

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

In the Matter of Proposed Allocation of)	NOTICE OF DETERMINATION and
Conserved Water Application CW-38,)	PROPOSED FINAL ORDER
Umatilla County and Diminution of a)	APPROVING ALLOCATION OF
Certificate 67205)	CONSERVED WATER and DRAFT
)	ORDER APPROVING DIMINUTION
)	OF A WATER RIGHT

Authority

ORS 537.455 to 537.500 as amended by 2003 HB 2456, authorize and establish the process in which a water right holder may submit a request for an allocation of conserved water. OAR Chapter 690, Division 18 implements the statutes and provides the Department's procedures and criteria for evaluating allocation of conserved water applications.

Applicant

Hudson Bay District Improvement Co. Inc.
P.O. Box 110
Milton-Freewater, Oregon 97862

Findings of Fact

1. On June 6, 2005, the Hudson Bay District Improvement Co. Inc. (District) filed an allocation of conserved water application. The Department assigned the application number CW-38.
2. On October 30, 2007 and November 1, 2007, the District modified the rate associated with the project, and indicated that they wanted to be able to irrigate an additional 36.5 acres at the same rate as the other lands. On January 8, 2008, the District clarified the location of the additional acreage proposed to be irrigated.
3. The District requested that this application be processed concurrently with their petition to map District water rights. ORS 541.329.
4. The District requests an allocation of conserved water under Certificate 67205, in the name of Hudson Bay Irrigation Company.
5. The District operates and maintains the water delivery system for the benefit of the landowners in the area.

Pursuant to OAR 690-180-0050, any person objecting to the proposed allocation may file protest this notice of determination and proposed final order to the Water Resources Commission within 60 days of the mailing of this determination.

6. The District was formed under ORS Chapter 554. Consequently, OAR 690-018-0025 does not apply to the District.
7. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application CW-38.
9. The first right involved in the allocation of conserved water is as follows:
Certificate: 67205 in the name of HUDSON BAY IRRIGATION CO. (confirmed by Walla Walla River decree)
Use: IRRIGATION of 2615.56 ACRES, STOCK AND DOMESTIC
Priority Date: FEBRUARY 16, 1903
Rate: Not described on certificate.
Limit/Duty: One and One-Half Miner's Inches Per Acre Measured at the Point of Diversion (3/80 cfs/ac)
Source: TUMALUM OR LITTLE WALLA WALLA RIVER, tributary to WALLA WALLA RIVER

Authorized Point of Diversion: Hudson Bay Ditch

Authorized Place of Use:

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	2	NW NW	20.00
5 N	35 E	WM	4	NE NW	17.80
5 N	35 E	WM	4	NW NW	17.20
5 N	35 E	WM	5	NE NE	11.20
6 N	34 E	WM	13	SW NE	18.50
6 N	34 E	WM	13	SE NE	20.00
6 N	34 E	WM	13	NE NW	35.00
6 N	34 E	WM	13	NW NW	45.00
6 N	34 E	WM	13	SW NW	24.72
6 N	34 E	WM	13	SE NW	24.52
6 N	34 E	WM	13	NE SW	14.00
6 N	34 E	WM	13	NW SW	1.50
6 N	34 E	WM	13	SE SW	6.06
6 N	34 E	WM	13	NW SE	12.34
6 N	34 E	WM	13	SW SE	16.20
6 N	34 E	WM	13	SE SE	10.07
6 N	34 E	WM	14	SW SE	12.00
6 N	34 E	WM	19	SW NE	5.00
6 N	34 E	WM	19	SE NE	5.00
6 N	34 E	WM	21	SW NE	20.00
6 N	34 E	WM	21	SE NE	1.60
6 N	34 E	WM	21	SW NW	0.20

