



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building
725 Summer St NE, Suite A
Salem, OR 97301
Phone (503) 986-0900
Fax (503) 986-0904
www.wrd.state.or.us

August 29, 2017

Applicant

Hudson Bay District Improvement Co,
PO Box 110
Milton-Freewater, OR 97862
WAHS@bmi.net

SUBJECT: Allocation of Conserved Water Application CW-94

Please find enclosed the Amended Preliminary Determination indicating that, based on the information available, the Department intends to approve Conserved Water Application CW-94.

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, if I may be of assistance.

Sincerely,

Teri Hranac
Allocation of Conserved Water
Transfer and Conservation Section

Enclosure

cc: CW-94
Anton Chiono, Confederated Tribes of the Umatilla Indian Reservation, 46411 Timine Way, Pendleton, OR 97801
(anotonchiono@ctuir.org)
District #5 Watermaster (via e-mail)



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

In the Matter of Allocation of Conserved) AMENDED PRELIMINARY
Water Application CW-94,) DETERMINATION PROPOSING
Umatilla County) APPROVAL ON COMPLETION AND
) FINALIZATION OF ALLOCATION OF
) CONSERVED WATER APPLICATION
) CW-94

Applicant

Hudson Bay District Improvement Co.
PO Box 110
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

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.

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).

If an application for the allocation of conserved water is approved, the Department shall issue orders describing the changes in the original water rights. Once the conservation project is finalized, the Department shall issue new certificates preserving the previously established-priority date of the rights to reflect the unaffected portion of the water rights. ORS 537.470(6).

ORS 537.455 to 537.500 authorize and establish the process by 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 October 3, 2016, Hudson Bay District Improvement Co. (District) filed an allocation of conserved water application under Certificate 89170. On October 13, 2016, the District submitted amended pages for the application. The Department assigned the application number CW-94.
2. The District operates and maintains the water delivery system for the benefit of the landowners in the area. The District was incorporated on September 2, 1952, under ORS 554.
3. The conservation project involves piping approximately 6.7 miles of open ditch to eliminate seepage losses. The piping of an open ditch is a proven technology for conserving water.
4. On December 16, 2016, the Department issued a Draft Preliminary Determination proposing to approve Conserved Water Application CW-94. On March 28, 2017, based on a review of the starting point for the conserved water application, the Department issued an Amended Draft Preliminary Determination proposing to deny Conserved Water Application CW-94.
5. On May 1, 2017, the District submitted an Amended Conserved Water Application CW-94 (5/1/17 amended Application). The 5/1/2017 amended Application proposed a rate reduction of approximately 6.25 cfs.
6. On May 12, 2017, the Department issued a Draft Preliminary Determination proposing to approve Conserved Water Application CW-94. On June 14, 2017, the Applicant notified the Department to proceed with issuance of a Preliminary Determination.
7. On June 20, 2017, the Department issued a Preliminary Determination proposing to approve the Application based on the 5/1/2017 amended Application. The Preliminary Determination was mailed on June 21, 2017, starting a 60-day Protest period.

8. On August 15, 2017, the Applicant submitted a request to withdraw the Preliminary Determination stating the quantity of water conserved was greater than the amount stated in the 5/21/2017 amended Application.
9. Also on August 15, 2017, the Applicant submitted amended pages 4, 5, and 7 to supersede like pages of the 5/21/2017 amended Application. In addition, the Applicant submitted a Request for Finalization.
10. On August 17, 2017, the Department issued an Order Withdrawing the Preliminary Determination which was issued on June 20, 2017, and recorded in Special Order Volume 105, Pages 591 and 592.
11. Application CW-94, as amended on August 15, 2017, proposes a rate reduction of approximately 9.0 cubic feet per second (cfs).

