

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

In the Matter of the Proposed Allocation of) DETERMINATION and ORDER
Conserved Water by Vern and Penny) APPROVING ALLOCATION OF
Rodighiero for certificates 12867 and) CONSERVED WATER
12872, Umatilla County, Oregon)

Pursuant to ORS 537.455 to 537.500; chapter 726, Oregon Laws 1997, as amended by chapter 394, Oregon Laws 1999; and OAR Chapter 690, Division 18, Vern and Penny Rodighiero filed an application for an allocation of conserved water. Public notice was published as required under OAR 690-18-050. No comments were received in response to the notice. However, the Walla Walla Irrigation District and the Oregon Department of Fish and Wildlife provided letters of support for the project which were submitted with the application.

The proposed allocation of conserved water involves certificate 12867 in the name of Mrs. G. W. Livesay and certificate 12872 in the name of Mrs. Sam Lynd. These rights are for primary irrigation as follows:

Certificate 12867

Priority: 1896 for 2 acres, 1898 for 2 acres, and 1903 for 5.5 acres
Source: Walla Walla River
Rate: One and one-half inches per acre measured at the point of diversion (0.0375 cfs per acre)
Type of Use: Irrigation
Place of Use: 9.5 acres in the SW ¼, SW ¼, Section 36, T 6 N, R 35 E, W.M.

Certificate 12872

Priority: 1886 for 4.63 acres, and 1903 for 5.54 acres
Source: Tualum River
Rate: One and one-half inches per acre measured at the point of diversion (0.0375 cfs per acre)
Type of Use: Irrigation
Place of Use: 4.63 acres in the NW ¼, SW ¼ and 5.54 acres in the SW ¼, SW ¼, Section 36, T 6 N, R 35 E, W.M.

The lands irrigated under certificate 12867 are on tax lots 1000 and 1100. Although the water right certificate is for a total of 9.5 acres, the total area of the two tax lots is 8.64 acres. The lands

This is a final order in other than 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

irrigated under certificate 12872 are on tax lot 900 which has an area of 10.93 acres. The area of the tax lot exceeds the acreage allowed under the water right by 0.76 acres. Water is not used on the roadway along the northern boundary of the tax lot and on the lands occupied by a house and other farm buildings. Together these areas comprise 0.80 acres leaving a total of 10.13 acres irrigated under certificate 12872.

The lands are within the Walla Walla Irrigation District which manages the diversion of water at several locations on the Walla Walla and Little Walla Walla Rivers. The Walla Walla River also is described under the Walla Walla River decree as the Tualum River. The Walla Walla decree and the adjudication map show both rights as being served by the Tualum Ditch into which water was diverted at a point approximately 1,750 feet south and 2,200 feet east of the northwest corner of Section 1, T 5 N, R 35 E. As a result of historical channel straightening and diking and the consolidation of ditches, the rights are now served by the Smith Ditch which takes water from the Walla Walla River at a point 3,625 feet south and 2,441 feet east of the northwest corner of Section 1, T 5 N, R 35 E.

The capacity of the existing facilities is sufficient to divert the full rate of 0.36 cfs allowed under certificate 12867 and 0.38 cfs allowed under certificate 12872. The applicants are converting all open ditches on the property to pipelines and have converted from flood irrigation to sprinklers. Work on the project is nearing completion. The applicant also proposes moving the point of diversion for the water rights to a point 7,091 feet south and 3,450 feet east of the northwest corner of Section 1, T 5 N, R 35 E. This is the location at which Walla Walla River water is routed into the Little Walla Walla River. The water would then be diverted into a holding pond from the East Crockett Branch of the Little Walla Walla River at a point NO 07' W, 612 feet from the southwest corner of Section 36, T 6 N, R 35 E. Finally, the applicant proposes to move 0.98 acres of lands irrigated under certificate 12867 from tax lot 1100 to tax lot 1200.

The Walla Walla River decree does not establish seasonal limitations on the use of water under water rights in the area. The Smith Ditch diversion is normally operated from late March to early April through late October or early November each year, depending on climatic conditions. The diversion of water into the Smith Ditch is accomplished by construction of a gravel push-up berm that directs streamflows to the diversion structure. The proposed new point of diversion would be supplied by routing Walla Walla River water into the Little Walla Walla River and subsequently to the East Crockett Branch. Water normally is routed from the Walla Walla River into the Little Walla Walla River from March to November each year, by inflating a rubber bladder anchored to the bed of the Walla Walla River.

The conservation project is being funded under a cost-share agreement with the U.S. Department of Agriculture. Under the agreement, 60 percent of the project costs are non-reimbursable federal funds. The remaining 40 percent of the project costs are being paid by the applicant.

