

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
SL-59, Wallowa County ) PROPOSED INSTREAM LEASE

**Authority**

Oregon Revised Statute (ORS) 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor**

Rocking M Cattle Company  
Attn: Jeremy McCulloch  
70208 Warnock Road  
Wallowa, OR 97885  
[Jeremy.mcculloch1@gmail.com](mailto:Jeremy.mcculloch1@gmail.com)

**Lessee**

Trout Unlimited  
401 NE First Street  
Enterprise, OR 97828  
[Jessica.humphreys@tu.org](mailto:Jessica.humphreys@tu.org)

**Findings of Fact**

1. On February 16, 2022, Rocking M. Cattle Company and Trout Unlimited filed an application to renew Split Season Instream Lease SL-59 involving a portion of Certificate 3162.
2. The portion of the right to be leased is as follows:
  - Certificate:** 3162 in the name of Ed Thompson (confirmed by the Wallowa River Decree) of record in the Order Records in Volume 5 at Page 97
  - Use:** Irrigation of 69.2 acres
  - Priority Date:** 1883
  - Quantity:** **Volume:** 387.52 Acre-Feet (AF)
  - Limit:** The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed 1.5 acre feet per acre during any period of 30 days prior to July 1 of each year, and thereafter not to exceed 1 acre foot per acre during the entire remainder of the irrigation season.
  - Source:** South Fork of the Wallowa River (aka Lostine River), tributary to the Wallowa River

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

**Authorized Point of Diversion (POD):** None Listed

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	28	NE NW	34.5
1 N	43 E	WM	28	NW NW	8.9
1 N	43 E	WM	28	SW NW	12.8
1 N	43 E	WM	28	SE NW	13.0
Total					69.2

3. Certificate 3162 does not provide a full description of the point of diversion of the Fitzpatrick Ditch. However, based upon additional information provided by the Lessee, the location of the point of diversion for purposes of this instream lease is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 S	43 E	WM	9	NE NE	FITZPATRICK DITCH: 615 FEET SOUTH AND 980 FEET WEST OF THE NE CORNER OF SECTION 9

4. Certificate 3162 does not include a rate limitation. The on-farm rate of 1.74 CFS (rounded) identified by the Lessors and Lessee as part of the split season lease is equivalent to approximately 1/40<sup>th</sup> CFS per acre.
5. Certificate 3162 does not specify the irrigation season; however, pursuant to the Wallowa River Decree the irrigation season is from May 1 to October 1 and shall be used to establish when water may be protected instream.
6. There are supplemental irrigation water rights, Certificates 95646 and 95647, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor and Lessee have requested that these water rights not be included as part of this lease application. During the term of the lease, water use for the lands covered under this lease for these rights will also be suspended during the instream use period.
7. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
8. The instream lease application, as proposed, is a split season lease.

Use of water under the water right included in this lease may continue for the existing use up to the rates and volumes specified in the below table consistent with the water right limitations identified in Findings of Fact No. 2.

Certificate	On-Farm Rate (CFS)	On-Farm Volume (AF)	On-Farm Use Period
3162	1.74	318.32	May 1 through July 31

9. Within the proposed reach, a portion of the water diverted at the point of diversion returns to the Lostine River (60%) and is available to downstream water right holders. A portion of the water diverted at the point of diversion returns to the Wallowa River (10%) and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for immediately below the point of diversion. The reduction in the instream water right is as follows:

Reach	Percent
From immediately below the Fitzpatrick Ditch point of diversion to the Mouth of the Lostine River at the confluence with the Wallowa River	60%
From the confluence with the Wallowa River to the Mouth at the confluence with the Grand Ronde	70%

OAR 690-077-0015(8).

10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

**Instream Point No. 1:** At the Fitzpatrick Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3162	1883	0.57	69.2	August 1 through September 30

**Instream Reach No. 1:** From immediately below the Fitzpatrick 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	0.23	27.68	August 1 through September 30

**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	0.17	20.76	August 1 through September 30

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
12. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - 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 are accounted for within the reaches of the instream water as identified in Findings of Fact Nos. 9 and 10.
13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
  14. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
  15. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
  16. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
  17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
  18. The Lessor and Lessee have requested that the lease terminate on October 1, 2022. The lease has been submitted prior to the first day of the instream use season. The lease may commence on May 1, 2022.
  19. The Lessor and Lessee have requested that there not be an option to terminate the lease.

### **Conclusions of Law**

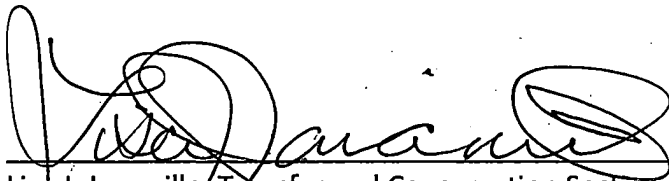
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.

2. During the term of this lease, the place of use will continue to receive water as identified in Finding of Fact No. 8 during the period May 1 through July 31 for irrigation. For the remainder of the irrigation season, during the term of this lease, the former place of use will not receive water as part of this right, any supplemental rights (including Certificates 95646 and 95647), or any other layered water rights for irrigation use, including groundwater registrations
3. The term of the lease will commence on May 1, 2022 and terminate on October 1, 2022. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day MAR 25 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 28 2022

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.*