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
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	17.30
6 N	34 E	WM	21	NW SE	17.00
6 N	34 E	WM	21	SW SE	12.70
6 N	34 E	WM	21	SE SE	30.00
6 N	34 E	WM	23	NE NE	16.50
6 N	34 E	WM	23	NW NE	40.00
6 N	34 E	WM	23	NE NW	5.50
6 N	34 E	WM	24	NE NE	40.00
6 N	34 E	WM	24	NW NE	28.00
6 N	34 E	WM	24	SW NE	23.50
6 N	34 E	WM	24	SE NE	24.00
6 N	34 E	WM	24	NE NW	30.00
6 N	34 E	WM	24	NW NW	40.00
6 N	34 E	WM	24	SW NW	40.00
6 N	34 E	WM	24	SE NW	40.00
6 N	34 E	WM	24	NE SW	40.00
6 N	34 E	WM	24	NW SW	40.00
6 N	34 E	WM	24	SW SW	18.00
6 N	34 E	WM	24	SE SW	20.00
6 N	34 E	WM	24	NE SE	20.00
6 N	34 E	WM	24	NW SE	13.50
6 N	34 E	WM	24	SW SE	20.00
6 N	34 E	WM	25	SE NW	26.00
6 N	34 E	WM	25	NE SW	28.30
6 N	34 E	WM	25	NE SE	33.50
6 N	34 E	WM	25	NW SE	33.00
6 N	34 E	WM	26	NE SE	3.00
6 N	34 E	WM	26	NW SE	12.50
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	32.00
6 N	34 E	WM	27	SW NW	34.00
6 N	34 E	WM	27	SE NW	32.00
6 N	34 E	WM	27	NE SW	5.00
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	1.00
6 N	34 E	WM	28	SE NE	32.00
6 N	35 E	WM	17	SW NW	24.27
6 N	35 E	WM	17	NE SW	26.50
6 N	35 E	WM	17	NW SW	40.00
6 N	35 E	WM	17	SW SW	40.00
6 N	35 E	WM	17	SE SW	40.00
6 N	35 E	WM	17	SW SE	13.90
6 N	35 E	WM	18	SW NE	24.00
6 N	35 E	WM	18	SE NE	24.00

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	18	SW NW	23.87
6 N	35 E	WM	18	SE NW	24.00
6 N	35 E	WM	18	NE SW	40.00
6 N	35 E	WM	18	NW SW	35.06
6 N	35 E	WM	18	NE SE	7.13
6 N	35 E	WM	18	NW SE	32.00
6 N	35 E	WM	18	SE SE	40.00
6 N	35 E	WM	19	NE NE	28.00
6 N	35 E	WM	19	SW NE	15.00
6 N	35 E	WM	19	SE NE	1.00
6 N	35 E	WM	19	NE NW	0.30
6 N	35 E	WM	19	NW NW	27.60
6 N	35 E	WM	19	SW NW	40.00
6 N	35 E	WM	19	SE NW	20.10
6 N	35 E	WM	19	NE SW	31.50
6 N	35 E	WM	19	NW SW	40.00
6 N	35 E	WM	19	SW SW	10.00
6 N	35 E	WM	19	SE SW	20.00
6 N	35 E	WM	19	NW SE	30.00
6 N	35 E	WM	19	SW SE	8.00
6 N	35 E	WM	20	NW NE	3.00
6 N	35 E	WM	20	SW NE	20.00
6 N	35 E	WM	20	SE NE	18.00
6 N	35 E	WM	20	NE NW	36.00
6 N	35 E	WM	20	NW NW	43.70
6 N	35 E	WM	20	SW NW	17.30
6 N	35 E	WM	20	SE NW	43.00
6 N	35 E	WM	20	NE SW	24.50
6 N	35 E	WM	20	SW SW	10.40
6 N	35 E	WM	20	SE SW	40.00
6 N	35 E	WM	20	NE SE	17.10
6 N	35 E	WM	20	NW SE	4.00
6 N	35 E	WM	20	SE SE	9.00
6 N	35 E	WM	21	NW SW	19.00
6 N	35 E	WM	21	SW SW	30.50
6 N	35 E	WM	28	SW NE	11.70
6 N	35 E	WM	28	NE NW	17.40
6 N	35 E	WM	28	NW NW	18.00
6 N	35 E	WM	28	SE NW	5.50
6 N	35 E	WM	29	NE NE	7.30
6 N	35 E	WM	29	NW NW	10.00
6 N	35 E	WM	29	SE NW	10.00
6 N	35 E	WM	30	NE NE	18.97
6 N	35 E	WM	30	SW SW	10.00
6 N	35 E	WM	32	SE NW	15.00
6 N	35 E	WM	32	NE SW	32.80
6 N	35 E	WM	32	NW SW	10.10
6 N	35 E	WM	32	NE SE	26.00
6 N	35 E	WM	32	SW SE	17.80
6 N	35 E	WM	32	SE SE	15.00