Return flows from irrigation supplied through the Smith Ditch are not available to other Walla Walla River users in Oregon. Prior to implementation of the conservation project, water diverted but not consumptively used likely flowed to the northwest, either as overland flow or as subsurface flow. Remnants of small, shallow drainage ditches lead from the western and northern boundaries of the existing irrigated lands to the East Crockett Branch. It does not appear that significant quantities of water flowed through the ditches during recent irrigation seasons.

The Milton-Freewater area generally is underlain by alluvial materials with relatively high porosity. Because of the high porosity of the soils, a significant amount of the water applied through flood irrigation percolates into the local, unconfined aquifer. Water in the unconfined aquifer flows generally northwest. Some of the irrigation water which has percolated into the unconfined aquifer may discharge at springs in the Big Springs area and to Mud Creek. However, most ground water in the alluvial aquifer discharges to the Columbia and Walla Walla Rivers in the area of Touchet and Prescott, Washington.

During the summer of 2000, the Walla Walla and Hudson Bay Irrigation District voluntarily provided bypass flows of 13 cfs past Nursery Bridge under an agreement with the U.S. Fish and Wildlife Service. Nursery Bridge is approximately 0.6 miles downstream of the Smith Ditch diversion. Significant losses were experienced throughout the river reach below the point at which water is routed into the Little Walla Walla River. At a point approximately 1.5 miles below Nursery Bridge, the surface flows completely disappeared into the riverbed gravels.

There are two instream water rights in the mainstem Walla Walla River. Flows in the river from the confluence of the North Fork and the South Fork to the Little Walla Walla diversion are protected under certificate 59839. The flows protected under the instream right vary from 30 cfs in October and November to 95 cfs in February through May. The priority date of the right is November 3, 1993.

An instream water right has also been established in the Walla Walla River below the point at which water is routed into the Little Walla Walla River through a previous allocation of conserved water. Instream water right certificate 76779 protects Walla Walla River flows "from the Little Walla Walla Headgate-Diversion from the Walla Walla River at approximately rivermile 46 in the SW ¼ NE ¼, Section 12, T 5 N, R 35 E, to the next senior water right diversion." The right protects 0.0116 cfs under a priority date of March 25, 1912 plus one minute and 0.0233 cfs under a priority date of January 16, 1959 plus one minute. There are no other instream water rights in the Walla Walla River below the point at which water is routed to the Little Walla River.

There is one small diversion for the City of Milton-Freewater cemetery between the point at which water is routed into the Little Walla Walla River and the Smith Ditch diversion. The priority date for the associated right is March 8, 1922. The portion of instream water right 76779 with the March 25, 1912 priority date is protected to the Smith Ditch diversion. The portion with the January 16, 1959 priority date is protected to the diversion for the cemetery.

The applicant proposes to reduce the quantity of water used on the lands irrigated under the existing water rights from 0.705 cfs to 0.430 cfs. The reduction will yield 0.275 cfs of conserved water. Allocation of the conserved water consistent with the project funding provides 0.165 cfs to the state and 0.110 cfs to the applicant to irrigate 4.8 acres of additional lands on a parcel immediately south of the existing lands. Irrigation of the existing lands results in annual consumptive use of approximately 54.5 acre-feet. The irrigation of an additional 4.8 acres of orchard will increase the average annual consumptive use of water by an estimated 4.4 acre-feet.

The Oregon Department of Fish and Wildlife indicated that the state's share of the conserved water is needed for instream purposes to aid in the recovery of bull trout and summer steelhead.

The U.S. Fish and Wildlife Service has notified the irrigation districts taking water from the Walla Walla River that it was considering enforcement action under the Endangered Species Act. The National Marine Fisheries Service also is involved in issues related to the take of listed species in the basin. In response, the districts are bypassing flows at the diversion to provide fish passage and habitat. The protection of additional flows in the Walla Walla River below the Little Walla Walla River diversion will contribute to the fish recovery efforts.

Determination and Findings

The proposed conservation project will result in a reduced diversion. The conversion from flood irrigation to pressurized sprinklers is a proven method for improving the efficiency of water use.

The proposed allocation of conserved water will not result in harm or injury to other water rights. Given the pattern of ground water flows in the alluvial aquifer, the use of the applicant's share of the conserved water likely will result in an immeasurable decrease in discharges to the Walla Walla River near the mouth and north of the Oregon-Washington state line. Any locally available return flows from the applicant's use of water which potentially could be available to other users would supply spring water users or Little Walla Walla River users, not other Walla Walla River users in Oregon. Water uses with diversions from springs in the area or from the Little Walla Walla River are not assured of continued access to any return flows which may result from the applicant's use of Walla Walla River water.

