

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

In the Matter of Allocation of Conserved) PRELIMINARY DETERMINATION
Water Application CW-101,) PROPOSING APPROVAL OF
Umatilla County) CONSERVED WATER CW-101

Applicant

Hudson Bay District Improvement Company
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 and the proposed location of use; (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

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.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 800-452-7500, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

used to finance the conservation measures comes from federal or state sources not subject to repayment. 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 January 2, 2018, Hudson Bay District Improvement Co. filed an allocation of conserved water application under Certificates 83940, 83953, 83954, 87756, and 93399. The Department assigned the application number CW-101.
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 4.1 miles of open canal to eliminate seepage losses. The piping of an open canal is a proven technology for conserving water.
4. Application CW-101 proposes a rate reduction of approximately 5.51 cubic feet per second (cfs) and proposes to reduce the annual volume by 1503.34 acre-feet (AF). The applicant proposes to protect approximately 70% (3.85 cfs) of the water conserved instream.

Conserved Water Description					
		Certificate		Needed	Conserved Water
		Rate		Rate	Rate
Certificate	Acres	Maximum CFS	CFS/AC	Maximum CFS	Maximum CFS
83940	496.30	10.30	0.0375	9.57	0.73
83953	814.90	30.56	0.0375	28.39	2.17
83954	321.24	12.04	0.0375	11.18	0.86
87556	480.45	13.20	0.0375	12.27	0.93
93399	483.83	11.66	0.0375	10.84	0.82
Totals		77.76		72.25	5.51

5. The first right to be modified by CW-101 is as follows:
 - Certificate:** 83940 in the name of HUDSON BAY DISTRICT IMPROVEMENT CO. (perfected under Permit S-32145)
 - Use:** IRRIGATION OF 464.1 ACRES and SUPPLEMENTAL IRRIGATION of 32.2 ACRES
 - Priority Date:** FEBRUARY 15, 1967

Rate: 10.3 CUBIC FEET PER SECOND with any deficiency in the available supply from the Little Walla Walla River to be made up by appropriation from Tum-A-Lum River provided the total quantity diverted from both sources does not exceed 10.3 cubic feet per second.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 0.0375 of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year. The right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Sources: LITTLE WALLA WALLA RIVER and TUM-A-LUM BRANCH OF WALLA WALLA RIVER, tributaries of the WALLA WALLA 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 ¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	17	SW SE	4.8
6 N	34 E	WM	18	SE SE	4.7
6 N	34 E	WM	20	NE NE	18.2
6 N	34 E	WM	20	NE NE	6.2
6 N	34 E	WM	20	SE NE	11.6
6 N	34 E	WM	20	SW NW	0.2
6 N	34 E	WM	20	SE NW	0.2
6 N	34 E	WM	20	NE SW	25.2
6 N	34 E	WM	20	NW SW	35.5
6 N	34 E	WM	20	SW SW	39.1
6 N	34 E	WM	20	SE SW	35.1
6 N	34 E	WM	20	NW SE	5.1
6 N	34 E	WM	20	SW SE	36.0
6 N	34 E	WM	20	SE SE	15.8
6 N	34 E	WM	29	NE NE	23.2
6 N	34 E	WM	29	NW NE	39.1
6 N	34 E	WM	29	SW NE	25.8
6 N	34 E	WM	29	SE NE	10.1
6 N	34 E	WM	29	NE NW	39.1
6 N	34 E	WM	29	NW NW	39.1
6 N	34 E	WM	29	SW NW	24.8
6 N	34 E	WM	29	SE NW	25.2
Total					464.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	17	SE SE	32.2

6. The portion of the second right to be modified by CW-101 is as follows:

Certificate: 83953 in the name of HUDSON BAY DISTRICT IMPROVEMENT CO.
(perfected under Permit S-16218)

Use: IRRIGATION of 724.0 ACRES and SUPPLEMENTAL IRRIGATION of 90.9 ACRES

Priority Date: MARCH 27, 1945

Rate: 30.56 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season.