Conserved Water Description			
Priority	Certificate	Needed	Conserved Water
	Maximum Rate (CFS)	Maximum Rate (CFS)	Rate (CFS)
February 16, 1903	24.07	15.07	9.00

12. The portion of the right to be modified by CW-94 is as follows:
Certificate: 89170 in the name of HUDSON BAY DISTRICT IMPROVEMENT COMPANY (confirmed by Walla Walla River decree)
Use: IRRIGATION of 998.60 ACRES, STOCK AND DOMESTIC
Priority Date: FEBRUARY 16, 1903
Rate: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 24.07 cubic feet per second (cfs).
Limit/Duty: ONE AND ONE-HALF MINER'S INCHES PER ACRE
Source: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCKWATER							
Twp	Rng	Mer	Sec	Q-Q	Acres	SUPPLEMENTAL INFORMATION	
						Tax Lot	Name
6 N	34 E	WM	13	SW NE	23.60	200	BOSTWICK, (Trustees)
6 N	34 E	WM	13	SE NE	14.50	200	BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE NW	21.30	21-0007	HUESBY
6 N	34 E	WM	13	NW NW	31.50	21-0007	HUESBY
6 N	34 E	WM	13	SW NW	14.00	21-0007	HUESBY

IRRIGATION, DOMESTIC AND STOCKWATER							
Twp	Rng	Mer	Sec	Q-Q	Acres	SUPPLEMENTAL INFORMATION	
						Tax Lot	Name
6 N	34 E	WM	13	SW NW	24.10	203	HELLBERG
6 N	34 E	WM	13	SE NW	13.70	21-0007	HUESBY
6 N	34 E	WM	13	SE NW	24.50	200	R. & J. BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE SW	16.00	100	RICHARTZ BROS.
6 N	34 E	WM	13	NW SW	1.50	201	HELLBERG
6 N	34 E	WM	13	NW SE	11.20	100	RICHARTZ BROS.
6 N	35 E	WM	17	SW NW	17.90	601	LOCATI, M.
6 N	35 E	WM	17	SW NW	1.40	602	LOCATI, M.
6 N	35 E	WM	17	NE SW	39.10	101	LOCATI, A
6 N	35 E	WM	17	NW SW	39.10	103	LOCATI, M.
6 N	35 E	WM	17	SW SW	37.30	103	LOCATI, M.
6 N	35 E	WM	17	SE SW	37.30	103	LOCATI, A
6 N	35 E	WM	17	SW SE	9.40	103	LOCATI, A
6 N	35 E	WM	18	SW NE	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SE NE	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SW NW	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SE NW	22.50	100	LOCATI, M.
6 N	35 E	WM	18	NE SW	40.00	200	CURCIO
6 N	35 E	WM	18	NW SW	38.90	200	CURCIO
6 N	35 E	WM	18	NE SE	7.00	700	LOCATI, M.
6 N	35 E	WM	18	NW SE	39.70	700	LOCATI, M.
6 N	35 E	WM	18	SE SE	38.20	600	DIXSON, J.
6 N	35 E	WM	18	SE SE	0.70	601	DIXSON, J.
6 N	35 E	WM	19	NE NE	28.00	100	CHVATAL
6 N	35 E	WM	20	NW NE	1.00	403	PALMER, B.
6 N	35 E	WM	20	NW NE	4.60	1500	LEE
6 N	35 E	WM	20	SW NE	20.00	400	LEE
6 N	35 E	WM	20	SE NE	9.50	203	CHILDERS
6 N	35 E	WM	20	SE NE	10.00	204	LONAI
6 N	35 E	WM	20	NE NW	15.50	402	NOBLE
6 N	35 E	WM	20	NE NW	10.80	400	LEE
6 N	35 E	WM	20	NE NW	1.00	403	PALMER, B.
6 N	35 E	WM	20	NE NW	6.90	500	GRAY, R.
6 N	35 E	WM	20	NW NW	1.60	402	NOBLE
6 N	35 E	WM	20	NW NW	35.60	500	GRAY, R.
6 N	35 E	WM	20	NW NW	2.60	400	LEE
6 N	35 E	WM	20	SW NW	6.50	500	GRAY, R.
6 N	35 E	WM	20	SW NW	16.00	400	LEE
6 N	35 E	WM	20	SE NW	39.80	400	LEE
6 N	35 E	WM	20	NE SW	3.00	100	LEE
6 N	35 E	WM	20	NE SW	20.50	1100	HAMBLÉN
6 N	35 E	WM	20	NE SE	4.30	200	LONAI
6 N	35 E	WM	20	NE SE	11.00	1600	BOLLING, J
6 N	35 E	WM	20	NW SE	4.00	400	LEE
6 N	35 E	WM	20	SE SE	2.60	1600	BOLLING, J
6 N	35 E	WM	20	SE SE	4.00	1500	VILLA, A.
6 N	35 E	WM	20	SE SE	7.00	1401	STEPHENS, M.
6 N	35 E	WM	21	NW SW	18.00	400	HEIDENRICH
6 N	35 E	WM	21	NW SW	1.40	700	ALLEMAN