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	33	SW SW	6.20
6 N	35 E	WM	33	SE SW	17.10
6 N	35 E	WM	34	NW NW	20.00
6 N	35 E	WM	34	SW NW	19.75
6 N	35 E	WM	34	NE SW	4.00
6 N	35 E	WM	34	SE SE	7.00
6 N	35 E	WM	35	SW SW	10.00

10. The second right involved in the allocation of conserved water is as follows:

Transfer: T-5938

Use: IRRIGATION of 20.00 ACRES, STOCK AND DOMESTIC

Priority Date: FEBRUARY 16, 1903

Limit/Duty: One and One-Half Miner's Inches Per Acre Measured at the Point of Diversion (3/80 cfs/ac)

Source: TUMALUM OR LITTLE WALLA WALLA RIVER, tributary to WALLA WALLA RIVER

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	32	W1/2 NW SE	20.00

11. The point of diversion for the rights described in Findings of Fact #9 and #10 is more completely described as:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	1	NE NW	HUDSON BAY DITCH: POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE N1/4 CORNER OF SECTION 1

12. Transfer T-5938 is a water right subject to transfer. It is included in the District remapping process, and was included in Certificate 52576, the predecessor of Certificate 67205.

13. The original water right is further described in the Walla Walla Decree on page 58, under contests 64 and 65 as limited to a maximum rate 75.00 cfs, serving 2,673.76 acres.

14. The maximum rate associated with Certificate 67205 is described in the allocation of conserved water application as 75.0 cfs. The actual maximum rate is less, due to modifications to the right as described below:

Special Order Volume 28, Page 89 cancelled 14.00 acres. Special Order Volume 14, Page 463 approved Transfer D-115. However, 4.2 acres involved in this transfer were not perfected as evidenced by Certificate 52576. Special Order Volume 33, Page 90 approved Transfer T-4356, reducing the right by 20.00 acres. Special Order Volume 46, Page 106 approved Transfer T-5938 reducing the right by 20.00 acres.

Consequently, the starting point for the before project rate associated with Certificate 67205 is:

Water Right Evidenced by	Certificate 13083				Certificate 52576	Certificate 67205
Action		Cancellation: Sp. Order V. 28 P. 89	D-115 4.2 acres not perfected	T-4356	T-5938	Before CW-38
Rate (cfs)*	75.000	(0.393)	(0.118)	(0.561)	(0.561)	73.367
Acres	2,673.76	(14.0)	(4.2)	(20.0)	(20.0)	2,615.56

* Maximum rate is not listed on the certificates or orders.

