



Oregon

Kate Brown, Governor

Water Resources Department

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July 1, 2016

Applicant

Walla Walla River Irrigation District
323 Evan Street
PO Box 248
Milton-Freewater, OR 97862
WWRID@qwestoffice.net

SUBJECT: Allocation of Conserved Water Application CW-74

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-74.

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@wrds.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Allocation of Conserved Water
Transfer and Conservation Section

Enclosure

cc: CW-74
District #5 Watermaster (via e-mail)
Conf. Tribes of the Umatilla Indian Reservation, 46411 Timine Way, Pendleton, OR 97801



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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-74,) PROPOSING APPROVAL ON
Umatilla County) COMPLETION AND FINALIZATION
) ALLOCATION OF CONSERVED
) WATER CW-74

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.

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-74. On September 16, 2014, and on February 24, 2016, WWRID amended the application clarifying the lands, certificates, and quantities 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-74 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:

Original Cert	New Cert
12514	86906
13079	86906
13312	86906
12543	86907
12592	86908
12592	86909
12737	86909
12891	86909
12514	86910
12543	86910

Original Cert	New Cert
12698	86910
12882	86910
12891	86910
13097	86910
13154	86910
13159	86910
13168	86910
12891	86913
13154	86917*
12593	86921

Original Cert	New Cert
13096	86932
13154	86933
13166	86934
13159	86935
13168	86935
13168	86936
13204	86937
13312	86938
12823	86939
13285	86940

Original Cert	New Cert
12882	86942
12992	86942
12891	86943
12891	86944
12882	86945
13154	86946
T-7641	86971
T-7642	86971
T-7681	86971

* Certificate 86917 was superseded, in part, by Certificate 91510 as a result of CW-73.

4. The conservation project involves piping the upper portion of the Powell Pleasantview Ditch and installation of a new automated headgate. The headgate self-adjusts to changes in demand on the Milton pipeline (phase 1 of this project) and significantly reduces operational spill on the Powell Pleasantview Ditch. Piping a ditch or canal is a proven technology for conserving water.

5. The rights to be modified by CW-74 are as follows:

Cert #	Priority	Landowner	Twp	Rng	Mer	Sec	Qtr	Qtr	Acres	Tax Lot	Certificate CFS
86942	1880	MALCOM MILLAR	6 N	35 E	WM	34	NW	SW	1.40	1100	0.370
	1880		6 N	35 E	WM	34	SW	SW	2.30	1100	
	1901		6 N	35 E	WM	34	SW	SW	0.80	1100	
	1901		6 N	35 E	WM	34	SW	SW	4.00	1100	
	1893		6 N	35 E	WM	34	SW	SW	1.30	1100	
86933	1900	MIKE DUTCHER	5 N	35 E	WM	3	NE	NE	0.70	1301	0.030
	1900		5 N	35 E	WM	3	SE	NE	0.10	1301	
91510	1900	EARL BROWN & SONS INC.	5 N	35 E	WM	3	NE	NE	7.10	1300	0.270
	1900		5 N	35 E	WM	3	SE	NE	0.20	1300	
86936	1900	DONALD BOLLING	5 N	35 E	WM	3	NE	NE	0.40	1400	0.020
86932	1895	MERLIN ZIMMERMAN	5 N	35 E	WM	2	NE	NW	2.00	600	0.075
86935	1900	CAYUSE VINEYARD	5 N	35 E	WM	3	NE	NE	4.28	900	0.340
	1900		5 N	35 E	WM	3	NE	NE	4.70	1500	
86946	1900	THOMAS & GLORIA OSBORN	5 N	35 E	WM	3	NE	NE	0.60	1100	0.020
86939	1895	LAVELLE HINKLE	5 N	35 E	WM	2	NE	NW	5.00	500	0.190
86906	1900	MARVIN & BEVERLY SAMS	5 N	35 E	WM	3	NE	NE	4.60	800	0.680
	1905		5 N	35 E	WM	3	NW	NE	4.79	300	
	1905		5 N	35 E	WM	3	NW	NE	2.02	700	
	1900		5 N	35 E	WM	3	NE	NE	4.20	200	
	1905		5 N	35 E	WM	3	NW	NE	2.50	500	
86907	1900	JOHN & SHEILA PETERSON	5 N	35 E	WM	3	NE	NE	4.50	100	0.170
86908	1892	LEONETTI CELLARS	5 N	35 E	WM	2	NE	NW	7.50	103	0.280
86940	1900	LEFORE FRUIT FARMS	6 N	35 E	WM	34	SE	SE	7.50	1500	0.280
86971	1891	KENT WALISER	6 N	35 E	WM	34	SW	SE	2.75	600	0.450
	1890		6 N	35 E	WM	34	SW	SE	2.00	600	
	1895		6 N	35 E	WM	34	SW	SE	3.95	600	
	1895		6 N	35 E	WM	34	NE	SW	1.30	200	
	1890		6 N	35 E	WM	34	NE	SW	1.10	200	
	1890		6 N	35 E	WM	34	SE	SW	0.90	200	
86945	1901	SHARON NOREEN	6 N	35 E	WM	33	SE	SE	1.80	1302	0.070
86910	1900	CHAR-WAY	6 N	35 E	WM	33	SW	SE	0.40	1200	
	1900		6 N	35 E	WM	33	SW	SE	1.00	1200	
	1880		6 N	35 E	WM	33	SE	SE	5.30	1200	
	1880		6 N	35 E	WM	33	SE	SE	0.80	1200	
	1900		6 N	35 E	WM	33	SW	SE	1.40	1200	
	1895		6 N	35 E	WM	33	SW	SE	2.30	1300	
	1900		6 N	35 E	WM	33	SW	SE	0.70	1300	
	1901		6 N	35 E	WM	33	SE	SE	8.13	1300	
	1900		6 N	35 E	WM	33	SW	SE	0.30	1300	
	1900		6 N	35 E	WM	33	SE	SE	0.40	1300	

