

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

In the Matter of Allocation of Conserved)
Water Application CW-105,)
Umatilla County) PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF ALLOCATION OF
CONSERVED WATER CW-105

Applicant

ROLOFF FARMS, INC.
151 BRADLEY STREET
WALLA WALLA, WA 99362

Applicant

KU'ULEI ORCHARDS, LLC
83618 CHUCKHOLE LANE
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

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>.

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 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 September 4, 2018, Roloff Farms, Inc. filed an allocation of conserved water application under Certificates 92480 and 92518. The Department assigned the application number CW-105.
2. On October 30, 2018, the application was amended to include Ku'ulei Orchards, LLC as an applicant and to identify the proposed area for the applicant's portion of conserved water to be use.
3. The conservation project involves converting 109.37 acres from flood irrigation to sprinkler irrigation. The conversion from flood irrigation to sprinkler irrigation is a proven technology for conserving water.
4. Application CW-105 proposes a rate reduction of approximately 1.369 cubic feet per second (cfs).

Conserved Water Description					
Certificate	Certificate		Needed		Conserved Water
	Rate		Rate		Rate
	Maximum CFS	CFS/AC	Maximum CFS	CFS/AC	Maximum CFS
92480	0.339	3/80	0.226	1/40	0.113
92518	3.766	3/80	2.510	1/40	1.256
Totals	4.105		2.736		1.369

5. The portion of the first right to be modified by CW-105 is as follows:

Certificate: 92480 in the name of KU'ULEI ORCHARDS LLC (confirmed by Walla Walla River Decree; Volume 12, Page 9)
Use: IRRIGATION of 9.03
Priority Date: 1878, 1888, 1889, and 1902
Rate: ONE and ONE-HALF MINER'S INCHES PER ACRE or 0.339 CUBIC FOOT PER SECOND
Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER
Authorized Point of Diversion: As corrected by Special Order Volume 104, Page 890.

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	SE NW	1700	2.50	1878
6 N	35 E	WM	35	SE NW	1700	2.50	1902
6 N	35 E	WM	35	NE SW	300	0.53	1888
6 N	35 E	WM	35	NE SW	300	3.50	1889
Total						9.03	

6. The portion of the second right to be modified by CW-105 is as follows:

Certificate: 92518 in the name of ROLOFF FARMS, INC. (confirmed by Walla Walla River Decree; Volume 12, Page 9)
Use: IRRIGATION, DOMESTIC, AND LIVESTOCK ON 0.80 ACRE and IRRIGATION ON 99.54 ACRES
Priority Date: 1881, 1885, 1887, 1889, 1890, 1892, 1893, 1900, 1901, 1904, and 1908
Rate: ONE and ONE-HALF MINER'S INCHES PER ACRE or 3.76 CUBIC FEET PER SECOND
Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER
Authorized Point of Diversion: As corrected by Special Order Volume 104, Page 890.

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

Authorized Place of Use:

IRRIGATION, DOMESTIC, AND LIVESTOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	SE SE	2900	0.80	1890

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	NE NE	400	11.92	1890
6 N	35 E	WM	35	NE NE	700	8.40	1893
6 N	35 E	WM	35	NE NE	400	0.77	1908

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	SE NE	3801	1.88	1890
6 N	35 E	WM	35	SE NE	4300	3.85	1890
6 N	35 E	WM	35	SE NE	4401	3.43	1890
6 N	35 E	WM	35	SE NE	3801	3.14	1885
6 N	35 E	WM	35	SE NE	4100	2.95	1885
6 N	35 E	WM	35	SE NE	4200	0.29	1885
6 N	35 E	WM	35	SE NE	4200	3.75	1892
6 N	35 E	WM	35	SE NE	4200	2.55	1892
6 N	35 E	WM	35	SE NE	4200	3.00	1887
6 N	35 E	WM	35	SE NW	1800	2.50	1889
6 N	35 E	WM	35	SE SE	2900	7.00	1881
6 N	35 E	WM	35	SE SE	2900	2.00	1893
6 N	35 E	WM	36	SW NW	701	9.47	1901
6 N	35 E	WM	36	SW NW	800	9.45	1900
6 N	35 E	WM	36	NW SW	800	11.00	1904
6 N	35 E	WM	36	NW SW	800	12.19	1900
Total						99.54	

7. Certificates 92480 and 92518 do not list a period of use. Based on the Walla Walla River Decree, the existing water right has 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 beneficially be diverted for the existing use.
8. For purposes of this allocation of conserved water application the season of use is April 1 through October 31, and such other times when agricultural diversions are being exercised.
9. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available demonstrating the right is subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of the application.