15. Based upon the Walla Walla River Decree, the existing water rights, described in Findings of Fact # 9 and # 10, have a year round season of use and do not have 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 amount allowed would exceed amounts necessary to accomplish the existing beneficial uses. A maximum of 8.4 acre-feet (AF)/acre can be beneficially diverted for the existing use.
16. The starting point for the rights involved in the allocation of conserved water are:

	Certificate 67205	Transfer T-5938	Total
Acres	2,615.56 ac	20.00 ac	2,635.56 ac
Rate	73.367 cfs	0.561 cfs	73.928 cfs
Beneficial Use Volume	21,970.70 AF	168.00 AF	22,138.70 AF

17. The conservation project involves piping approximately 4.56 miles of the Richartz Irrigation Ditch, and 2.52 miles of the Huffman Ditch and a new pressurized line allows reduced flows to be used. The replacement of open, unlined ditches with pipelines is a proven technology for conserving water.
18. Public notice was published in the Department's weekly notice on November 20, 2007, and in the Valley Herald on November 16, 23, and 30, 2007, as required under OAR 690-018-0050. Walla Walla River Irrigation District commented on the project and indicated that they wanted to be included in discussions relating to the season that the water will be protected and relating to when the proposed conserved water would have been available based on historical use and the Walla Walla River Decree.
19. Pursuant ORS 537.485, the applicant requests that the priority date of the conserved water be the same as the originating right. On December 18, 2007, the District requested to diminish the remaining right to be subordinate to the instream right created by this allocation of conserved water project.
20. The proposed allocation of conserved water project was completed on January 1, 2003. The District requests that the allocation be finalized.
21. The return flows from the lands served by the diversion due not return to the Walla Walla River in Oregon. Therefore, the proposed allocation of conserved water will not harm

existing 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 is not additive to the by-pass flow conditions described in Permit 53662, or other water rights, unless otherwise specified by a subsequent order.

22. The application includes land use information forms completed and signed by representatives of Umatilla County planning department demonstrating that the application is compatible with the local comprehensive land use plan. Additionally, the Department provided notification of the proposed action to Umatilla County.

23. Since no harm will occur to other water rights, no reduction in the quantity of conserved water to be allocated is required to mitigate for effects on other water rights.

24. After the allocation of conserved water, the water rights held by the applicant (Certificate 67205 and T-5938) will allow use of the following quantities of water:

Priority Date	Before Project Maximum Rate and Beneficial Use Volume	Conserved Water Rate and Beneficial Use Volume	After Project Maximum Rate and Beneficial Use Volume
February 16, 1903	73.928 cfs 22,138.70 AF	10.488 cfs 3,140.77 AF	63.440 cfs 18,997.93 AF

25. In consultation with the Oregon Department of Fish and Wildlife, Department of Environmental Quality, and Oregon Parks and Recreation Department, the Department has determined that conserved water is needed to support instream uses 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.

26. Pursuant to OAR 690-018-0012(1), the District proposes that 92 percent of the conserved water be allocated to the State for an instream water right and that 8 percent be used for irrigating 36.5 acres of new lands within the District, stock and domestic use. The new lands are located in:

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	21	SW SE	10.9
6 N	34 E	WM	21	SE SE	25.6

27. The amounts of water to be allocated to the applicant for new out-of-stream use, and the amount of water to be allocated to the State for an instream water right are:

Priority Date	Conserved Water Rate and Volume	New Lands Out-of-Stream Rate and Volume	Instream Water Right Rate and Volume
February 16, 1903	10.488 cfs 3,140.77 AF	0.878 cfs 263.82 AF	9.610 cfs 2,876.95 AF

28. The stream reach for state's instream water right is from the previously authorized point of diversion, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	1	NE NW	HUDSON BAY DITCH: POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE N1/4 CORNER OF SECTION 1

To the Oregon – Washington State Line.

29. The instream use shall allow the use and protection of flows for 151 days from May 1 through September 28. If the full amount of water is not available to be protected under this right for this time period, then the ending date shall be extended until December 15 or when the entire instream volume of 2,876.95 AF is used, whichever occurs first.

Determination and Proposed Action

The project described in the application CW-38 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 18. Water will be conserved that can be allocated without harming other water rights.