IRRIGATION, DOMESTIC AND STOCKWATER							
Twp	Rng	Mer	Sec	Q-Q	Acres	SUPPLEMENTAL INFORMATION	
						Tax Lot	Name
6 N	35 E	WM	21	SW SW	15.40	700	ALLEMAN
6 N	35 E	WM	21	SW SW	13.50	800	ROFF
6 N	35 E	WM	28	SW NE	11.70	1400	DELAHAYE
6 N	35 E	WM	28	NE NW	9.30	1500	TELLEFSON, K.
6 N	35 E	WM	28	NE NW	12.90	1601	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	12.00	1601	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	1.20	1601	TELLEFSON, K.
6 N	35 E	WM	28	SE NW	5.50	1400	DELAHAYE
TOTAL					998.60		

- The original water right is further described in the Walla Walla Decree on Pages 55-60, under Paragraph 75 as limited to a maximum rate of 75.00 cfs, serving 2,673.76 acres.
- The rate and acreage associated with the original Certificate (13083) from the Walla Walla Decree has been affected by transfers, cancellations, and allocations of conserved water. The approximate starting point for Certificate 89170 is as follows:

Activity	Rate	Acres
Start: Certificate 13083	75.000	2673.76
Cancellation: Spec. Order V. 28, P. 89	-0.393	-14.00
D-115 (4.2 acres not perfected)	-0.118	-4.20
T-4356	-0.561	-20.00
T-5938 - Certificate 52576	-0.561	-20.00
Certificate 67205 issued	73.367	2615.56

Activity	Rate	Acres
Start: Certificate 67205	73.367	2615.56
T-4356	0.561	20.00
T-5938 - Certificate 52576	0.561	20.00
Certificate 85805 issued	74.489	2655.56

Activity	Rate	Acres
Start: Certificate 85805	74.489	2655.56
CW-38	-10.488	0.00
Certificate 89170 issued	64.001	2655.56

- Using the starting point of 64.001 cubic feet per second, the rate per acre is calculated as follows: $64.001 / 2655.56 \text{ acre} = 0.0241 \text{ cfs/ac}$. Only a portion of Certificate 89170 is involved in CW-94; therefore, the starting point for CW-94 is as follows:
 $(998.6 \text{ acres} \times 0.0241 \text{ cfs/ac} = 24.07 \text{ cfs})$
- Based upon the Walla Walla Decree, Certificate 89170 has a year-round season of use without a specified duty limitation. However, the existing right is subject to beneficial use without waste in accordance with ORS 536.310. Use of the existing right at the full amount allowed would exceed amounts necessary to accomplish the existing beneficial uses. After allocation of conserved water application CW-38, a maximum of 7.2 acre-feet (AF) per acre can be beneficially diverted for the existing use (19165.93 AF /

2655.56 [entirety of Cert. 89170] = 7.2 AF per acre).

17. 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 the right is subject to forfeiture under ORS 540.610.
18. A pump, pipeline, 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.
19. The District requests that the conserved water be allocated as follows:

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
89170	78.5%	7.07	2088.79	21.5%	1.93	571.48	100%	9.0	2660.27

20. The District proposes its portion of the conserved water be allocated for an out-of-stream use within Townships 5 and 6 North, Ranges 34 and 35 East, W.M
21. The District requests the priority date for any conserved water be the same as the originating right, being February 16, 1903. In addition, the District requested to diminish the remaining right to be subordinate to the instream right created by this allocation of conserved water project.
22. The District has received federal and state non-reimbursable funds for this project. The District proposes an allocation of 78.5% to the state with the District receiving 21.5%. The District will be receiving less than the minimum 25% allocation under ORS 537.470(3).
23. The District 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 under ordinance UCDC Section 152.055(M).
24. The implementation of the conservation measures began no earlier than July 30, 2012. A request for finalization was submitted on August 15, 2017. The District has contacted the local governments and worked with the Confederated Tribe of the Umatilla Reservation to identify and resolve the concerns of water right holders in the area, governmental entities, and other organizations.
25. The District proposes that any instream water right created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
26. The District requests the Department protect the new instream water right created from the conserved water under Certificate 89170 from the authorized point of diversion

(POD #2) in Section 12, Township 5 North, Range 35 East, W.M., at approximately River Mile (RM) 50.0, to the Oregon-Washington state line at approximately RM 44.5.