11. The Applicants request the conserved water be allocated as follows:

Certificate	Priority	State's Portion		Applicant's Portion		Conserved Water	
		Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
92480	1878	83%	0.026	17%	0.005	100%	0.031
	1888	83%	0.005	17%	0.002	100%	0.007
	1889	83%	0.036	17%	0.007	100%	0.043
	1902	83%	0.027	17%	0.005	100%	0.032
92518	1881	83%	0.073	17%	0.015	100%	0.088
	1885	83%	0.032	17%	0.007	100%	0.039
	1885	83%	0.031	17%	0.006	100%	0.037
	1885	83%	0.003	17%	0.001	100%	0.004
	1887	83%	0.032	17%	0.006	100%	0.038
92518	1889	83%	0.026	17%	0.005	100%	0.031
	1890	83%	0.124	17%	0.025	100%	0.149
	1890	83%	0.020	17%	0.004	100%	0.024
	1890	83%	0.040	17%	0.008	100%	0.048
	1890	83%	0.036	17%	0.007	100%	0.043
	1890	83%	0.008	17%	0.002	100%	0.010
	1892	83%	0.039	17%	0.008	100%	0.047
	1892	83%	0.027	17%	0.005	100%	0.032
	1893	83%	0.087	17%	0.018	100%	0.105
	1893	83%	0.021	17%	0.004	100%	0.025
	1900	83%	0.126	17%	0.026	100%	0.152
	1900	83%	0.098	17%	0.020	100%	0.118
	1901	83%	0.098	17%	0.020	100%	0.118
	1904	83%	0.115	17%	0.023	100%	0.138
	1908	83%	0.008	17%	0.002	100%	0.010
		Totals	1.138		0.231		1.369

12. The Applicants propose that their portion of the conserved water be allocated for an out-of-stream use within Sections 25, 35, and 36, of Township 6 North, Range 35 East, W.M.
13. The Applicants request the priority dates for any conserved water be the same as the originating rights.
14. The projected costs for the conservation project are approximately \$162,935. The Applicants received approximately 88.5% of non-reimbursable state and federal funds for this project in the amount of \$144,205.
15. The Applicants 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.
16. Construction of the conservation project began in October 2016. There are no governmental entities or other organizations who have asked to be consulted regarding the allocation of conserved water.

17. The Applicants propose 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.
18. The Applicants requested the Department protect the new instream water right created from the conserved water under Certificates 92480 and 92518 from the authorized point of diversion where water is diverted into the Little Walla Walla River from the Walla Walla River at approximately River Mile (RM) 45.4 to the Oregon-Washington state line at approximately RM 40.0. (Note: the application contained a scrivener's error in the river mile locations opposite of the actual locations; e.g. authorized point of diversion located at RM 40.0 and state line located at RM 45.4.)
19. The Applicants requested the deadline for submitting the Notice of Completion of April 30, 2019. The Applicants will submit a Request for Finalization within 5 years of filing the Notice of Completion.
20. The application meets the requirements of OAR 690-018-0040.
21. 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 ODFW asserts 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.
22. Notice of the proposed conservation project was published in the Department's weekly notice on December 11, 2018, and in the Valley Herald newspaper on December 7 and 14, 2018, 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]

23. 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).
24. On November 8, 2018, the District #5 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster's review indicated the existence of seepage losses from the authorized PODs, commonly referred to as the Little Walla Walla River diversion headgate, at approximately RM 45.4 to the Oregon-Washington state line at approximately RM 40.0. Enlargement could occur unless the instream water right allows for this seepage loss. In addition, the Watermaster determined the conservation project could harm other water rights if it was not conditioned to limit the maximum amount of water necessary to accomplish the existing beneficial uses.

Harm to other water rights can be mitigated by not protecting more water in the Walla Walla River than is legally available at the point of diversion. Harm can also be mitigated

by limiting the period when water is being protected instream to April 1 through October 31 of each year, and other times when agricultural diversion are being exercised. Therefore, as conditioned, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(d).

- 25. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #15). OAR 690-018-0050(4)(c).
- 26. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate for the existing uses involved in Allocation of Conserved Water Application CW-105 under Certificates 92480 and 92518 are as follows:

Certificate	Priority	Rate	
		Maximum CFS	CFS/AC
92480	1878 – 1902	0.226	0.025
92518	1881 – 1908	2.510	0.025

(Finding of Fact #4).

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

Certificate	Priority	Maximum Rate
92480	1878 - 1902	0.094
92518	1881 – 1908	1.044
Total		1.138

(Finding of Fact #11).