If approved, the change and subsequent use of water shall be subject to the following conditions:

- The changes proposed in CW-38, as modified by the applicant, are approved.*
- Water Right Certificate 67205 and the water right described by Transfer T-5938 are modified. A new superseding certificate shall be issued to the District for the remaining portion of the Certificate 67205 and the water right described by Transfer T-5938 upon a determination that it is necessary to produce a certificate to confirm that remaining portion of the water right. Approval of this allocation of conserved water reduces the amount of water lawfully available under the remaining portion of the water rights as described below:*

Water Right	Priority Date	Rate (cfs)	Volume (AF)
Certificate 67205 and Transfer T-5938	February 16, 1903	10.488	3,140.77

The acreage, rate, duty, and priority dates are subject to modification by any previously approved transfers, cancellations, corrections, allocation of conserved water, or other modifications to the water rights. The associated priority date, rate, and duty of the remaining right, measured at the point of diversion, shall be:

Priority	Maximum CFS	Duty (AF)
February 16, 1903*	63.44	18,997.93

** The District water right shall be subordinate to the instream water right created by the allocation of conserved water project described in this order which has the same priority date. When the instream water right is fully met, the District may divert water under this right.*

The place of use shall be those lands described under Certificate 67205 and Transfer T-5938, as modified by any transfers completed pursuant to ORS 540.580, any petition to map District water rights completed pursuant to ORS 541.329, or other modifications.

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

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

- The conserved water held by Hudson Bay District Improvement Co. Inc. may be used to irrigate a maximum of 36.50 acres of new land, stock and domestic use, with a February 16, 1903 priority date*, within the District, located in.*

IRRIGATION, STOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	21	SW SE	10.9
6 N	34 E	WM	21	SE SE	25.6

** This water right shall be subordinate to the instream water right created by the allocation of conserved water project described in this order which has the same priority date. When the instream water right is fully met, the District may divert water under this right.*

The authorized PODs for the new lands are those points of diversion proposed on the district remapping petition, being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 N	35 E	WM	1	NE NW	POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE N1/4 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

The maximum rate for the new lands shall be 1/41.5 cfs per acre-equivalent. The season of use is year around and subject to beneficial use and other conditions and limitations of the Walla Walla River decree.

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

- A new instream certificate shall be issued for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values in the Walla Walla River from the authorized point of diversion for Certificate 67205 at:*

Authorized Point of Diversion:


<i>Twp</i>	<i>Rng</i>	<i>Mer</i>	<i>Sec</i>	<i>Q-Q</i>	<i>Survey Coordinates</i>
5 N	35 E	WM	1	NE NW	HUDSON BAY DITCH: POD #1 – 910 FEET SOUTH AND 700 FEET WEST FROM THE N1/4 CORNER OF SECTION 1

To the Oregon – Washington State Line.

The instream water right shall be for a total of 9.61 cfs, and a total volume of 2,876.95 AF, with a February 16, 1903 priority date, and shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right. The instream use shall allow the use and protection of flows for 151 days from May 1 through September 28. If the full amount of water is not available to be protected under this right for this time period, then the ending date shall be extended until December 15 or when the entire instream volume of 2,876.95 AF is used, whichever occurs first.

The quantity of water protected in the stream reach 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 the right is entitled downstream from the original point of diversion within the specified stream reach. The instream right created by this allocation of conserved water 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 7th day of February, 2008.


Phillip C. Ward
Director

Date of Mailing: 2/08/2008

Protest Rights:

Under the provisions of OAR 690-018-0050, any person may protest this order by filing a protest with the Department within 60 days of the mailing of the determination.

If no protests are received the Director shall issue an order consistent with this determination.

Protests should be addressed to the attention of Bob Rice, Water Resources Department, 725 Summer St., NE Salem, OR 97301-1266.

This Notice of Determination and Proposed Final Order was prepared by Bob Rice. If you have questions about the information in this document, you may reach me at 503-986-0885 or Robert.D.Rice@wrdd.state.or.us.