



# Oregon

Kate Brown, Governor

## Water Resources Department

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May 31, 2016

### Applicant

Walla Walla River Irrigation District

323 Evan Street

PO Box 248

Milton-Freewater, OR 97862

[WWRID@qwestoffice.net](mailto:WWRID@qwestoffice.net)

SUBJECT: Allocation of Conserved Water Application CW-73

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-73.

If no protest is filed, the Department will issue a Final Order consistent with this Preliminary Determination. You should receive a copy of the Final Order shortly after the close of the protest period for the conserved water application.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position to the Water Resources Commission.

Please do not hesitate to contact me at 503-986-0881 or [teri.k.hranac@wrdd.state.or.us](mailto:teri.k.hranac@wrdd.state.or.us), if I may be of assistance.

Sincerely,

Teri Hranac

Allocation of Conserved Water

Transfer and Conservation Section

Enclosure

cc: CW-73  
District #5 Watermaster (via e-mail)



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

In the Matter of Allocation of Conserved ) PRELIMINARY DETERMINATION  
Water Application CW-73, ) PROPOSING APPROVAL ON  
Umatilla County ) COMPLETION AND FINALIZATION  
) ALLOCATION OF CONSERVED  
) WATER CW-73

**Applicant**

Walla Walla River Irrigation District  
323 Evan Street  
PO Box 248  
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; (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.

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).

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.
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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 finalized, the Department shall issue new certificates preserving the previously established priority of rights to cover the unaffected portion of the water rights. 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 April 5, 2012, Walla Walla River Irrigation District (WWRID), Applicant, filed an allocation of conserved water application. The Department assigned the application number CW-73. On November 30, 2015, WWRID amended the application clarifying the lands and certificates involved in the conserved water project.
2. On June 9, 2005, WWRID adopted an Allocation of Conserved Water policy pursuant to OAR 690-018-0025. On October 11, 2010, and again on February 13, 2015, WWRID reviewed and renewed the District's Conserved Water Policy. WWRID maintains the water delivery system for the benefit of the patrons in the district.
3. Conserved Water Application CW-73 was placed on administrative hold, pending the outcome of a HB-3201 petition. Following completion of a portion of the HB-3201 petition, the certificates as originally filed were changed:

Old Cert. #	New Cert. #	Old Cert. #	New Cert. #	Old Cert. #	New Cert. #	Old Cert. #	New Cert. #	Old Cert. #	New Cert. #
12561	86972	12988	86948	13003	86928	13031	86922	52832	86917
12698	86912	12992	86915	13003	86947	13031	86928	52833	86917
12888	86947	12992	86917	13005	86919	13043	86923	54771	86917
12940	86928	12992	86927	13005	86924	13043	86930	55844	86941
12944	86926	12992	86928	13005	86925	13057	86931	76940	86917
12954	86918	12992	86941	13010	86929	13065	86922	76940	86967
12961	86912	12993	86917	13020	86915	33675	86928	76940	86968
12962	86925	12993	86926	13023	86941	52228	86919		

4. The conservation project involves converting 2 miles of the Milton Ditch from an open ditch to a piped delivery system and eliminating the use of 1.5 miles of the ditch. The point of diversion for the Milton Ditch was abandoned and water is now diverted downstream at the Little Walla Walla River Diversion headgate and is run through the Powell Pleasantview Ditch at a reduced flow resulting in the elimination of several cubic feet of ditch loss. Piping a ditch or canal is a proven technology for conserving water.