Sources: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to 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 ¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	19	NE SE	2.0
6 N	34 E	WM	20	NE NE	5.0
6 N	34 E	WM	20	NE NE	9.9
6 N	34 E	WM	20	NW NE	3.8
6 N	34 E	WM	20	NW NE	35.4
6 N	34 E	WM	20	SW NE	40.0
6 N	34 E	WM	20	SE NE	25.0
6 N	34 E	WM	20	SE NE	3.4
6 N	34 E	WM	20	NE NW	40.0
6 N	34 E	WM	20	NW NW	35.8
6 N	34 E	WM	20	SW NW	24.4
6 N	34 E	WM	20	SW NW	7.5
6 N	34 E	WM	20	SE NW	34.6
6 N	34 E	WM	20	NE SW	13.4
6 N	34 E	WM	20	NW SW	3.4
6 N	34 E	WM	20	NW SW	1.1
6 N	34 E	WM	20	SE SW	4.0
6 N	34 E	WM	20	NE SE	39.4
6 N	34 E	WM	20	NW SE	31.2
6 N	34 E	WM	20	SW SE	3.1
6 N	34 E	WM	20	SE SE	16.5
6 N	34 E	WM	21	NE SW	14.8
6 N	34 E	WM	21	NW SW	39.0
6 N	34 E	WM	21	SW SW	37.4
6 N	34 E	WM	21	SE SW	25.5
6 N	34 E	WM	21	SW SE	3.3
6 N	34 E	WM	22	SE SW	1.0
6 N	34 E	WM	26	SW SE	16.7

IRRIGATION					
Twps	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	27	NW NW	6.8
6 N	34 E	WM	28	NE NE	20.0
6 N	34 E	WM	28	NW NE	24.3
6 N	34 E	WM	28	NW NE	6.9
6 N	34 E	WM	28	SW NE	21.4
6 N	34 E	WM	28	SE NE	1.8
6 N	34 E	WM	28	NE NW	39.0
6 N	34 E	WM	28	NW NW	30.9
6 N	34 E	WM	28	SW NW	1.3
6 N	34 E	WM	28	SE NW	11.0
6 N	35 E	WM	30	NE SW	23.8
6 N	35 E	WM	30	SW SW	10.0
6 N	35 E	WM	30	SE SW	10.2
Total					724.0

SUPPLEMENTAL IRRIGATION					
Twps	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	27	SW NE	38.0
6 N	34 E	WM	27	NW SE	0.1
6 N	34 E	WM	27	NW SE	29.2
6 N	34 E	WM	27	SW SE	23.6
Total					90.9

7. The portion of the third right to be modified by CW-101 is as follows:

Certificate: 83954 in the name of HUDSON BAY DISTRICT IMPROVEMENT CO.
(perfected under Permit S-26499)

Use: IRRIGATION of 112.3 ACRES and SUPPLEMENTAL IRRIGATION of 208.94 ACRES

Priority Date: DECEMBER 8, 1959

Rate: 12.04 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Sources: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to the COLUMBIA RIVER

Authorized Points of Diversion:

Twps	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 ¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twps	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	22	SW SW	5.80
6 N	34 E	WM	25	NE NE	1.60
6 N	34 E	WM	25	NW NE	7.60

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	25	SW NE	0.40
6 N	34 E	WM	25	SW NE	1.20
6 N	34 E	WM	25	SE NE	0.10
6 N	34 E	WM	25	SE NE	15.00
6 N	34 E	WM	25	SE SE	17.10
6 N	34 E	WM	27	SW NE	4.00
6 N	34 E	WM	27	SE NW	5.70
6 N	34 E	WM	27	NE SW	34.00
6 N	34 E	WM	27	SW SE	7.80
6 N	35 E	WM	30	SE SW	8.00
6 N	35 E	WM	30	SW SE	4.00
Total					112.30