27. The application meets the requirements of OAR 690-018-0040.
28. 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. ODFW advised the proposed instream water right will protect and support flows for spawning, rearing, and migration of native fishes in the mainstem of the Walla Walla River.
29. Notice of the proposed conservation project was published in the Department's weekly notice on November 22, 2016, and in the Valley Herald newspaper on November 4 and 11, 2016, as required under OAR 690-018-0050(1)(a) and (2). Comments were received from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) on December 13, 2016. The CTUIR recommended the instream flow would maximize benefits to the fisheries by occurring during the time periods of May 15 through July 22 and September 15 through October 15.

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

30. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #11).
31. On December 7, 2016, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Department staff determined the return flows from lands served by the diversion do not return to the Walla Walla River in Oregon. Therefore, the proposed allocation of conserved water will not harm existing water rights so long as the instream use created by the allocation of conserved water project has the following conditions: a) the quantity of water protected in the stream reach does not exceed the quantity of water legally available at the original point of diversion; b) the stream channel losses and gains are calculated based on available data and the use of water by senior appropriators will determine the amount of water to which the right is entitled downstream from the original point of diversion within the specified stream reach; and c) the instream right created by this allocation of conserved water project is not additive to the by-pass flow conditions described in Permit S-53662, or other water rights, unless otherwise specified by subsequent order. OAR 690-018-0050(4)(b).
32. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #23). OAR 690-018-0050(4)(c).
33. No harm will occur to other water rights if the conditions and limitations set forth in Finding of Fact #31 are included for the instream water right to be created by this allocation of conserved water. Therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(d).

34. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-94 under Certificate 89170 are as follows:

Originating Certificate	Rate	Duty
	Maximum CFS	Maximum AF
89170	15.07	4529.65

(Finding of Fact #11).

35. Pursuant to OAR 690-018-0050(4)(e), the rate and volume allocated to the State for instream use is as follows:

Maximum Rate	Maximum Duty (Volume)
7.07 cfs	2088.79 AF

(Finding of Fact #19).

36. In consultation with the Oregon Department of Fish and Wildlife, the Department has determined the conserved water is needed to support public benefits in the Walla Walla River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-018-0050(4)(f). (Finding of Fact #28).

37. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the District does not need to be adjusted because the District will be receiving less than the minimum 25% allocation allowed under ORS 537.470(3). The rate and volume allocated to the District is as follows:

Priority Date	Maximum Rate	Maximum Duty (Volume)
February 16, 1903	1.93 cfs	571.48 AF

(Finding of Fact #19).

38. The stream reach for the State's instream water right created by CW-94 will be protected in the Walla Walla River from authorized point of diversion #2 as described in Finding of Fact #12, at approximately RM 50 to the Oregon-Washington state line at approximately RM 44.5. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

39. To prevent enlargement, the period of use for water to be protected instream must be adjusted so the annual volume limitation is not exceeded.

40. The instream right shall allow the use and protection of flows as follows:

Priority Date		Period	Rate (cfs)	Volume (acre-feet)
February 16, 1903	Season 1	4/25 through 7/21	7.07	1233.79
February 16, 1903	Season 2	9/1 through 10/31	7.07	855.00
Total				2088.79

41. 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).
42. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion (for POD #2);
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known 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).
43. The combination of instream rights for the proposed reach on the Walla Walla River does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
44. There are no existing instream water rights for the proposed reach on the Walla Walla River established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process). By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water rights established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).
45. The proposed areas within which the conserved water is proposed to be used for out-of-stream uses are within Townships 5 and 6 North, Ranges 34 and 35 East, W.M. (Finding of Fact #20). OAR 690-018-0050(4)(h).
46. The project was implemented on July 30, 2012. The project is complete. A Request for Finalization was submitted on August 15, 2017. (Finding of Fact #24). OAR 690-018-0050(4)(i).
47. No other conditions or limitations, except those identified in Finding of Fact #31, are needed to prevent or mitigate for harm to existing water rights. OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-94 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-94 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 #11 and #30.*
2. *The proposed allocation of conserved water will not harm existing water rights. Findings of Fact #33 and #47.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #23 and #32.*
4. *The changes proposed in CW-94 are approved.*
5. *The quantities of water conserved and allocated are as follows:*