5. The rights to be modified by CW-73 are as follows:

Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Certificate CFS
86972	1880	MALCOM & PAULINE MILLAR	5 N	35 E	3	NE	NW	5.40	1200	0.20
86925	1875	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.13	6101	0.02
	1875	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.32	6104	
	1880	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.17	6700	
86948	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.14	6302	0.09
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.37	6500	
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.48	6300	
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	1.53	6303	
86930	1881	JEFF AND MANFORD ANLIKER	5 N	35 E	2	NW	SE	0.14	4200	0.005
86923	1881	DAVID LEE WOODS	5 N	35 E	2	NW	SE	0.14	4100	0.005
86915	1880	DARRELL KEY	5 N	35 E	2	SW	NW	4.87	900	0.50
	1880	DARRELL KEY	5 N	35 E	2	SE	NW	2.80	900	
	1880	DARRELL KEY	5 N	35 E	2	NW	SW	1.30	900	
	1877	DARRELL KEY	5 N	35 E	2	SE	NW	1.30	600	
	1880	DARRELL KEY	5 N	35 E	2	NE	SW	3.20	900	
86931	1875	PATRICK KELLY	5 N	35 E	3	SW	NE	19.40	2700	0.73
86926	1877	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NE	NW	1.20	1300	0.69
	1877	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SE	NW	3.80	1300	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	3.56	1800	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NW	NE	1.44	1800	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NW	NE	0.51	1900	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	4.59	1900	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	3.40	2000	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	3.40	2000	
86968	1880	GEORGE CRAIGEN	5 N	35 E	3	NE	NW	1.40	1101	0.05
86928	1894	ROBERT & RUTH WONDRA	5 N	35 E	3	NE	NE	2.90	2100	0.91
	1894	ROBERT & RUTH WONDRA	5 N	35 E	3	SE	NE	5.10	2100	
	1875	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	7.20	800	
	1877	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	1.80	800	
	1885	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	0.70	800	
	1883	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	3.30	800	
	1885	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	2.10	800	
	1877	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	1.12	800	
86941	1880	RICHARD E & LOUISE PIPER	5 N	35 E	3	SE	NE	2.20	3002	0.73
	1880	RICHARD E & LOUISE PIPER	5 N	35 E	3	NE	SE	3.30	3002	
	1877	RICHARD E & LOUISE PIPER	5 N	35 E	3	NE	NE	0.38	2200	
	1881	RICHARD E & LOUISE PIPER	5 N	35 E	3	SE	NE	9.00	2200	

Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Certificate CFS
	1877	RICHARD E & LOUISE PIPER	5 N	35 E	2	NW	SW	1.60	1002	
	1880	RICHARD E & LOUISE PIPER	5 N	35 E	2	NW	SW	3.00	1002	
86922	1885	ANTHONY & RACHEL GRAVES	5 N	35 E	2	SW	NW	3.50	700	0.26
	1885	ANTHONY & RACHEL GRAVES	5 N	35 E	2	SW	NW	3.50	700	
86929	1881	JOHN D & DOROTHY M STACEY	5 N	35 E	2	SE	NE	3.00	2300	0.30
	1888	JOHN D & DOROTHY M STACEY	5 N	35 E	2	SE	NE	5.00	2300	
86947	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	NW	NE	4.40	1600	0.35
	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	NW	NE	4.00	1600	
	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	SW	NE	1.00	1600	
86912	1880	DAVID WALISER	5 N	35 E	3	NW	NE	3.60	1700	0.32
	1890	DAVID WALISER	5 N	35 E	3	NW	NE	5.00	1700	
86917	1877	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	5.80	1400	1.08
	1877	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	4.55	1400	
	1880	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	3.60	1400	
	1875	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	1.21	1400	
	1875	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	2.98	1400	
	1903	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	4.56	1400	
	1903	EARL BROWN & SONS INC	5 N	35 E	3	SE	NW	6.10	1400	
86918	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	1.48	1300	0.07
	1887	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.10	1300	
	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.20	1200	
	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.16	1400	
86919	1875	GREG NELSON	5 N	35 E	2	NE	SW	0.50	1000	0.02
	1875	GREG NELSON	5 N	35 E	2	NW	SE	0.05	1000	
86924	1875	GREG NELSON	5 N	35 E	2	NW	SE	0.03	6000	0.001
86967	1880	ROB CARTER	5 N	35 E	3	NE	NW	4.00	1100	0.15
86927	1893	ROGER COSNER	5 N	35 E	2	SE	NW	1.00	902	0.04
<b>Totals</b>								174.61		6.521

6. Certificates 86912, 86915, 86917, 86918, 86919, 86922, 86923, 86924, 86925, 86926, 86927, 86928, 86929, 86930, 86931, 86941, 86947, 86948, 86967, 86968, and 86972 identify the same diversion point and redirection point located as follows:

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
5 N	35 E	WM	2	NE NE	REDIVERSION: PLEASANT VIEW DITCH – 650 FEET SOUTH AND 450 FEET WEST FROM THE NE CORNER OF SECTION 2

7. Allocation of Conserved Water Application CW-73 proposes a total rate reduction of approximately 2.16 cubic feet per second (cfs) under the following Certificates:

Conserved Water Description						
Certificate				Needed		Conserved
Certificate	Priority	Certificate CFS	CFS/AC	New Cfs	New CFS/AC	CFS
86972	1880	0.200	0.0370	0.135	0.025	0.065
86925	1875	0.015	0.0323	0.011	0.025	0.004
86925	1880	0.005	0.0323	0.004	0.025	0.001
86948	1885	0.090	0.0357	0.063	0.025	0.027
86930	1881	0.005	0.0357	0.004	0.025	0.001
86923	1881	0.005	0.0357	0.004	0.025	0.001
86915	1880	0.452	0.0371	0.304	0.025	0.148
86915	1877	0.048	0.0371	0.033	0.025	0.015
86931	1875	0.730	0.0377	0.485	0.025	0.245
86926	1875	0.500	0.0373	0.337	0.025	0.163
86926	1877	0.190	0.0373	0.125	0.025	0.065
86968	1880	0.050	0.0357	0.035	0.025	0.015
86928	1875	0.271	0.0376	0.180	0.025	0.091
86928	1877	0.110	0.0376	0.073	0.025	0.037
86928	1883	0.124	0.0376	0.083	0.025	0.041
86928	1885	0.105	0.0376	0.071	0.025	0.034
86928	1894	0.301	0.0376	0.200	0.025	0.101
86941	1877	0.074	0.0375	0.050	0.025	0.024
86941	1880	0.320	0.0375	0.213	0.025	0.107
86941	1881	0.338	0.0375	0.225	0.025	0.113
86922	1885	0.260	0.0371	0.176	0.025	0.084
86929	1881	0.113	0.0375	0.075	0.025	0.038
86929	1888	0.188	0.0375	0.125	0.025	0.063
86947	1891	0.350	0.0372	0.235	0.025	0.118
86912	1880	0.134	0.0372	0.090	0.025	0.044
86912	1890	0.186	0.0372	0.125	0.025	0.061
86917	1875	0.157	0.0375	0.105	0.025	0.052
86917	1877	0.389	0.0375	0.259	0.025	0.130
86917	1880	0.135	0.0375	0.090	0.025	0.045
86917	1903	0.400	0.0375	0.267	0.025	0.133
86918	1881	0.066	0.0361	0.046	0.025	0.020
86918	1887	0.004	0.0361	0.003	0.025	0.001
86919	1875	0.020	0.0363	0.014	0.025	0.006
86924	1875	0.001	0.0333	0.001	0.025	0.000
86967	1880	0.150	0.0375	0.100	0.025	0.050
86927	1893	0.040	0.0400	0.025	0.025	0.015
<b>Totals</b>		<b>6.526*</b>		<b>4.371*</b>		<b>2.158*</b>

\* - Any discrepancy between the actual amount and the amount listed is due to rounding.

8. The Applicant requests that the total conserved water be allocated as follows:

State's Portion		Applicant's Portion		Conserved Water	
Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
100%	2.16	0	0	100%	2.16

9. The Applicant requested the priority date for any conserved water be the one minute junior to the priority dates for the originating rights.
10. The Applicant received funding for the conservation project.
11. The Applicant submitted a completed Land Use Form from Umatilla County which indicated the proposed use was allowed outright or is not regulated by Umatilla County's comprehensive plan.
12. The conservation measures were implemented by the end of 2007. The Applicant stated it attempted to identify and resolve the concerns of water right holders in the area, governmental entities, and other organizations.
13. The Applicant proposed that any instream water rights created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
14. The Applicant requested the Department protect the new instream water right created from the conserved water in the Walla Walla River in the reach from the point of diversion identified in Finding of Fact #6 to the Oregon-Washington state line.
15. Conserved Water application CW-72 indicated the project has been completed and requested finalization of the allocation.
16. The application meets the requirements of OAR 690-018-0040.
17. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) to ascertain whether the proposed instream flows are necessary to support instream flow uses. The flow currently being left instream for aquatic life is not protected. This project will allow for protection of the flow.
18. Notice of the proposed conservation project was published in the Department's weekly notice on May 1, 2012, and again on January 12, 2016, and in the East Oregonian newspaper on January 6 and 13, 2016, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

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

19. 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 rights are subject to forfeiture under ORS 540.610. Confirming certificates were issued for these rights in August 2012.