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	25	SW NE	18.70
6 N	34 E	WM	25	NE SE	3.50
6 N	34 E	WM	25	NW SE	4.00
6 N	34 E	WM	27	NW NE	5.10
6 N	34 E	WM	27	SW NE	15.90
6 N	34 E	WM	27	SE SW	17.54
6 N	34 E	WM	27	NW SE	8.00
6 N	34 E	WM	27	SW SE	8.00
6 N	35 E	WM	30	NE NE	10.00
6 N	35 E	WM	30	SW NE	9.80
6 N	35 E	WM	30	SW NW	4.70
6 N	35 E	WM	30	SE NW	5.30
6 N	35 E	WM	30	SE NW	7.10
6 N	35 E	WM	30	SE NW	7.50
6 N	35 E	WM	30	NE SW	0.90
6 N	35 E	WM	30	NW SW	9.00
6 N	35 E	WM	30	NW SW	20.00
6 N	35 E	WM	30	NW SE	1.40
6 N	35 E	WM	30	SW SE	32.50
6 N	35 E	WM	31	NW NE	20.00
Total					208.94

8. The portion of the fourth right to be modified by CW-101 is as follows:

- Certificate:** 87556 in the name of HUDSON BAY DISTRICT IMPROVEMENT COMPANY (perfected under Permit S-43973)
- Use:** IRRIGATION of 352.69 ACRES and SUPPLEMENTAL IRRIGATION of 127.76 ACRES
- Priority Date:** SEPTEMBER 28, 1978
- Rate:** 13.20 CUBIC FEET PER SECOND
- Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein

shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Sources: LITTLE WALLA WALLA RIVER and WALLA WALLA RIVER, tributaries to 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 ¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	17	SW SW	39.50
6 N	34 E	WM	18	SE SE	12.39
6 N	34 E	WM	21	NW NW	17.80
6 N	34 E	WM	21	NE SW	15.40
6 N	34 E	WM	21	SE SW	8.80
6 N	34 E	WM	21	NW SE	1.40
6 N	34 E	WM	21	NW SE	19.60
6 N	34 E	WM	21	SW SE	4.90
6 N	34 E	WM	21	SW SE	18.10
6 N	34 E	WM	21	SE SE	9.00
6 N	34 E	WM	25	SW NW	40.00
6 N	34 E	WM	25	SE NW	12.00
6 N	34 E	WM	25	SE SW	10.00
6 N	34 E	WM	25	SW SE	9.00
6 N	34 E	WM	25	SE SE	15.90
6 N	34 E	WM	27	NE NW	3.90
6 N	35 E	WM	30	NE NW	0.60
6 N	35 E	WM	30	SE NW	2.50
6 N	35 E	WM	30	SW SW	18.70
6 N	35 E	WM	30	SE SW	20.40
6 N	35 E	WM	31	NW NE	15.70
6 N	35 E	WM	32	NE NW	40.00
6 N	35 E	WM	32	NW NW	17.10
Total					352.69

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	21	NW NW	18.20
6 N	34 E	WM	22	SW SW	11.70
6 N	34 E	WM	25	SW SE	5.00
6 N	34 E	WM	25	SE SE	1.80
6 N	34 E	WM	27	NW NE	13.00
6 N	34 E	WM	27	SW NE	18.80
6 N	34 E	WM	27	SE SW	21.86
6 N	34 E	WM	27	NE SE	0.70
6 N	34 E	WM	27	SE SE	19.50
6 N	35 E	WM	30	NE NE	7.20
6 N	35 E	WM	30	SW NW	1.70

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	30	SE NW	5.00
6 N	35 E	WM	30	SE NW	3.30
Total					127.76

9. The portion of the fifth right to be modified by CW-101 is as follows:

Certificate 93399 in the name of HUDSON BAY DISTRICT IMPROVEMENT CO.
(confirmed by the Walla Walla River Decree)

Use: IRRIGATION, DOMESTIC AND STOCK on 483.83 ACRES

Priority Date: FEBRUARY 16, 1903

Rate: 11.66 CUBIC FEET PER SECOND

Limit/Duty: The use of water under this right is limited to an amount actually used beneficially and is limited to ONE AND ONE-HALF MINER'S INCHES PER ACRE or its equivalent in case of rotation, and is further limited to an ANNUAL VOLUME of 3483.58 ACRE-FEET, measured at the points of diversion.