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Maximum Duty (Volume) AF
89170	78.5%	7.07	2088.79	21.5%	1.93	571.48	100%	9.0	2660.27

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 Certificate 89170 and any related decree.*
7. *Water Right Certificate 89170 is cancelled. A new certificate will be issued for that portion of the water right not involved in this conserved water application.*
8. *A superseding Certificate will be issued for the existing authorized use and place of use (described in Finding of Fact #12) at the reduced rate and duty as follows:*

Certificate: 89170 in the name of HUDSON BAY DISTRICT IMPROVEMENT COMPANY (confirmed by Walla Walla River decree)

Use: IRRIGATION of 998.60 ACRES, STOCK AND DOMESTIC

Priority Date: FEBRUARY 16, 1903

Rate: 15.07 CUBIC FEET PER SECOND (cfs)

Limit/Duty: ONE AND ONE-HALF MINER'S INCHES PER ACRE, limited to an ANNUAL VOLUME of 4529.65 ACRE-FEET (AF)

Source: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCKWATER							
<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Acres</i>	SUPPLEMENTAL INFORMATION	
						<i>Tax Lot</i>	<i>Name</i>
6 N	34 E	WM	13	SW NE	23.60	200	BOSTWICK, (Trustees)
6 N	34 E	WM	13	SE NE	14.50	200	BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE NW	21.30	21-0007	HUESBY
6 N	34 E	WM	13	NW NW	31.50	21-0007	HUESBY
6 N	34 E	WM	13	SW NW	14.00	21-0007	HUESBY
6 N	34 E	WM	13	SW NW	24.10	203	HELLBERG
6 N	34 E	WM	13	SE NW	13.70	21-0007	HUESBY
6 N	34 E	WM	13	SE NW	24.50	200	R. & J. BOSTWICK, (Trustees)
6 N	34 E	WM	13	NE SW	16.00	100	RICHARTZ BROS.
6 N	34 E	WM	13	NW SW	1.50	201	HELLBERG
6 N	34 E	WM	13	NW SE	11.20	100	RICHARTZ BROS.
6 N	35 E	WM	17	SW NW	17.90	601	LOCATI, M.
6 N	35 E	WM	17	SW NW	1.40	602	LOCATI, M.
6 N	35 E	WM	17	NE SW	39.10	101	LOCATI, A
6 N	35 E	WM	17	NW SW	39.10	103	LOCATI, M.
6 N	35 E	WM	17	SW SW	37.30	103	LOCATI, M.
6 N	35 E	WM	17	SE SW	37.30	103	LOCATI, A
6 N	35 E	WM	17	SW SE	9.40	103	LOCATI, A
6 N	35 E	WM	18	SW NE	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SE NE	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SW NW	22.50	100	LOCATI, M.
6 N	35 E	WM	18	SE NW	22.50	100	LOCATI, M.
6 N	35 E	WM	18	NE SW	40.00	200	CURCIO
6 N	35 E	WM	18	NW SW	38.90	200	CURCIO
6 N	35 E	WM	18	NE SE	7.00	700	LOCATI, M.
6 N	35 E	WM	18	NW SE	39.70	700	LOCATI, M.
6 N	35 E	WM	18	SE SE	38.20	600	DIXSON, J.
6 N	35 E	WM	18	SE SE	0.70	601	DIXSON, J.
6 N	35 E	WM	19	NE NE	28.00	100	CHVATAL
6 N	35 E	WM	20	NW NE	1.00	403	PALMER, B.
6 N	35 E	WM	20	NW NE	4.60	1500	LEE
6 N	35 E	WM	20	SW NE	20.00	400	LEE
6 N	35 E	WM	20	SE NE	9.50	203	CHILDERS
6 N	35 E	WM	20	SE NE	10.00	204	LONAI
6 N	35 E	WM	20	NE NW	15.50	402	NOBLE
6 N	35 E	WM	20	NE NW	10.80	400	LEE
6 N	35 E	WM	20	NE NW	1.00	403	PALMER, B.
6 N	35 E	WM	20	NE NW	6.90	500	GRAY, R.
6 N	35 E	WM	20	NW NW	1.60	402	NOBLE
6 N	35 E	WM	20	NW NW	35.60	500	GRAY, R.
6 N	35 E	WM	20	NW NW	2.60	400	LEE
6 N	35 E	WM	20	SW NW	6.50	500	GRAY, R.