Cert #	Priority	Landowner	Twp	Rng	Mer	Sec	Qtr	Qtr	Acres	Tax Lot	Certificate CFS
86910	1900	CHAR-WAY	6 N	35 E	WM	33	SE	SE	0.80	1300	0.860
	1901		6 N	35 E	WM	33	SW	SE	1.30	1300	
86909	1892	OLE AND YVONNE OLESON	6 N	35 E	WM	34	SW	SE	2.50	400	0.320
	1895		6 N	35 E	WM	34	SW	SE	0.70	400	
	1880		6 N	35 E	WM	34	NW	NE	5.00	400	
	1895		6 N	35 E	WM	34	NW	NE	0.40	400	
86937	1895	JAMES & KIMBERLY GIBBONS	6 N	35 E	WM	34	SW	SE	6.00	900	0.350
	1908		6 N	35 E	WM	34	SW	SE	3.40	900	
86938	1905	BENJAMIN & DORIS TUCKER	5 N	35 E	WM	3	NE	NE	0.60	600	0.020
86934	1905	GLEN & ELSIE GIBBONS	6 N	35 E	WM	34	SW	SE	6.40	700	0.240
86913	1895	DAVID PROCK	5 N	35 E	WM	2	NE	NW	0.40	700	0.015
86943	1895	SALVADOR PINA	5 N	35 E	WM	2	NE	NW	1.90	705	0.070
86944	1895	SHERYL KNIGHT	5 N	35 E	WM	2	NE	NW	1.30	707	0.050
86921	1904	THOMAS J WALISER	5 N	35 E	WM	2	NE	NW	3.00	200	0.110
Totals									140.72		5.280

6. Certificates 86906, 86907, 86908, 86909, 86910, 86913, 91510, 86921, 86932, 86933, 86934, 86935, 86936, 86937, 86938, 86939, 86940, 86942, 86943, 86944, 86945, 86946, and 86971 identify the same diversion point and rediversion 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-74 proposes a total rate reduction of approximately 1.76 cubic feet per second (cfs) under the following Certificates:

Conserved Water Description						
Certificate				Needed		Conserved
Certificate	Priority	Certificate CFS	Cert CFS/AC	New CFS	New CFS/AC	CFS
86942	1880	0.140	0.037	0.093	0.025	0.047
	1893	0.049	0.037	0.033	0.025	0.016
	1901	0.181	0.037	0.120	0.025	0.061
86933	1900	0.030	0.038	0.021	0.026	0.009
91510	1900	0.270	0.037	0.183	0.025	0.087
86936	1900	0.020	0.050	0.010	0.025	0.010
86932	1895	0.075	0.038	0.050	0.025	0.025
86935	1900	0.340	0.038	0.225	0.025	0.115
86946	1900	0.020	0.033	0.015	0.025	0.005
86939	1895	0.190	0.038	0.125	0.025	0.065
86906	1900	0.330	0.038	0.220	0.025	0.110

Conserved Water Description						
Certificate				Needed		Conserved
Certificate	Priority	Certificate CFS	Cert CFS/AC	New CFS	New CFS/AC	CFS
	1905	0.350	0.038	0.233	0.025	0.117
86907	1900	0.170	0.038	0.113	0.025	0.058
86908	1892	0.280	0.037	0.188	0.025	0.092
86940	1900	0.280	0.037	0.188	0.025	0.092
86971	1890	0.150	0.038	0.100	0.025	0.050
	1891	0.103	0.038	0.069	0.025	0.034
	1895	0.197	0.038	0.131	0.025	0.066
86945	1901	0.070	0.039	0.045	0.025	0.025
86910	1880	0.229	0.038	0.153	0.025	0.077
	1895	0.087	0.038	0.058	0.025	0.030
	1900	0.190	0.038	0.125	0.025	0.065
	1901	0.354	0.038	0.236	0.025	0.118
86909	1880	0.186	0.037	0.125	0.025	0.061
	1892	0.093	0.037	0.063	0.025	0.031
	1895	0.041	0.037	0.028	0.025	0.014
86937	1895	0.224	0.037	0.150	0.025	0.074
	1908	0.126	0.037	0.085	0.025	0.041
86938	1905	0.020	0.033	0.015	0.025	0.005
86934	1905	0.240	0.038	0.160	0.025	0.080
86913	1895	0.015	0.038	0.010	0.025	0.005
86943	1895	0.070	0.037	0.048	0.025	0.023
86944	1895	0.050	0.038	0.033	0.025	0.018
86921	1904	0.110	0.037	0.075	0.025	0.035
Totals		5.280		3.519		1.761

* - 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%	1.76	0	0	100%	1.76

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 did not list the quantity or type of funding received for this conservation project. However, because 100% of the conserved water is being converted to an instream water right, the rate does not need to be adjusted for the amount of funding received.

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 (commonly referred to as near the Cemetery Bridge) identified in Finding of Fact #6 to the Oregon-Washington state line.
15. Conserved Water application CW-74 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 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 Watermaster determined the conservation project could be made without harm. However, enlargement could occur if the water rights involved in the conservation project were not conditioned to limit the maximum amount of water necessary to accomplish the existing beneficial uses. OAR 690-018-0050(4)(d).
24. Enlargement can be prevented 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 or enlargement. 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-74 are as follows:

Cert #	Priority	Landowner	Twp	Rng	Mer	Sec	Qtr	Qtr	Acres	Tax Lot	Reduced Rate	Reduced Cert. Total
86942	1880	MALCOM MILLAR	6 N	35 E	WM	34	NW	SW	1.40	1100	0.035	0.245
	1880		6 N	35 E	WM	34	SW	SW	2.30	1100	0.058	
	1901		6 N	35 E	WM	34	SW	SW	0.80	1100	0.020	
	1901		6 N	35 E	WM	34	SW	SW	4.00	1100	0.100	
	1893		6 N	35 E	WM	34	SW	SW	1.30	1100	0.033	
86933	1900	MIKE DUTCHER	5 N	35 E	WM	3	NE	NE	0.70	1301	0.018	0.021
	1900		5 N	35 E	WM	3	SE	NE	0.10	1301	0.003	
91510	1900	EARL BROWN & SONS INC.	5 N	35 E	WM	3	NE	NE	7.10	1300	0.178	0.183
	1900		5 N	35 E	WM	3	SE	NE	0.20	1300	0.005	
86936	1900	DONALD BOLLING	5 N	35 E	WM	3	NE	NE	0.40	1400	0.010	0.010
86932	1895	MERLIN ZIMMERMAN	5 N	35 E	WM	2	NE	NW	2.00	600	0.050	0.050
86935	1900	CAYUSE VINEYARD	5 N	35 E	WM	3	NE	NE	4.28	900	0.107	0.225
	1900		5 N	35 E	WM	3	NE	NE	4.70	1500	0.118	
86946	1900	THOMAS & GLORIA	5 N	35 E	WM	3	NE	NE	0.60	1100	0.015	0.015
86939	1895	LAVELLE HINKLE	5 N	35 E	WM	2	NE	NW	5.00	500	0.125	0.125
86906	1900	MARVIN & BEVERLY SAMS	5 N	35 E	WM	3	NE	NE	4.60	800	0.115	0.453
	1905		5 N	35 E	WM	3	NW	NE	4.79	300	0.120	
	1905		5 N	35 E	WM	3	NW	NE	2.02	700	0.051	
	1900		5 N	35 E	WM	3	NE	NE	4.20	200	0.105	
	1905		5 N	35 E	WM	3	NW	NE	2.50	500	0.063	
86907	1900	JOHN & SHEILA PETERSON	5 N	35 E	WM	3	NE	NE	4.50	100	0.113	0.113
86908	1892	LEONETTI CELLARS	5 N	35 E	WM	2	NE	NW	7.50	103	0.188	0.188
86940	1900	LEFORE FRUIT FARMS	6 N	35 E	WM	34	SE	SE	7.50	1500	0.188	0.188

Cert #	Priority	Landowner	Twp	Rng	Mer	Sec	Qtr	Qtr	Acres	Tax Lot	Reduced Rate	Reduced Cert. Total
86971	1891	KENT WALISER	6 N	35 E	WM	34	SW	SE	2.75	600	0.069	0.300
	1890		6 N	35 E	WM	34	SW	SE	2.00	600	0.050	
	1895		6 N	35 E	WM	34	SW	SE	3.95	600	0.099	
	1895		6 N	35 E	WM	34	NE	SW	1.30	200	0.033	
	1890		6 N	35 E	WM	34	NE	SW	1.10	200	0.028	
	1890		6 N	35 E	WM	34	SE	SW	0.90	200	0.023	
86945	1901	SHARON NOREEN	6 N	35 E	WM	33	SE	SE	1.80	1302	0.045	0.045
86910	1900	CHAR-WAY	6 N	35 E	WM	33	SW	SE	0.40	1200	0.010	0.571
	1900		6 N	35 E	WM	33	SW	SE	1.00	1200	0.025	
	1880		6 N	35 E	WM	33	SE	SE	5.30	1200	0.133	
	1880		6 N	35 E	WM	33	SE	SE	0.80	1200	0.020	
	1900		6 N	35 E	WM	33	SW	SE	1.40	1200	0.035	
	1895		6 N	35 E	WM	33	SW	SE	2.30	1300	0.058	
	1900		6 N	35 E	WM	33	SW	SE	0.70	1300	0.018	
	1901		6 N	35 E	WM	33	SE	SE	8.13	1300	0.203	
	1900		6 N	35 E	WM	33	SW	SE	0.30	1300	0.008	
	1900		6 N	35 E	WM	33	SE	SE	0.40	1300	0.010	
	1900		6 N	35 E	WM	33	SE	SE	0.80	1300	0.020	
	1901		6 N	35 E	WM	33	SW	SE	1.30	1300	0.033	
86909	1892	OLE AND YVONNE OLESON	6 N	35 E	WM	34	SW	SE	2.50	400	0.063	0.215
	1895		6 N	35 E	WM	34	SW	SE	0.70	400	0.018	
	1880		6 N	35 E	WM	34	NW	NE	5.00	400	0.125	
	1895		6 N	35 E	WM	34	NW	NE	0.40	400	0.010	
86937	1895	JAMES & KIMBERLY GIBBONS	6 N	35 E	WM	34	SW	SE	6.00	900	0.150	0.235
	1908		6 N	35 E	WM	34	SW	SE	3.40	900	0.085	
86938	1905	BENJAMIN & DORIS TUCKER	5 N	35 E	WM	3	NE	NE	0.60	600	0.015	0.015
86934	1905	GLEN & ELSIE GIBBONS	6 N	35 E	WM	34	SW	SE	6.40	700	0.160	0.160
86913	1895	DAVID PROCK	5 N	35 E	WM	2	NE	NW	0.40	700	0.010	0.010
86943	1895	SALVADOR PINA	5 N	35 E	WM	2	NE	NW	1.90	705	0.048	0.048
86944	1895	SHERYL KNIGHT	5 N	35 E	WM	2	NE	NW	1.30	707	0.033	0.033
86921	1904	THOMAS J WALISER	5 N	35 E	WM	2	NE	NW	3.00	200	0.075	0.075
Totals									140.72		3.518	3.519