Sources: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to 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 ¼ CORNER OF SECTION 1
5 N	35 E	WM	12	SW NE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	18	NE SE	11.53
6 N	34 E	WM	21	SW NE	20.50
6 N	34 E	WM	21	SE NE	1.10
6 N	34 E	WM	21	SW NW	0.20
6 N	34 E	WM	21	SE NW	0.80
6 N	34 E	WM	21	NE SW	9.80
6 N	34 E	WM	21	NW SW	1.00
6 N	34 E	WM	21	SE SW	3.90
6 N	34 E	WM	21	NE SE	27.60
6 N	34 E	WM	21	NW SE	17.00
6 N	34 E	WM	21	SW SE	10.90
6 N	34 E	WM	21	SE SE	29.20
6 N	34 E	WM	25	SW NE	5.90
6 N	34 E	WM	25	SW NE	0.20
6 N	34 E	WM	25	SE NW	26.00
6 N	34 E	WM	25	NE SE	16.20
6 N	34 E	WM	25	NE SE	10.00
6 N	34 E	WM	25	NW SE	11.30
6 N	34 E	WM	25	NW SE	21.50
6 N	34 E	WM	26	SE SW	6.00
6 N	34 E	WM	26	NE SE	3.00
6 N	34 E	WM	26	NW SE	12.50

IRRIGATION, DOMESTIC AND STOCK					
Twtp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	26	SE SE	4.50
6 N	34 E	WM	27	NE NW	32.00
6 N	34 E	WM	27	NW NW	32.10
6 N	34 E	WM	27	SW NW	35.20
6 N	34 E	WM	27	SE NW	32.40
6 N	34 E	WM	27	NE SW	5.50
6 N	34 E	WM	28	NE NE	20.00
6 N	34 E	WM	28	NW NE	6.00
6 N	34 E	WM	28	SW NE	4.30
6 N	34 E	WM	28	SE NE	36.80
6 N	35 E	WM	30	NE NE	18.90
6 N	35 E	WM	30	SW SW	10.00
Total					483.83

10. Certificates 83940, 83953, 83954, 87556, and 93399 do not list the dates or times of the year within which the irrigation rights may be exercised. However, the Walla Walla Decree specifies the irrigation season is year 'round.
11. Certificates 83940, 83953, 83954, and 87556 do not specify a duty limitation. However, the existing rights are subject to beneficial use without waste in accordance with ORS 536.310. Use of these existing rights at the full amount allowed would exceed amounts 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 beneficially diverted for the existing use.
12. Certificate 93399 describes an annual volume limitation of 3483.58 acre-feet. This equates to a duty of 7.2 acre-feet per acre ($3483.58 / 483.83 \text{ [acres]} = 7.2 \text{ AF}$).
13. 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 right is subject to forfeiture under ORS 540.610.
14. 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.
15. The Applicant 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
83940	70%	0.51	206.83	30%	0.22	88.64	100%	0.73	295.47
83953	70%	1.52	340.06	30%	0.65	145.74	100%	2.17	485.80
83954	70%	0.60	134.92	30%	0.26	57.82	100%	0.86	192.74
87556	70%	0.65	199.04	30%	0.28	85.30	100%	0.93	284.34
93399	70%	0.57	171.49	30%	0.25	73.50	100%	0.82	244.99
Totals		3.85	1052.34		1.66	451.00		5.51	1503.34

