in CW-45 shall be described as the WEST BRANCH OF WEST BRANCH OF CROCKETT, tributary to LITTLE WALLA WALLA RIVER, and the point of diversion shall be described as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 N	35 E	WM	35	NW NE	1960 FEET NORTH & 210 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 35

12. When required by the Department, the water user shall install, maintain and operate an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
13. A new instream water right certificate shall be issued for 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 Little Walla Walla River headgate-diversion at approximately River Mile 46 in:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	12	SW NE	7,091 FEET SOUTH AND 3,450 FEET EAST OF THE NW CORNER OF SECTION 1

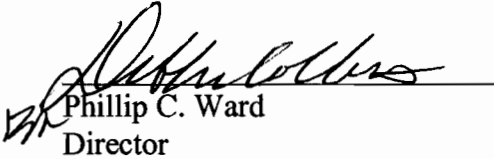
to the State Line. The instream use shall allow the use and protection of flows from April 1 through October 31, and at other times when agricultural diversions are being exercised. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the Little Walla Walla River headgate-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 Little Walla Walla River headgate-diversion within the specified stream reach.

The instream water right(s) shall be for a total of 0.335 cfs, as described below:

Priority Date	Instream Water Right Rate (cfs)
1879 + 1 minute	0.075
1885 + 1 minute	0.101
1887 + 1 minute	0.121
1894 + 1 minute	0.038
<i>Total</i>	<i>0.335</i>

The instream right(s) shall replace a portion of instream water rights established pursuant to ORS 537.341 or 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. The rights shall allow for the use and protection of flows from April 1 through October 31, and at other times when agricultural diversions are being exercised. 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 Little Walla Walla River headgate-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 Little Walla Walla River headgate-diversion within the specified stream reach.

Dated at Salem, Oregon this 4th day of May, 2007.


Phillip C. Ward
Director

Date of Mailing: MAY 09 2007