* - 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 1.76 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 fishes in the mainstem of the Walla Walla River. (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	Total by Priority
86909	1880	0.061	
86910	1880	0.077	
86942	1880	0.047	0.185
86971	1890	0.050	0.050
86971	1891	0.034	0.034
86908	1892	0.092	
86909	1892	0.031	0.123
86942	1893	0.016	0.016
86909	1895	0.014	
86910	1895	0.030	
86913	1895	0.005	
86932	1895	0.025	
86937	1895	0.074	
86939	1895	0.065	
86943	1895	0.023	
86944	1895	0.018	
86971	1895	0.066	0.320
86906	1900	0.110	
86907	1900	0.058	
86910	1900	0.065	
91510	1900	0.087	
86933	1900	0.009	
86935	1900	0.115	
86936	1900	0.010	
86940	1900	0.092	
86946	1900	0.005	0.551
86910	1901	0.118	
86942	1901	0.061	
86945	1901	0.025	0.204
86921	1904	0.035	0.035
86906	1905	0.117	
86934	1905	0.080	
86938	1905	0.005	0.202
86937	1908	0.041	0.041
Totals		1.761**	1.761**

* - 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
1880, plus one minute	4/1 through 10/31	0.185	0.179	0.174	0.169	0.164	0.159	0.156
1890, plus one minute	4/1 through 10/31	0.050	0.049	0.047	0.046	0.044	0.043	0.042
1891, plus one minute	4/1 through 10/31	0.034	0.033	0.032	0.031	0.030	0.029	0.029*
1892, plus one minute	4/1 through 10/31	0.123	0.119	0.116	0.112	0.109	0.106	0.104
1893, plus one minute	4/1 through 10/31	0.016	0.016	0.015	0.015	0.014	0.014	0.014
1895, plus one minute	4/1 through 10/31	0.320	0.310	0.301	0.292	0.283	0.275	0.271
1900, plus one minute	4/1 through 10/31	0.551	0.534	0.518	0.503	0.488	0.473	0.466
1901, plus one minute	4/1 through 10/31	0.204	0.198	0.192	0.186	0.181	0.175	0.173
1904, plus one minute	4/1 through 10/31	0.035	0.034	0.033	0.032	0.031	0.030	0.030*
1905, plus one minute	4/1 through 10/31	0.202	0.196	0.190	0.184	0.179	0.173	0.171
1908, plus one minute	4/1 through 10/31	0.041	0.040	0.039	0.037	0.036	0.035	0.035*
<i>Totals</i>		1.761	1.708	1.657	1.607	1.559	1.512	1.490

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

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-74, 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-74 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-74 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>
100%	1.76	0	0	100%	1.76

(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 86906, 86907, 86908, 86909, 86910, 86913, 91510, 86921, 86932, 86933, 86934, 86935, 86936, 86937, 86938, 86939, 86940, 86942, 86943, 86944, 86945, 86946, and 86971, and any related decree.*
7. *Water Right Certificates 86906, 86907, 86908, 86909, 86910, 86913, 91510, 86921, 86932, 86933, 86934, 86935, 86936, 86937, 86938, 86939, 86940, 86942, 86943, 86944, 86945, 86946, and 86971 are cancelled. A new certificate will be issued for that portion of Certificate 91510 not involved in this application. New certificates will be issued for the existing uses and places of use at the reduced rates as follows:*