16. The Applicant proposes that 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
17. The District requested the priority date for any conserved water be the same as the originating rights. In addition, the District requested to diminish the remaining rights to be subordinate to the instream right created by this allocation of conserved water project.
18. The Applicant funded 30% of the conservation project. The remaining 70% of the proposed project costs come from non-reimbursable federal funds.
19. On March 26, 2018, the Applicant requested Part 4 of the application be amended to include all of the certificates under the instream water right.
20. 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 under UCDC Section 152.055.
21. The development of the conservation measures began no earlier than September 1, 2015, with a projected implementation date of September 1, 2020. The Applicant provided evidence that it attempted to identify and resolve the concerns of water right holders in the area, governmental entities and other organizations.
22. The Applicant 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.
23. The Applicant requested the Department protect the new instream water right created from the conserved water under Certificates 83940, 83953, 83954, 87556, and 93399 from the authorized point of diversion (POD #2) in the SWNE of Section 12, Township 5 North, Range 35 East, W.M., at approximately River Mile (RM) 45.7 (previous versions of the map indicated POD #2 is located at RM 50.0), to the Oregon-Washington state line in the SWNE of Section 13, Township 6 North, Range 35E, W.M., at approximately RM 39.5 (previous versions of the map and conserved water applications show the Oregon-Washington state line is located at approximately RM 44.5).
24. The Applicant requested the deadline for submitting the Notice of Completion of September 1, 2020. The Applicant will submit a Request for Finalization on or before finalization of the allocation on or before September 1, 2025.
25. The application meets the requirements of OAR 690-018-0040.
26. 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. There are no state agency instream water rights on the Walla Walla River. ODFW asserts the proposed flows are necessary as the flow currently being left instream for fish benefits is unprotected. This instream right would allow the instream flow to be protected by priority date.
27. Notice of the proposed conservation project was published in the Department's weekly notice on January 30, 2018, and in the Valley Herald newspaper on January 26, and

February 2, 2018, 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 February 22, 2018.

28. The CTUIR comments related to: 1) the quantity of the conserved water claimed in the application, and 2) the water rights under which the instream water right is to be created. The Department has reviewed the comments and has considered them while making its determination.

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

29. 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 #4).
30. On April 18, 2018, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would not harm other water rights; therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).
31. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #20). OAR 690-018-0050(4)(c).
32. 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-101 under Certificates 83940, 83953, 83954, 87556, and 93399 are as follows:

Originating Certificate	Priority	Rate	Duty
		Maximum CFS	Maximum AF
83940	2/15/1967*	9.57	3,873.45
83953	3/27/1945*	28.39	6,359.36
83954	12/8/1959*	11.18	2,505.67
87556	9/28/1978*	12.27	3,751.44
93399	2/16/1903*	10.84	3,238.59
Totals		72.25	19,728.51

(Finding of Fact #4).

* - Subordinate to the instream right created by this allocation of conserved water project.

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

Originating Certificate	Priority	Rate	Duty
		Maximum CFS	Maximum AF
83940	2/15/1967	0.51	206.83
83953	3/27/1945	1.52	340.06
83954	12/8/1959	0.60	134.92
87556	9/28/1978	0.65	199.04
93399	2/16/1903	0.57	171.49
Totals		3.85	1,052.34

(Finding of Fact #15).

- 34. The new instream water right created will be protected in the Walla Walla River from the authorized POD #2 as described in Findings of Fact #5, 6, 7, 8, and 9, where water is diverted into the Little Walla Walla, at approximately river mile 50.0 to the mouth of the Walla Walla River at approximately River Mile 44.5. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
- 35. To prevent enlargement, the period of use for water to be permanently protected instream must be adjusted so the annual volume limitation is not exceeded. By reducing the rate, the conserved water may be protected throughout the entire requested irrigation season without enlarging the right.

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 instream right shall allow the use and protection of flows from the authorized point of diversion (POD #2) at approximately River Mile (RM) 50, to the Oregon-Washington state line at approximately RM 44.5, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M. as follows:

Orig. Cert.	Priority	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
83940	2/15/1967	10/1 through 7/31	0.343	0.333	0.323	0.313	0.304	0.295	0.286
83953	3/27/1945	10/1 through 7/31	0.564	0.547	0.531	0.515	0.499	0.484	0.470
83954	12/8/1959	10/1 through 7/31	0.224	0.217	0.211	0.204	0.198	0.192	0.187
87556	9/28/1978	10/1 through 7/31	0.33	0.320	0.310	0.301	0.292	0.283	0.275
93399	2/16/1903	10/1 through 7/31	0.284	0.275	0.267	0.259	0.251	0.244	0.237
Total			1.745	1.692	1.642	1.592	1.544	1.498	1.455

OAR 690-018-0050(g).