20. A pump, ditch, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of the application.
21. The proposed allocation of conserved water will result in a reduced diversion for the uses allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #7).
22. Based upon the Walla Walla River Decree, the existing water rights described in Findings of Fact #5 have 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 be beneficially diverted for the existing use.
23. On December 29, 2015, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Department 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. OAR 690-018-0050(4)(d).
24. Harm to other water rights can be mitigated by limiting the period when water is being protected instream to April 1 through October 31 of each year. As conditioned, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(d).
25. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #11). OAR 690-018-0050(4)(c).
26. Pursuant to OAR 690-018-0050(4)(e), the new reduced rates for the existing uses under the certificates involved in Allocation of Conserved Water Application CW-73 are as follows:

Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals
86972	1880	MALCOM & PAULINE MILLAR	5 N	35 E	3	NE	NW	5.40	1200	0.135	0.135
86925	1875	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.13	6101	0.003	0.015
	1875		5 N	35 E	2	NW	SE	0.32	6104	0.008	
	1880		5 N	35 E	2	NW	SE	0.17	6700	0.004	
86948	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.14	6302	0.004	0.063
	1885		5 N	35 E	2	NW	SE	0.37	6500	0.009	
	1885		5 N	35 E	2	NW	SE	0.48	6300	0.012	
	1885		5 N	35 E	2	NW	SE	1.53	6303	0.038	
86930	1881	JEFF AND MANFORD ANLIKER	5 N	35 E	2	NW	SE	0.14	4200	0.004	0.004
86923	1881	DAVID LEE WOODS	5 N	35 E	2	NW	SE	0.14	4100	0.004	0.004
86915	1880	DARRELL KEY	5 N	35 E	2	SW	NW	4.87	900	0.122	
	1880		5 N	35 E	2	SE	NW	2.80	900	0.070	
	1880		5 N	35 E	2	NW	SW	1.30	900	0.033	



Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals
	1877	DARRELL KEY	5 N	35 E	2	SE	NW	1.30	600	0.033	
	1880		5 N	35 E	2	NE	SW	3.20	900	0.080	0.337
86931	1875	PATRICK KELLY	5 N	35 E	3	SW	NE	19.40	2700	0.485	0.485
86926	1877	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NE	NW	1.20	1300	0.030	
	1877		5 N	35 E	3	SE	NW	3.80	1300	0.095	
	1875		5 N	35 E	3	SW	NE	3.56	1800	0.089	
	1875		5 N	35 E	3	NW	NE	1.44	1800	0.036	
	1875		5 N	35 E	3	NW	NE	0.51	1900	0.013	
	1875		5 N	35 E	3	SW	NE	4.59	1900	0.115	
	1875		5 N	35 E	3	SW	NE	3.40	2000	0.085	0.463
86968	1880	GEORGE CRAIGEN	5 N	35 E	3	NE	NW	1.40	1101	0.035	0.035
86928	1894	ROBERT & RUTH WONDRA	5 N	35 E	3	NE	NE	2.90	2100	0.073	
	1894		5 N	35 E	3	SE	NE	5.10	2100	0.128	
	1875		5 N	35 E	2	SW	NW	7.20	800	0.180	
	1877		5 N	35 E	2	NW	SW	1.80	800	0.045	
	1885		5 N	35 E	2	SW	NW	0.70	800	0.018	
	1883		5 N	35 E	2	NW	SW	3.30	800	0.083	
	1885		5 N	35 E	2	NW	SW	2.10	800	0.053	
	1877		5 N	35 E	2	SW	NW	1.12	800	0.028	0.606
86941	1880	RICHARD E & LOUISE PIPER	5 N	35 E	3	SE	NE	2.20	3002	0.055	
	1880		5 N	35 E	3	NE	SE	3.30	3002	0.083	
	1877		5 N	35 E	3	NE	NE	0.38	2200	0.010	
	1881		5 N	35 E	3	SE	NE	9.00	2200	0.225	
	1877		5 N	35 E	2	NW	SW	1.60	1002	0.040	
	1880		5 N	35 E	2	NW	SW	3.00	1002	0.075	0.487
86922	1885	ANTHONY & RACHEL GRAVES	5 N	35 E	2	SW	NW	3.50	700	0.088	
	1885		5 N	35 E	2	SW	NW	3.50	700	0.088	0.176
86929	1881	JOHN D & DOROTHY M STACEY	5 N	35 E	2	SE	NE	3.00	2300	0.075	
	1888		5 N	35 E	2	SE	NE	5.00	2300	0.125	0.200
86947	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	NW	NE	4.40	1600	0.110	
	1891		5 N	35 E	3	NW	NE	4.00	1600	0.100	
	1891		5 N	35 E	3	SW	NE	1.00	1600	0.025	0.235
86912	1880	DAVID WALISER	5 N	35 E	3	NW	NE	3.60	1700	0.090	
	1890		5 N	35 E	3	NW	NE	5.00	1700	0.125	0.215
86917	1877	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	5.80	1400	0.145	
	1877		5 N	35 E	3	NE	NW	4.55	1400	0.114	
	1880		5 N	35 E	3	NE	NW	3.60	1400	0.090	

Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals		
	1875	EARL BROWN & SONS INC	5	N	35	E	3	NE	NW	1.21	1400	0.030	0.720
	1875		5	N	35	E	3	NE	NW	2.98	1400	0.075	
	1903		5	N	35	E	3	NE	NW	4.56	1400	0.114	
	1903		5	N	35	E	3	SE	NW	6.10	1400	0.153	
86918	1881	EUGENE & BETTY FOX	5	N	35	E	2	SW	SE	1.48	1300	0.037	0.049
	1887		5	N	35	E	2	SW	SE	0.10	1300	0.003	
	1881		5	N	35	E	2	SW	SE	0.20	1200	0.005	
	1881		5	N	35	E	2	SW	SE	0.16	1400	0.004	
86919	1875	GREG NELSON	5	N	35	E	2	NE	SW	0.50	1000	0.013	0.014
	1875		5	N	35	E	2	NW	SE	0.05	1000	0.001	
86924	1875	GREG NELSON	5	N	35	E	2	NW	SE	0.03	6000	0.001	0.001
86967	1880	ROB CARTER	5	N	35	E	3	NE	NW	4.00	1100	0.100	0.100
86927	1893	ROGER COSNER	5	N	35	E	2	SE	NW	1.00	902	0.025	0.025
<b>Totals</b>										174.61		4.365	4.369

\* - Any discrepancy between the actual amount and the amount listed is due to rounding.

27. Pursuant to OAR 690-018-0050(4)(e), the rate allocated to the State for instream use is 2.16 cfs. (Finding of Fact #8).
28. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed instream water right will support spawning, rearing and migration of native fish species in the mainstem of the Walla Walla River. In particular, the instream water rights will benefit summer steelhead and bull trout, both listed as threatened under the Endangered Species Act. (Finding of Fact #17).
29. The applicant proposes 100% of the conserved water be allocated to the state for an instream water right. Because no quantity of conserved water is being allocated to the applicant, no adjustment is necessary to be made to the allocation based on the amount of non-reimbursable public funds. (Findings of Fact #8 and 10). OAR 690-018-0050(4)(g).
30. The new instream water right created will be protected in the Walla Walla River beginning at the authorized point of diversion described in Finding of Fact # 6 to the Oregon-Washington state line. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
31. The amounts of water to be allocated to the State for an instream water right with the respective priority dates, are as follows:

Certificate	Priority*	CFS
86972	1880	0.065
86925	1875	0.004
86925	1880	0.001
86948	1885	0.027
86930	1881	0.001

Certificate	Priority*	CFS
86941	1880	0.107
86941	1881	0.113
86922	1885	0.084
86929	1881	0.038
86929	1888	0.063

Certificate	Priority*	CFS
86923	1881	0.001
86915	1880	0.148
86915	1877	0.015
86931	1875	0.245
86926	1875	0.163
86926	1877	0.065
86968	1880	0.015
86928	1875	0.091
86928	1877	0.037
86928	1883	0.041
86928	1885	0.034
86928	1894	0.101
86941	1877	0.024

Certificate	Priority*	CFS
86947	1891	0.118
86912	1880	0.044
86912	1890	0.061
86917	1875	0.052
86917	1877	0.130
86917	1880	0.045
86917	1903	0.133
86918	1881	0.020
86918	1887	0.001
86919	1875	0.006
86924	1875	0.000
86967	1880	0.050
86927	1893	0.015
Total		0.2158**

\* - Priority date, plus one minute

\*\* - Any discrepancy between the actual amount and the amount listed is due to rounding.

OAR 690-018-0050(g).