The applicant has proposed that the new authorized point of diversion be the control structure at which Walla Walla River flows are routed to the Little Walla Walla River. The Department co-manages the routing of water from the Walla Walla River into the Little Walla Walla River with the Walla Walla and Hudson Bay Irrigation Districts. The control structure on the Walla Walla River is generally not an identified point of diversion for water rights taking water from the Little Walla Walla River. Instead, authorized points of diversion for these rights are the individual turn-outs within the Little Walla Walla system. Therefore, the new authorized point of diversion for the irrigation rights established under this order for the use of water from the Walla Walla River should be the location of the turn-out box on the East Crockett Branch of the Little Walla Walla River.

The existing instream water right below the Little Walla Walla diversion established under certificate 76779 would not be injured by the change in the diversion of water from Smith Ditch to the East Crockett Branch proposed in conjunction with the conservation project. The establishment of instream water rights at the site of the Tumulum Ditch diversion for a total of 0.166 cfs with senior priority dates ranging from 1886 to 1903 will help to ensure the passage of water past the control structure diverting water to the Little Walla Walla River to the benefit of instream water right 76779.

The instream water rights established under this allocation of conserved water can be reasonably protected from the site of the Tumulum Ditch diversion to a point immediately below the lower end of the Nursery Bridge Diversion Dam fish ladder, a reach of approximately 0.2 mile during the period from April 1 through October 31 and at any other time during which water is used under the originating rights. Some unquantified channel losses will be incurred between the site of the Tumulum Ditch and the Nursery Bridge Diversion Dam. Below the diversion dam,

channel losses result in significantly larger reductions in flows. There are no seasonal limitations on the use of water under these decreed rights in the Walla Walla River Basin. The period during which the instream water right would be protected is consistent with the historic operation of the Smith Ditch.

Based on the Land Use Information Form included with the application, the allocation of conserved water is consistent with local comprehensive land use plans.

No mitigation is required to prevent harm to other water users. The full quantity of conserved water may be allocated.

Based on the project funding, 60 percent of the conserved water should be allocated to the state and 40 percent should be allocated to the applicant. The state’s portion of the conserved water is needed to support instream uses in the Walla Walla River. The applicant’s portion of the water may be used to irrigate 4.79 acres adjacent to the existing lands. The following table lists the quantities of water to be allocated and the additional lands to be irrigated under the allocation.

	Existing Water Rights		After Conservation	State’s Share	Applicant’s Share	
	acres	cfs	cfs	cfs	cfs	acres
12867	8.64	0.324	0.198	0.076	0.050	2.20
1896	2.00	0.076	0.046	0.018	0.012	0.51
1898	2.00	0.076	0.046	0.018	0.012	0.51
1903	4.64	0.172	0.106	0.040	0.026	1.18
12872	10.13	0.381	0.232	0.089	0.060	2.59
1886	4.63	0.173	0.106	0.040	0.027	1.18
1903	5.50	0.208	0.126	0.049	0.033	1.41
Total	18.77	0.705	0.430	0.165	0.110	4.79

Now, therefore, it is ORDERED:

1. Certificates 12867 and 12872 are hereby cancelled.
2. The Department shall issue a certificate to confirm the reduction in the rate of diversion under the water right for the lands currently irrigated under certificate 12867, less the 0.98 acres being transferred to other lands within the SW ¼ SW ¼ Section 36, T 6 N, R 35 E, WM. The certificate shall allow the use of water routed from the Walla Walla River into the Little Walla Walla River at the control structure located 7,091 feet south and 3,450 feet east of the northwest corner of Section 1, T 5 N, R 35 E in the following amounts: 0.046 cfs with a priority of 1896 for the irrigation of 2.00 acres, 0.046 cfs with a priority of 1898 for the irrigation of 2.00 acres, and 0.084 with a priority of 1903 for the irrigation of 3.66 acres. The authorized point of diversion for the right shall be at a point on the East Crocket Branch of the Little Walla River NO °07' W, 612 feet from the southwest corner of Section 36, T 6 N,

R 35 E, WM. All other terms and conditions of the original certificate, including those of the decree, shall be included in the new certificate.