- 36. 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).
- 37. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - 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).
- 38. 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).
- 39. There are no existing instream water rights 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).

40. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed flows are necessary as the flow currently being left instream for fish benefits is unprotected. The proposed instream water right would allow the instream flow to be protected by priority date. (Finding of Fact #26).
41. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the Applicant does not need to be adjusted. The Applicant funded 30% of the project and no quantity of water is needed to mitigate for harm. The rate and volume allocated to the Applicant is as follows:

Originating Certificate	Priority	Maximum Rate (CFS)	Maximum Volume (AF)
83940	2/15/1967*	0.22	88.64
83953	3/27/1945*	0.65	145.74
83954	12/8/1959*	0.26	57.82
87556	9/28/1978*	0.28	85.30
93399	2/16/1903*	0.25	73.50
Totals		1.66	451.00

(Findings of Fact #15 and #18).

* - Subordinate to the instream right created by this allocation of conserved water project.

42. 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 #16). OAR 690-018-0050(4)(h).
43. The deadline for submitting a Notice of Completion is September 1, 2020. The deadline for submitting a Request for Finalization is on or before September 1, 2025. (Finding of Fact #24). OAR 690-018-0050(4)(i).
44. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #30). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-101, 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(6), the conserved water application will be approved.*

If Allocation of Conserved Water Application CW-101 is approved, the Order Approving will include the following:

1. *The proposed change will result in reduced diversions for the uses allowed under the original water rights. Findings of Fact #4 and 15.*

2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #30.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #20.*

Upon Filing the Notice of Completion:

4. *The changes proposed in CW-101 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
83940	70%	0.51	206.83	30%	0.22	88.64	100%	0.73	295.47
83953	70%	1.52	340.06	30%	0.65	145.74	100%	2.17	485.80
83954	70%	0.60	134.92	30%	0.26	57.82	100%	0.86	192.74
87556	70%	0.65	199.04	30%	0.28	85.30	100%	0.93	284.34
93399	70%	0.57	171.49	30%	0.25	73.50	100%	0.82	244.99
Totals		3.85	1052.34		1.66	451.00		5.51	1503.34

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 83940, 83953, 83954, 87556, 93399 and any related decree.*
7. *Water Right Certificate 83940 is cancelled. A superseding Certificate will be issued for the existing uses and place of use (described in Finding of Fact #5) at the reduced rate and duty as follows:*

Originating Certificate:

83940, perfected under Permit S-32145

Use:

IRRIGATION of 464.10 ACRES and SUPPLEMENTAL IRRIGATION of 32.2 ACRES

Priority Date: FEBRUARY 15, 1967

Rate: 9.57 CUBIC FEET PER SECOND

Limit/Duty:

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year, and is further limited to an ANNUAL VOLUME OF 3873.45 ACRE-FEET. THE RIGHT ALLOWED HEREIN SHALL BE LIMITED TO ANY DEFICIENCY IN THE AVAILABLE SUPPLY OF ANY PRIOR RIGHT EXISTING FOR THE SAME LAND AND SHALL NOT EXCEED THE LIMITATION ALLOWED HEREIN, PROVIDED FURTHER THAT THE RIGHT ACQUIRED HEREIN TOGETHER WITH THAT UNDER ALL OTHER RIGHTS HELD BY THE COMPANY TO THE USE OF THE LITTLE WALLA WALLA AND TUM-A-LUM RIVERS SHALL NOT EXCEED THE CAPACITY OF THE DIVERSION WORKS AT TIME OF MAKING PROOF OF APPROPRIATION.