- 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 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 #21).

- 29. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the amount of water allocated to the Applicants does not need to be adjusted because the Applicants have proposed a higher allocation to the state than that required by statute. (Finding of Fact #14). The rate allocated to the Applicants is as follows:

Certificate	Priority	Maximum Rate
92480	1878 – 1902	0.019
92518	1881 – 1908	0.212
Total		0.231

(Finding of Fact #11)

- 30. The new instream water right created will be protected in the Walla Walla River from the authorized POD as described in Findings of Fact #5 and #6, known as the Little Walla Walla

River diversion headgate, at approximately RM 45.4 to the Oregon-Washington state line at approximately RM 40.0 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)(h); OAR 690-077-0015(8).

31. The instream right shall allow the use and protection of flows at a point as follows:

From the authorized POD as described below, known as the Little Walla Walla River headgate, at approximately River Mile (RM) 45.4.

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

To the Oregon-Washington state line, at approximately RM 40.0:

Originating Certificate	Priority Date	Period	Rate (CFS)
92480	1878	April 1 through October 31	0.026
92518	1881	April 1 through October 31	0.073
92518	1885	April 1 through October 31	0.066
92518	1887	April 1 through October 31	0.032
92480	1888	April 1 through October 31	0.005
92518	1889	April 1 through October 31	0.026
92480	1889	April 1 through October 31	0.036
92518	1890	April 1 through October 31	0.227
92518	1892	April 1 through October 31	0.066
92518	1893	April 1 through October 31	0.108
92518	1900	April 1 through October 31	0.225
92518	1901	April 1 through October 31	0.098
92480	1902	April 1 through October 31	0.027
92518	1904	April 1 through October 31	0.115
92518	1908	April 1 through October 31	0.008
Total			1.138

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

33. 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 point of the instream water right.

OAR 690-077-0015(8)

34. 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 do not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
35. 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) at the point to be protected. 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).
36. The proposed areas within which the conserved water is proposed to be used for out-of-stream are within Sections 25, 35, and 36, of Township 6 North, Range 35 East, W.M. (Finding of Fact #12). OAR 690-018-0050(4)(h).
37. The deadline for submitting a Notice of Completion is April 30, 2019. The deadline for submitting a Request for Finalization is within five-years of the date of filing the Notice of Completion. (Finding of Fact #19). OAR 690-018-0050(4)(i).
38. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #24). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-105, 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-105 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 #4 and #26.*
2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #24.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #25.*
4. *The changes proposed in CW-105 are approved.*
5. *The deadline for filing the Notice of Completion is April 30, 2019.*

Upon Filing of the Notice of Completion.

6. The quantities of water conserved and allocated are as follows:

Certificate	State's Portion		Applicant's Portion		Conserved Water	
	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)	Percentage	Maximum Rate (CFS)
92480	83%	0.094	17%	0.019	100%	0.113
92518	83%	1.044	17%	0.212	100%	1.256
Totals		1.138		0.231		1.369

7. 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 92480, 92518, and any related decree.

8. Water Right Certificate 92480 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application. A superseding Certificate will be issued for the existing use and place of use at the reduced rate and duty as follows:

Use: IRRIGATION of 9.03 ACRES
Priority Dates: 1878, 1888, 1889, and 1902
Rate: 0.226 CUBIC FOOT PER SECOND
Limit/Duty: The use is limited to ONE MINER'S INCH PER ACRE or 0.226 cubic feet per second, or its equivalent in case of rotation measured at the point of diversion from the source.
Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	SE NW	1700	2.50	1878
6 N	35 E	WM	35	SE NW	1700	2.50	1902
6 N	35 E	WM	35	NE SW	300	0.53	1888
6 N	35 E	WM	35	NE SW	300	3.50	1889
Total						9.03	

9. Water Right Certificate 92518 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application. A superseding Certificate will be issued for the existing use and place of use at the reduced rate and duty as follows:

Use: IRRIGATION, DOMESTIC, AND LIVESTOCK ON 0.80 ACRE and IRRIGATION ON 99.54 ACRES
Priority Dates: 1881, 1885, 1887, 1889, 1890, 1892, 1893, 1900, 1901, 1904, and 1908

Rate: ONE MINER'S INCH PER ACRE or 2.51 CUBIC FEET PER SECOND
Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

IRRIGATION, DOMESTIC, AND LIVESTOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	SE SE	2900	0.80	1890