Authorized Point of Diversion:

<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Measured Distances</i>
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

Authorized Place of Use, Priority and Rate:

<i>Orig. Cert #</i>	<i>Priority</i>	<i>Landowner</i>	<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Qtr</i>	<i>Qtr</i>	<i>Acres</i>	<i>Tax Lot</i>	<i>Reduced Rate</i>	<i>Reduced Cert. Total</i>
86942	1880	MALCOM MILLAR	6 N	35 E	WM	34	NW	SW	1.40	1100	0.035	0.245
	1880		6 N	35 E	WM	34	SW	SW	2.30	1100	0.058	
	1901		6 N	35 E	WM	34	SW	SW	0.80	1100	0.020	
	1901		6 N	35 E	WM	34	SW	SW	4.00	1100	0.100	
	1893		6 N	35 E	WM	34	SW	SW	1.30	1100	0.033	
86933	1900	MIKE DUTCHER	5 N	35 E	WM	3	NE	NE	0.70	1301	0.018	0.021
	1900		5 N	35 E	WM	3	SE	NE	0.10	1301	0.003	
91510	1900	EARL BROWN & SONS INC	5 N	35 E	WM	3	NE	NE	7.10	1300	0.178	0.183
	1900		5 N	35 E	WM	3	SE	NE	0.20	1300	0.005	
86936	1900	DONALD BOLLING	5 N	35 E	WM	3	NE	NE	0.40	1400	0.010	0.010
86932	1895	MERLIN ZIMMERMAN	5 N	35 E	WM	2	NE	NW	2.00	600	0.050	0.050
86935	1900	CAYUSE VINEYARD	5 N	35 E	WM	3	NE	NE	4.28	900	0.107	0.225
	1900		5 N	35 E	WM	3	NE	NE	4.70	1500	0.118	
86946	1900	THOMAS & GLORIA OSBORN	5 N	35 E	WM	3	NE	NE	0.60	1100	0.015	0.015
86939	1895	HINKLE FARM LCC	5 N	35 E	WM	2	NE	NW	5.00	500	0.125	0.125
86906	1900	MARVIN & BEVERLY SAMS	5 N	35 E	WM	3	NE	NE	4.60	800	0.115	0.453
	1905		5 N	35 E	WM	3	NW	NE	4.79	300	0.120	
	1905		5 N	35 E	WM	3	NW	NE	2.02	700	0.051	
	1900		5 N	35 E	WM	3	NE	NE	4.20	200	0.105	
	1905		5 N	35 E	WM	3	NW	NE	2.50	500	0.063	
86907	1900	JOHN & SHEILA PETERSON	5 N	35 E	WM	3	NE	NE	4.50	100	0.113	0.113
86908	1892	LEONETTI CELLARS	5 N	35 E	WM	2	NE	NW	7.50	103	0.188	0.188
86940	1900	LEFORE FRUIT FARMS	6 N	35 E	WM	34	SE	SE	7.50	1500	0.188	0.188
86971	1891	KENT WALISER	6 N	35 E	WM	34	SW	SE	2.75	600	0.069	0.300
	1890		6 N	35 E	WM	34	SW	SE	2.00	600	0.050	
	1895		6 N	35 E	WM	34	SW	SE	3.95	600	0.099	
	1895		6 N	35 E	WM	34	NE	SW	1.30	200	0.033	
	1890		6 N	35 E	WM	34	NE	SW	1.10	200	0.028	
	1890		6 N	35 E	WM	34	SE	SW	0.90	200	0.023	