3. The Department shall issue a certificate to confirm the reduction in the rate of diversion under the water right under certificate 12872. The certificate shall allow the use of water routed from the Walla Walla River into the Little Walla Walla River at the control structure located 7,091 feet south and 3,450 feet east of the northwest corner of Section 1, T 5 N, R 35 E in the following amounts: 0.106 cfs with a priority of 1886 for the irrigation of 4.63 acres and 0.126 cfs with a priority of 1903 for the irrigation of 5.50 acres. The authorized point of diversion for the right shall be at a point on the East Crocket Branch of the Little Walla River NO °07' W, 612 feet from the southwest corner of Section 36, T 6 N, R 35 E, WM. All other terms and conditions of the original certificate, including those of the decree, shall be included in the new certificate.
4. The Department shall issue a certificate of water right to confirm the new place of use and rate of diversion for the irrigation of 2.20 acres to be supplied by the applicant's portion of the conserved water from the lands currently irrigated under certificate 12867 and for the 0.98 acres being transferred. The certificate shall allow the use of water routed from the Walla Walla River into the Little Walla Walla River at the control structure located 7,091 feet south and 3,450 feet east of the northwest corner of Section 1, T 5 N, R 35 E in the following amounts: 0.012 cfs with a priority of 1896 for the irrigation of 0.51 acres, 0.012 cfs with a priority of 1898 for the irrigation of 0.51 acres, and 0.048 cfs with a priority of 1903 for the irrigation of 2.16 acres, all within the SW ¼ SW ¼ Section 36, T 6 N, R 35 E, WM. The authorized point of diversion for the right shall be at a point on the East Crocket Branch of the Little Walla River NO °07' W, 612 feet from the southwest corner of Section 36, T 6 N, R 35 E, WM. All other terms and conditions of the original certificate, including those of the decree, shall be included in the new certificate.
5. The Department shall issue a certificate of water right to confirm the new place of use and rate of diversion for the irrigation of 2.59 acres to be supplied by the applicant's portion of the conserved water from the lands currently irrigated under certificate 12872. The certificate shall allow the use of water routed from the Walla Walla River into the Little Walla Walla River at the control structure located 7,091 feet south and 3,450 feet east of the northwest corner of Section 1, T 5 N, R 35 E in the following amounts: 0.027 cfs with a priority of 1886 for the irrigation of 1.18 acres, and 0.033 cfs with a priority of 1903 for the irrigation of 1.41 acres, all within the SW ¼ SW ¼ Section 36, T 6 N, R 35 E, WM. The authorized point of diversion for the right shall be at a location on the East Crocket Branch of the Little Walla River at a point NO °07' W, 612 feet from the southwest corner of Section 36, T 6 N, R 35 E, WM. All other terms and conditions of the original certificate, including those of the decree, shall be included in the new certificate.
6. The Department shall issue a certificate for an instream water right to confirm a change in use and place of use of the state's portion of the water conserved under certificate 12867. The instream water right shall allow the use of 0.018 cfs with a priority of 1896, 0.018 cfs with a priority of 1898, and 0.040 cfs with a priority of 1903 for the support of aquatic life and shall provide for the protection of flows in the Walla Walla River at the site of the Tumalum Ditch diversion located at a point 1,750 feet south and 2,200 feet east of the northwest corner

of Section 1, T 5 N, R 35 E, WM. (approximately rivermile 45). The flows, less any channel losses as determined by the watermaster during distribution and regulation, shall be protected downstream to a point immediately below the lower end of the Nursery Bridge Diversion Dam fish ladder. The lower end of the fish ladder is located at 45 degrees, 56 minutes, 45 seconds North Latitude and 118 degrees, 22 minutes, 59 seconds West Longitude. The certificate shall provide for the use and protection of flows from April 1 through October 31 and at any other time during which the originating right is being exercised. The quantity of water to be protected under this instream water right shall combined with the quantity to be protected under the instream water right established in paragraph 7 of this order. The right shall be subject to all other terms and conditions of the original right, including those of the decree.

7. The Department shall issue a certificate for an instream water right to confirm a change in use and place of use of the state's portion of the water conserved under certificate 12872. The instream water right shall allow the use of 0.040 cfs with a priority of 1886 and 0.049 cfs with a priority of 1903 for the support of aquatic life and shall provide for the protection of flows in the Walla Walla River at the site of the Tumalum Ditch diversion located at a point 1,750 feet south and 2,200 feet east of the northwest corner of Section 1, T 5 N, R 35 E (approximately rivermile 45). The flows, less any channel losses as determined by the watermaster during distribution and regulation, shall be protected downstream to a point immediately below the lower end of the Nursery Bridge Diversion Dam fish ladder. The lower end of the fish ladder is located at 45 degrees, 56 minutes, 45 seconds North Latitude and 118 degrees, 22 minutes, 59 seconds West Longitude. The certificate shall provide for the use and protection of flows from April 1 through October 31 and at any other time during which the originating right is being exercised. The quantity of water to be protected under this instream water right shall combined with the quantity to be protected under the instream water right established in paragraph 6 of this order. The right shall be subject to all other terms and conditions of the original right, including those of the decree.

Dated at Salem, Oregon this 27th day of June, 2001.


Paul R. Cleary
Director