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	NE NE	400	11.92	1890
6 N	35 E	WM	35	NE NE	700	8.40	1893
6 N	35 E	WM	35	NE NE	400	0.77	1908
6 N	35 E	WM	35	SE NE	3801	1.88	1890
6 N	35 E	WM	35	SE NE	4300	3.85	1890
6 N	35 E	WM	35	SE NE	4401	3.43	1890
6 N	35 E	WM	35	SE NE	3801	3.14	1885
6 N	35 E	WM	35	SE NE	4100	2.95	1885
6 N	35 E	WM	35	SE NE	4200	0.29	1885
6 N	35 E	WM	35	SE NE	4200	3.75	1892
6 N	35 E	WM	35	SE NE	4200	2.55	1892
6 N	35 E	WM	35	SE NE	4200	3.00	1887
6 N	35 E	WM	35	SE NW	1800	2.50	1889
6 N	35 E	WM	35	SE SE	2900	7.00	1881
6 N	35 E	WM	35	SE SE	2900	2.00	1893
6 N	35 E	WM	36	SW NW	701	9.47	1901
6 N	35 E	WM	36	SW NW	800	9.45	1900
6 N	35 E	WM	36	NW SW	800	11.00	1904
6 N	35 E	WM	36	NW SW	800	12.19	1900
Total						99.54	

10. 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.

39. 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.

Originating Certificate	Priority	Period of Use	Rate
92480	1878	April 1 through October 31	0.031
92518	1881	April 1 through October 31	0.088
92518	1885	April 1 through October 31	0.080
92518	1887	April 1 through October 31	0.038
92480	1888	April 1 through October 31	0.007
92480	1889	April 1 through October 31	0.074
92518	1890	April 1 through October 31	0.274
92518	1892	April 1 through October 31	0.079
92518	1893	April 1 through October 31	0.130
92518	1900	April 1 through October 31	0.270
92518	1901	April 1 through October 31	0.118
92480	1902	April 1 through October 31	0.032
92518	1904	April 1 through October 31	0.138
92518	1908	April 1 through October 31	0.010
Total			1.369

Source: Walla Walla River

From: Authorized the authorized POD, also known as the Little Walla Walla River headgate, located at approximately RM 45.4:

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 ¼ CORNER OF SECTION 12

To the Oregon-Washington state line at approximately RM 40.0, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M.

40. The deadline for filing a Request for Finalization is on or before April 30, 2024, or within five years of filing the Notice of Completion, whichever occurs first.

Upon Filing the Request for Finalization.

41. The project is complete and no additional time is needed for finalization.
42. The areas within which the Applicants' portion of conserved water is proposed to be used for out-of-stream uses are within Sections 25, 35, and 36, Township 6 North, Range 35 East, W.M.

43. The Applicant's portion of conserved water (0.231 cfs) 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:

Priority and rate:

Originating Certificate	Priority	Rate (CFS)
92480	1878	0.005
92518	1881	0.015
92518	1885	0.014
92518	1887	0.006
92480	1888	0.002
92518	1889	0.005
92480	1889	0.007
92518	1890	0.046
92518	1892	0.013
92518	1893	0.022
92518	1900	0.046
92518	1901	0.020
92480	1902	0.005
92518	1904	0.023
92518	1908	0.002
<i>Total</i>		0.231

Source: Walla Walla River

From: Authorized POD, also known as the Little Walla Walla River headgate, located at approximately RM 45.4:

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 ¼ CORNER OF SECTION 12

To the Oregon-Washington state line at approximately RM 40.0, located in the SWNE of Section 13, Township 6 North, Range 35 East, W.M.

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

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

Originating Certificate	Priority	Period of Use	Rate
92480	1878	April 1 through October 31	0.026
92518	1881	April 1 through October 31	0.073
92518	1885	April 1 through October 31	0.066
92518	1887	April 1 through October 31	0.032

Originating Certificate	Priority	Period of Use	Rate
92480	1888	April 1 through October 31	0.005
92480	1889	April 1 through October 31	0.062
92518	1890	April 1 through October 31	0.227
92518	1892	April 1 through October 31	0.066
92518	1893	April 1 through October 31	0.108
92518	1900	April 1 through October 31	0.225
92518	1901	April 1 through October 31	0.098
92480	1902	April 1 through October 31	0.027
92518	1904	April 1 through October 31	0.115
92518	1908	April 1 through October 31	0.008
Total			1.138

Source: Walla Walla River

From: Authorized POD, also known as the Little Walla Walla River headgate, located at approximately RM 45.4:

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 40.0, 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.

Dated at Salem, Oregon this 11th day of February, 2019.


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

Mailing Date: FEB 12 2019

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>.