IRRIGATION, DOMESTIC AND STOCKWATER							
Twp	Rng	Mer	Sec	Q-Q	Acres	SUPPLEMENTAL INFORMATION	
						Tax Lot	Name
6 N	35 E	WM	20	SW NW	16.00	400	LEE
6 N	35 E	WM	20	SE NW	39.80	400	LEE
6 N	35 E	WM	20	NE SW	3.00	100	LEE
6 N	35 E	WM	20	NE SW	20.50	1100	HAMBLEN
6 N	35 E	WM	20	NE SE	4.30	200	LONAI
6 N	35 E	WM	20	NE SE	11.00	1600	BOLLING, J
6 N	35 E	WM	20	NW SE	4.00	400	LEE
6 N	35 E	WM	20	SE SE	2.60	1600	BOLLING, J
6 N	35 E	WM	20	SE SE	4.00	1500	VILLA, A.
6 N	35 E	WM	20	SE SE	7.00	1401	STEPHENS, M.
6 N	35 E	WM	21	NW SW	18.00	400	HEIDENRICH
6 N	35 E	WM	21	NW SW	1.40	700	ALLEMAN
6 N	35 E	WM	21	SWSW	15.40	700	ALLEMAN
6 N	35 E	WM	21	SWSW	13.50	800	ROFF
6 N	35 E	WM	28	SWNE	11.70	1400	DELAHAYE
6 N	35 E	WM	28	NE NW	9.30	1500	TELLEFSON, K.
6 N	35 E	WM	28	NE NW	12.90	1601	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	12.00	1601	TELLEFSON, K.
6 N	35 E	WM	28	NW NW	1.20	1601	TELLEFSON, K.
6 N	35 E	WM	28	SE NW	5.50	1400	DELAHAYE
				TOTAL	998.60		

This water right shall be subordinate to the State's instream water right created by allocation of conserved water project (CW-94) described in this order and Certificate 89171, which have the same priority date. When the instream water rights are fully met, the District may divert water under this right.

The water user shall maintain and operate the existing measurement devices at the points of diversion and shall make such improvements as may be required by the Department.

All other conditions of the existing water right certificate shall be included in the superseding certificate.

- The District's portion of conserved water (1.93 cfs, 571.48 AF) shall be used and managed instream until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-009. The water shall be managed instream from the authorized point of diversion on the Walla Walla River at approximately River Mile 50:*

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

To the Oregon-Washington state line at approximately River Mile 44.5, as follows:

Priority Date	Period	Rate (cfs)	Volume (acre-)
February 16, 1903	5/6 through 10/1	1.93	571.48

10. The priority date for the conserved water held by the District is February 16, 1903, and shall be subordinate to the State's instream water rights created by the allocation of conserved water projects CW-38 (Cert. 89171) and CW-94.
11. The areas within which the Applicant's portion of conserved water is proposed to be used for out-of-stream uses are within Townships 5 and 6 North, Ranges 34 and 35 East, W.M
12. 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 as follows:

Priority Date		Period	Rate (cfs)	Volume (acre-feet)
February 16, 1903	Season 1	4/25 through 7/21	7.07	1233.79
February 16, 1903	Season 2	9/1 through 10/31	7.07	414.5
Total				2088.79

From the authorized point of diversion on the Walla Walla River at approximately River Mile 50.

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	POD #2 – 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER CORNER OF SECTION 12

To the Oregon-Washington state line at approximately River Mile 44.5.

The instream right shall contain the following conditions:

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. The stream channel losses and gains are calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach. This instream right is not in addition to the by-pass flow conditions described in Permit 53662, or other water rights, unless otherwise specified by a subsequent order.

Dated at Salem, Oregon this 28 day of August, 2017.


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

Mailing date: AUG 29 2017

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