Sources:

LITTLE WALLA WALLA RIVER and TUM-A-LUM BRANCH OF WALLA WALLA RIVER, tributaries to the PACIFIC OCEAN

8. *Water Right Certificate 83953 is cancelled. A new Certificate will be issued for that portion of the water right not involved in this conserved water application. A superseding Certificate will be issued for the existing uses and place of use (described in Finding of Fact #6) at the reduced rate and duty as follows:*

Originating

Certificate: 83953, perfected under Permit S-16218

Use: IRRIGATION of 724.0 ACRES and SUPPLEMENTAL IRRIGATION of 90.9 ACRES

Priority Date: March 27, 1945

Rate: 28.39 CUBIC FEET PER SECOND

Limit/Duty: *The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year, and is further limited to an ANNUAL VOLUME OF 6,359.36 ACRE FEET.*

Sources: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to the PACIFIC OCEAN

9. *Water Right Certificate 83954 is cancelled. A new Certificate will be issued for that portion of the water right not involved in this conserved water application. A superseding Certificate will be issued for the existing uses and place of use (described in Finding of Fact #7) at the reduced rate and duty as follows:*

Originating

Certificate: 83954, perfected under Permit S-26499

Use: IRRIGATION of 112.3 ACRES and SUPPLEMENTAL IRRIGATION of 208.94 ACRES

Priority Date: December 8, 1959

Rate: 11.18 CUBIC FEET PER SECOND

Limit/Duty: *The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year, and is further limited to an ANNUAL VOLUME OF 2,505.67 ACRE FEET.*

Sources: LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to the PACIFIC OCEAN

10. *Water Right Certificate 87756 is cancelled. A new Certificate will be issued for that portion of the water right not involved in this conserved water application. A superseding Certificate will be issued for the existing uses and place of use (described in Finding of Fact #8) at the reduced rate and duty as follows:*

Originating

Certificate: 87556, perfected under Permit S-43973

Use: IRRIGATION of 352.69 ACRES and SUPPLEMENTAL IRRIGATION of 127.76 ACRES

Priority Date: December 8, 1959

Rate: 12.27 CUBIC FEET PER SECOND

Limit/Duty: *The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to 0.0375 of one cubic foot per second per acre (or its equivalent) for each acre irrigated during the irrigation season of each year provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein. The use of water under this right is limited to an ANNUAL VOLUME OF 3,751.44 ACRE FEET.*

Sources: *LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to the PACIFIC OCEAN*

11. *Water Right Certificate 93399 is cancelled. A new Certificate will be issued for that portion of the water right not involved in this conserved water application. A superseding Certificate will be issued for the existing uses and place of use (described in Finding of Fact #9) at the reduced rate and duty as follows:*

Originating

Certificate: *93399, confirmed by the Walla Walla Decree. The decree is of record at Salem, in the Order Record of the Water Resources Director, in Volume 12 at Page 9.*

Use: *DOMESTIC, STOCK, AND IRRIGATION of 483.83 ACRES*

Priority Date: *February 16, 1903*

Rate: *10.84 CUBIC FEET PER SECOND*

Limit/Duty: *The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 10.84 CUBIC FEET PER SECOND, and is limited to ONE AND ONE-HALF MINER'S INCHES PER ACRE or its equivalent in case of rotation, and is further limited to an ANNUAL VOLUME of 3,238.59 ACRE FEET, measured at the point of diversion*

Sources: *LITTLE WALLA WALLA RIVER and the WALLA WALLA RIVER, tributaries to the PACIFIC OCEAN*

12. *The superseding reduced rate water right certificates issued for originating Certificates 83940, 83953, 83954, 87556, and 93399 shall be subordinate to the State's instream water right created by allocation of conserved water project (CW-101) described in this order, which has the same priority dates. When the instream water right is fully met, the District may divert water under these rights.*

13. *Water use measurement conditions:*

- a. *Before the use of the Applicant's portion of conserved water, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.*
- b. *The water user shall maintain the meters or measuring devices in good working order.*
- c. *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.*

14. All conserved water shall be managed instream as follows until such time as a Request for Finalization is filed. To prevent enlargement, the rate has been adjusted so the total volume limitation is not exceeded during the time the water is to be protected.

