

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

In the Matter of Allocation of Conserved)
Water Application CW-129,)
Wallowa County) FINAL ORDER ON COMPLETION AND
FINALIZATION OF ALLOCATION OF
CONSERVED WATER CW-129

Applicant

Rocking M Cattle Company
70208 Warnock Rd
Wallowa, OR 97885

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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

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 and new certificates reflecting the changes for the portions of the water rights involved in the conserved water application. 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 April 25, 2022, Rocking M Cattle Company filed an allocation of conserved water application under Certificate 3162 The Department assigned the application number CW-129.
2. On March 1, 2023, a Final Order Approving Allocation of Conserved Water CW-129 (Final Order) was issued and mailed on March 1, 2023. The Final Order is recorded at Special Order Volume 129, Pages 921-930.
3. The Final Order established the deadline for submitting a Notice of Completion of November 30, 2023, and the deadline for submitting a Request for Finalization of December 1, 2023.
4. The Final Order allocated the conserved water 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
3162	100%	0.79	144.58	0%	0.00	0.00	100%	0.79	144.58

5. The Final Order established the reduced rate and duty for the existing uses under Certificate 3162 as follows:

Originating Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
3162	0.99	1/73	180.73	2.5

6. The Final Order allocated the following rate and volume to the State for instream use:

Priority Date	Rate (cfs)	Volume (acre-feet)
1883	0.79	144.58

7. On October 17, 2023, the Applicant submitted a Notice of Completion, and on October 18, 2023, the Applicant submitted a Request for Finalization.

Conclusions of Law

The Findings of Fact and Conclusions of Law set forth in the Final Order Approving Allocation of Conserved Water CW-129, recorded at Special Order Volume 127, Pages 921-930, are incorporated as if set forth fully herein. The project described in Allocation of Conserved Water Application CW-129, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077.

Now, therefore, it is ORDERED:

1. The project is complete, and no additional time is needed for finalization.
2. A remaining right certificate will be issued for that portion of the right not affected by this application, and a superseding certificate will be issued for the existing uses and places of use at the reduced rate and duty described below:

Use: IRRIGATION of 72.29 ACRES
Priority Date: 1883
Rate: 0.99 CUBIC FOOT PER SECOND
Limit: The amount of water to which this right is entitled shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 31 of each year, and thereafter not to exceed 1.0 acre-foot per acre during the entire remainder of the irrigation season; and said right shall be subject to all other conditions and limitations contained in said decree, and is further limited to 180.73 Acre Feet per year.
Source: South Fork of Wallowa River (aka Lostine River), a tributary of Wallowa River

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	28	NE NW	6300	34.94
1 N	43 E	WM	28	NW NW	6400	0.41
1 N	43 E	WM	28	SW NW	6400	12.67
1 N	43 E	WM	28	SE NW	6300	24.27
Total						72.29

3. An instream water right certificate shall be issued for the Lostine River to provide for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, other ecological values.

LOSTINE RIVER, a tributary of Wallowa River

Instream Point No. 1: At the POD (as described below)

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	43 E	WM	28	SE NW	Latitude: 45.499396 Longitude: -117.442333

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3162	1883	0.79	144.58	May 1 through July 31

Instream Reach No. 1: From immediately below the POD to the mouth of the Lostine River at the confluence with the Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3162	1883	0.71	130.12	May 1 through July 31

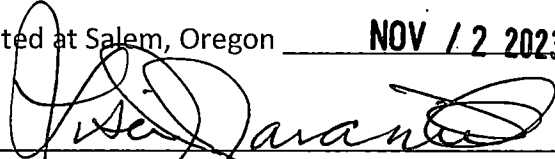
Instream Reach No. 2: In the Wallowa River from immediately below the confluence with the Lostine River to the mouth at confluence with the Grande Ronde River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3162	1883	0.64	117.11	May 1 through July 31

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. Stream channel losses and gains calculate based on available data and 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.

The instream right shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470.

Dated at Salem, Oregon NOV / 2 2023


 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
 DOUGLAS E. WOODCOCK, ACTING DIRECTOR
 Oregon Water Resources Department

Mailing Date: NOV / 6 2023