32. The Watermaster has identified a 3% loss per mile in the Walla Walla River. Therefore, the instream water right must be reduced to reflect the losing reaches. The table below reflects the cumulative total by priority date of the water rights identified in Finding of Fact #31. The instream rights shall allow the use and protection of flows from the authorized point of diversion at approximately River Mile (RM) 50 (Finding of Fact #6), to the Oregon-Washington state line at approximately RM 44.5 as follows:

Priority Date	Period of Use	CFS at RM 50	CFS at RM 49	CFS at RM 48	CFS at RM 47	CFS at RM 46	CFS at RM 45	CFS at RM 44.5
1875, plus one minute	4/1 through 10/31	0.561	0.544	0.528	0.512	0.497	0.482	0.475
1877, plus one minute	4/1 through 10/31	0.271	0.263	0.255	0.247	0.240	0.233	0.229
1880, plus one minute	4/1 through 10/31	0.475	0.461	0.447	0.434	0.421	0.408	0.402
1881, plus one minute	4/1 through 10/31	0.173	0.168	0.163	0.158	0.153	0.149	0.146
1883, plus one minute	4/1 through 10/31	0.041	0.040	0.039	0.037	0.036	0.035	0.035
1885, plus one minute	4/1 through 10/31	0.145	0.141	0.136	0.132	0.128	0.125	0.123
1887, plus one minute	4/1 through 10/31	0.001	0.001	0.001	0.001	0.001	0.001	0.001
1888, plus one minute	4/1 through 10/31	0.063	0.061	0.059	0.057	0.056	0.054	0.053
1890, plus one minute	4/1 through 10/31	0.061	0.059	0.057	0.056	0.054	0.052	0.052
1891, plus one minute	4/1 through 10/31	0.118	0.114	0.111	0.108	0.104	0.101	0.100
1893, plus one minute	4/1 through 10/31	0.015	0.015	0.014	0.014	0.013	0.013	0.013
1894, plus one minute	4/1 through 10/31	0.101	0.098	0.095	0.092	0.089	0.087	0.085
1903, plus one minute	4/1 through 10/31	0.133	0.129	0.125	0.121	0.118	0.114	0.112
Totals		2.158	2.093	2.030	1.970	1.910	1.853	1.825

OAR 690-018-0050(g).

33. The amount and timing of the proposed instream flows are allowable within the limits and use of the original water right. OAR 690-077-0015(10).

34. The protection of flows at the authorized points of diversion are appropriate, considering:
  - a. The instream water uses begin 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 reach of the instream water right.
 OAR 690-077-0015(8).
35. The combination of instream rights for the proposed reaches 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).
36. All conserved water is dedicated for instream use. Therefore, there are no proposed areas where the conserved water may be used for out-of-stream uses. (Finding of Fact #29). OAR 690-018-0050(4)(h).
37. 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 upon approval. (Finding of Fact #15). OAR 690-018-0050(4)(i).
38. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Findings of Fact #23 and #24). OAR 690-018-0050(4)(j).

**Determination and Proposed Action**

The project described in Allocation of Conserved Water Application CW-73, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. If protests are not filed pursuant to OAR 690-018-0050(b), the conserved water application will be approved.

*If Allocation of Conserved Water Application CW-73 is approved, the Order Approving will include the following:*

1. *The proposed change will result in a reduced diversion for the uses allowed under the original water right. (Findings of Fact #7 and #26).*
2. *The proposed allocation of conserved water, as conditioned, will not harm existing water rights. (Finding of Fact #38).*
3. *The application is consistent with the requirements established in OAR 690-005-0045. (Finding of Fact #25).*
4. *The changes proposed in CW-73 are approved.*
5. *The quantities of water conserved and allocated are as follows:*

<i>State's Portion</i>		<i>Applicant's Portion</i>		<i>Conserved Water</i>	
<i>Percentage</i>	<i>Maximum Rate (CFS)</i>	<i>Percentage</i>	<i>Maximum Rate (CFS)</i>	<i>Percentage</i>	<i>Maximum Rate (CFS)</i>
<i>100%</i>	<i>2.16</i>	<i>0</i>	<i>0</i>	<i>100%</i>	<i>2.16</i>

*(Finding of Fact #27).*

6. The right 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 86912, 86915, 86917, 86918, 86919, 86922, 86923, 86924, 86925, 86926, 86927, 86928, 86929, 86930, 86931, 86941, 86947, 86948, 86967, 86968, and 86972, and any related decree.
7. Water Right Certificates 86912, 86915, 86917, 86918, 86919, 86922, 86923, 86924, 86925, 86926, 86927, 86928, 86929, 86930, 86931, 86941, 86947, 86948, 86967, 86968, and 86972 are cancelled. A new Certificate will be issued for that portion of Certificate 86917, not involved in this conserved water application. New certificates will be issued for the existing uses and places of use at the reduced rates as follows:

**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, Priority and Rate:**

Orig. Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals
86972	1880	MALCOM & PAULINE MILLAR	5 N	35 E	3	NE	NW	5.40	1200	0.135	0.135
86925	1875	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.13	6101	0.003	0.015
	1875	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.32	6104	0.008	
	1880	RICK & TRACEY RAMBO	5 N	35 E	2	NW	SE	0.17	6700	0.004	
86948	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.14	6302	0.004	0.063
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.37	6500	0.009	
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	0.48	6300	0.012	
	1885	WILLIAM SAAGER	5 N	35 E	2	NW	SE	1.53	6303	0.038	
86930	1881	JEFF AND MANFORD ANLIKER	5 N	35 E	2	NW	SE	0.14	4200	0.004	0.004
86923	1881	DAVID LEE WOODS	5 N	35 E	2	NW	SE	0.14	4100	0.004	0.004
86915	1880	DARRELL KEY	5 N	35 E	2	SW	NW	4.87	900	0.122	0.337
	1880	DARRELL KEY	5 N	35 E	2	SE	NW	2.80	900	0.070	
	1880	DARRELL KEY	5 N	35 E	2	NW	SW	1.30	900	0.033	
	1877	DARRELL KEY	5 N	35 E	2	SE	NW	1.30	600	0.033	
	1880	DARRELL KEY	5 N	35 E	2	NE	SW	3.20	900	0.080	
86931	1875	PATRICK KELLY	5 N	35 E	3	SW	NE	19.40	2700	0.485	0.485
86926	1877	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NE	NW	1.20	1300	0.030	0.036
	1877	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SE	NW	3.80	1300	0.095	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	3.56	1800	0.089	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NW	NE	1.44	1800	0.036	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	NW	NE	0.51	1900	0.013	

Orig. Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	4.59	1900	0.115	
	1875	ROBERT & NADINE DOUGHERTY	5 N	35 E	3	SW	NE	3.40	2000	0.085	0.463
86968	1880	GEORGE CRAIGEN	5 N	35 E	3	NE	NW	1.40	1101	0.035	0.035
86928	1894	ROBERT & RUTH WONDRA	5 N	35 E	3	NE	NE	2.90	2100	0.073	
	1894	ROBERT & RUTH WONDRA	5 N	35 E	3	SE	NE	5.10	2100	0.128	
	1875	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	7.20	800	0.180	
	1877	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	1.80	800	0.045	
	1885	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	0.70	800	0.018	
	1883	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	3.30	800	0.083	
	1885	ROBERT & RUTH WONDRA	5 N	35 E	2	NW	SW	2.10	800	0.053	
	1877	ROBERT & RUTH WONDRA	5 N	35 E	2	SW	NW	1.12	800	0.028	0.606
86941	1880	RICHARD E & LOUISE PIPER	5 N	35 E	3	SE	NE	2.20	3002	0.055	
	1880	RICHARD E & LOUISE PIPER	5 N	35 E	3	NE	SE	3.30	3002	0.083	
	1877	RICHARD E & LOUISE PIPER	5 N	35 E	3	NE	NE	0.38	2200	0.010	
	1881	RICHARD E & LOUISE PIPER	5 N	35 E	3	SE	NE	9.00	2200	0.225	
	1877	RICHARD E & LOUISE PIPER	5 N	35 E	2	NW	SW	1.60	1002	0.040	
	1880	RICHARD E & LOUISE PIPER	5 N	35 E	2	NW	SW	3.00	1002	0.075	0.487
86922	1885	ANTHONY & RACHEL GRAVES	5 N	35 E	2	SW	NW	3.50	700	0.088	
	1885	ANTHONY & RACHEL GRAVES	5 N	35 E	2	SW	NW	3.50	700	0.088	0.176
86929	1881	JOHN D & DOROTHY M STACEY	5 N	35 E	2	SE	NE	3.00	2300	0.075	
	1888	JOHN D & DOROTHY M STACEY	5 N	35 E	2	SE	NE	5.00	2300	0.125	0.200
86947	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	NW	NE	4.40	1600	0.110	
	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	NW	NE	4.00	1600	0.100	
	1891	TIMOTHY & MELINDA WALISER	5 N	35 E	3	SW	NE	1.00	1600	0.025	0.235
86912	1880	DAVID WALISER	5 N	35 E	3	NW	NE	3.60	1700	0.090	
	1890	DAVID WALISER	5 N	35 E	3	NW	NE	5.00	1700	0.125	0.215
86917	1877	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	5.80	1400	0.145	
	1877	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	4.55	1400	0.114	
	1880	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	3.60	1400	0.090	
	1875	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	1.21	1400	0.030	
	1875	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	2.98	1400	0.075	
	1903	EARL BROWN & SONS INC	5 N	35 E	3	NE	NW	4.56	1400	0.114	
	1903	EARL BROWN & SONS INC	5 N	35 E	3	SE	NW	6.10	1400	0.153	0.720