Orig. Cert.	Priority	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
83940	2/15/1967	10/1 through 7/31	0.490	0.475	0.461	0.447	0.434	0.421	0.408
83953	3/27/1945	10/1 through 7/31	0.806	0.782	0.758	0.736	0.714	0.692	0.671
83954	12/8/1959	10/1 through 7/31	0.320	0.310	0.301	0.292	0.283	0.275	0.267
87556	9/28/1978	10/1 through 7/31	0.472	0.458	0.444	0.431	0.418	0.405	0.393
93399	2/16/1903	10/1 through 7/31	0.406	0.394	0.382	0.371	0.359	0.349	0.338
<i>Total</i>			2.494	2.419	2.346	2.277	2.208	2.142	2.077

Source: Walla Walla River

From: Authorized POD #2, located at approximately RM 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 ¼ CORNER OF SECTION 12

To the Oregon-Washington state line at approximately RM 44.5, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M.

15. The deadline for filing a Request for Finalization is on or before September 1, 2025, or within five years of filing the Notice of Completion, whichever occurs first.

Upon Filing the Request for Finalization.

16. The project is complete and no additional time is needed for finalization. The Applicant's portion of conserved water (1.66, 451.0 AF) shall be used and managed instream until a Notice of Use or Disposition is received pursuant to ORS 537.490 and OAR 690-019-0090 and approved. The water shall be managed instream as follows:

<i>Applicant's Portion of Conserved Water</i>									
Orig. Cert.	Priority	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
83940	2/15/1967*	10/1 through 7/31	0.147	0.143	0.138	0.134	0.130	0.126	0.122
83953	3/27/1945*	10/1 through 7/31	0.242	0.235	0.228	0.221	0.214	0.208	0.202
83954	12/8/1959*	10/1 through 7/31	0.096	0.093	0.090	0.088	0.085	0.082	0.080
87556	9/28/1978*	10/1 through 7/31	0.141	0.137	0.133	0.129	0.125	0.121	0.117
93399	2/16/1903*	10/1 through 7/31	0.122	0.118	0.115	0.111	0.108	0.105	0.102
<i>Total</i>			0.748	0.726	0.704	0.683	0.662	0.642	0.623

* - Subordinate to the instream right created by this allocation of conserved water project.

Source: Walla Walla River

From: Authorized POD #2 located at approximately RM 50:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SWNE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

To the Oregon-Washington state line at approximately RM 44.5, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M.

17. The proposed 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.
18. 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 Columbia River as follows:
19. The instream right shall allow the use and protection of flows as follows:

Orig. Cert.	Priority	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
83940	2/15/1967	10/1 through 7/31	0.343	0.333	0.323	0.313	0.304	0.295	0.286
83953	3/27/1945	10/1 through 7/31	0.564	0.547	0.531	0.515	0.499	0.484	0.470
83954	12/8/1959	10/1 through 7/31	0.224	0.217	0.211	0.204	0.198	0.192	0.187
87556	9/28/1978	10/1 through 7/31	0.330	0.320	0.310	0.301	0.292	0.283	0.275
93399	2/16/1903	10/1 through 7/31	0.284	0.275	0.267	0.259	0.251	0.244	0.237
Total			1.745	1.692	1.642	1.592	1.544	1.498	1.455

Source: Walla Walla River

From: Authorized POD #2 located at approximately RM 50:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SWNE	POD 2: 1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 12

To the Oregon-Washington state line at approximately RM 44.5, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M.

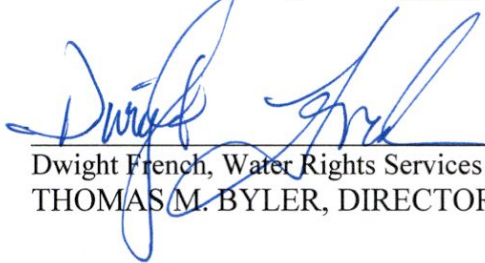
The instream right shall contain the following conditions:

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 18th day of June, 2018.


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

Mailing Date: JUN 19 2018

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>.