Orig. Cert #	Priority	Landowner	Twp	Rng	Mer	Sec	Qtr	Qtr	Acres	Tax Lot	Reduced Rate	Reduced Cert. Total
86945	1901	SHARON NOREEN	6 N	35 E	WM	33	SE	SE	1.80	1302	0.045	0.045
86910	1900	CHAR-WAY	6 N	35 E	WM	33	SW	SE	0.40	1200	0.010	0.571
	1880		6 N	35 E	WM	33	SW	SE	1.00	1200	0.025	
	1880		6 N	35 E	WM	33	SE	SE	5.30	1200	0.133	
	1880		6 N	35 E	WM	33	SE	SE	0.80	1200	0.020	
	1900		6 N	35 E	WM	33	SW	SE	1.40	1200	0.035	
	1895		6 N	35 E	WM	33	SW	SE	2.30	1300	0.058	
	1900		6 N	35 E	WM	33	SW	SE	0.70	1300	0.018	
	1901		6 N	35 E	WM	33	SE	SE	8.13	1300	0.203	
	1900		6 N	35 E	WM	33	SW	SE	0.30	1300	0.008	
	1900		6 N	35 E	WM	33	SE	SE	0.40	1300	0.010	
	1900		6 N	35 E	WM	33	SE	SE	0.80	1300	0.020	
1901	6 N	35 E	WM	33	SW	SE	1.30	1300	0.033			
86909	1892	OLE AND YVONNE OLESON	6 N	35 E	WM	34	SW	SE	2.50	400	0.063	0.215
	1895		6 N	35 E	WM	34	SW	SE	0.70	400	0.018	
	1880		6 N	35 E	WM	34	NW	NE	5.00	400	0.125	
	1895		6 N	35 E	WM	34	NW	NE	0.40	400	0.010	
86937	1895	JAMES & KIMBERLY GIBBONS	6 N	35 E	WM	34	SW	SE	6.00	900	0.150	0.235
	1908		6 N	35 E	WM	34	SW	SE	3.40	900	0.085	
86938	1905	BENJAMIN & DORIS TUCKER	5 N	35 E	WM	3	NE	NE	0.60	600	0.015	0.015
86934	1905	GLEN & ELSIE GIBBONS	6 N	35 E	WM	34	SW	SE	6.40	700	0.160	0.160
86913	1895	DAVID PROCK	5 N	35 E	WM	2	NE	NW	0.40	700	0.010	0.010
86943	1895	SALVADOR PINA	5 N	35 E	WM	2	NE	NW	1.90	705	0.048	0.048
86944	1895	SHERYL KNIGHT	5 N	35 E	WM	2	NE	NW	1.30	707	0.033	0.033
86921	1904	THOMAS J WALISER	5 N	35 E	WM	2	NE	NW	3.00	200	0.075	0.075
Totals									140.72		3.518*	3.519*

* - 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
1880, plus one minute	4/1 through 10/31	0.185	0.179	0.174	0.169	0.164	0.159	0.156
1890, plus one minute	4/1 through 10/31	0.050	0.049	0.047	0.046	0.044	0.043	0.042
1891, plus one minute	4/1 through 10/31	0.034	0.033	0.032	0.031	0.030	0.029	0.029*
1892, plus one minute	4/1 through 10/31	0.123	0.119	0.116	0.112	0.109	0.106	0.104
1893, plus one minute	4/1 through 10/31	0.016	0.016	0.015	0.015	0.014	0.014	0.014
1895, plus one minute	4/1 through 10/31	0.320	0.310	0.301	0.292	0.283	0.275	0.271
1900, plus one minute	4/1 through 10/31	0.551	0.534	0.518	0.503	0.488	0.473	0.466
1901, plus one minute	4/1 through 10/31	0.204	0.198	0.192	0.186	0.181	0.175	0.173
1904, plus one minute	4/1 through 10/31	0.035	0.034	0.033	0.032	0.031	0.030	0.030*
1905, plus one minute	4/1 through 10/31	0.202	0.196	0.190	0.184	0.179	0.173	0.171
1908, plus one minute	4/1 through 10/31	0.041	0.040	0.039	0.037	0.036	0.035	0.035*
Totals		1.761	1.708	1.657	1.607	1.559	1.512	1.490

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

(Finding of Fact #32).

Dated at Salem, Oregon this 1 day of July, 2016.



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

JUL 06 2016

Mailing Date: _____

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>.