Orig. Cert #	Priority	Landowner	Twp	Rng	Sec	Qtr	Qtr	Acres	TL	Reduced Rate	Reduced Cert. Totals
86918	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	1.48	1300	0.037	0.049
	1887	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.10	1300	0.003	
	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.20	1200	0.005	
	1881	EUGENE & BETTY FOX	5 N	35 E	2	SW	SE	0.16	1400	0.004	
86919	1875	GREG NELSON	5 N	35 E	2	NE	SW	0.50	1000	0.013	0.014
	1875	GREG NELSON	5 N	35 E	2	NW	SE	0.05	1000	0.001	
86924	1875	GREG NELSON	5 N	35 E	2	NW	SE	0.03	6000	0.001	0.001
86967	1880	ROB CARTER	5 N	35 E	3	NE	NW	4.00	1100	0.100	0.100
86927	1893	ROGER COSNER	5 N	35 E	2	SE	NW	1.00	902	0.025	0.025
<b>Totals</b>								174.61		4.365*	4.369*

\* - Any discrepancy between the actual amount and the amount listed is due to rounding.

8. *Water use measurement conditions:*

- a. *The water user shall maintain the meters or measuring devices in good working order.*
- b. *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.*

9. *The project is complete and no additional time is needed for finalization.*

10. *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 point of diversion located at approximately RM 50:*

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

*to the Oregon-Washington state line at approximately RM 44.5 as follows:*

Priority Date	Period of Use	CFS at RM 50	CFS at RM 49	CFS at RM 48	CFS at RM 47	CFS at RM 46	CFS at RM 45	CFS at RM 44.5
1875, plus one minute	4/1 through 10/31	0.561	0.544	0.528	0.512	0.497	0.482	0.475
1877, plus one minute	4/1 through 10/31	0.271	0.263	0.255	0.247	0.240	0.233	0.229
1880, plus one minute	4/1 through 10/31	0.475	0.461	0.447	0.434	0.421	0.408	0.402
1881, plus one minute	4/1 through 10/31	0.173	0.168	0.163	0.158	0.153	0.149	0.146
1883, plus one minute	4/1 through 10/31	0.041	0.040	0.039	0.037	0.036	0.035	0.035
1885, plus one minute	4/1 through 10/31	0.145	0.141	0.136	0.132	0.128	0.125	0.123
1887, plus one minute	4/1 through 10/31	0.001	0.001	0.001	0.001	0.001	0.001	0.001
1888, plus one minute	4/1 through 10/31	0.063	0.061	0.059	0.057	0.056	0.054	0.053
1890, plus one minute	4/1 through 10/31	0.061	0.059	0.057	0.056	0.054	0.052	0.052
1891, plus one minute	4/1 through 10/31	0.118	0.114	0.111	0.108	0.104	0.101	0.100
1893, plus one minute	4/1 through 10/31	0.015	0.015	0.014	0.014	0.013	0.013	0.013

Priority Date	Period of Use	CFS at RM 50	CFS at RM 49	CFS at RM 48	CFS at RM 47	CFS at RM 46	CFS at RM 45	CFS at RM 44.5
1894, plus one minute	4/1 through 10/31	0.101	0.098	0.095	0.092	0.089	0.087	0.085
1903, plus one minute	4/1 through 10/31	0.133	0.129	0.125	0.121	0.118	0.114	0.112
<i>Totals</i>		2.158*	2.093*	2.030*	1.970*	1.910*	1.853*	1.825*

\* - Any discrepancy between the actual amount and the amount listed is due to rounding.

(Finding of Fact #32.)

Dated at Salem, Oregon this 11 day of May, 2016.

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

Mailing Date: MAY 31 2016

### NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415.

The Commission shall notify the applicant and any other person requesting notice, of the action the Commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the Commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant to OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of



conserved water is not likely to injure existing rights and is otherwise consistent with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).

**NOTICE TO ACTIVE DUTY SERVICE MEMBERS:**

Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1-(800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1-(800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>.