

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-12853, Wallowa County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE; AND
	)	APPROVING A CHANGE IN PLACE
	)	OF USE UNDER CERTIFICATE 81507

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

**Applicants**

WOODY AND MEGAN WOLFE  
81544 HWY 82  
WALLOWA, OR 97885

**Agent**

THE FRESHWATER TRUST (TFT)  
ATTN: JESSICA HUMPHREYS  
700 SW TAYLOR STREET, SUITE #200  
PORTLAND, OR 97205

**Findings of Fact**

1. On February 12, 2018, Woody and Megan Wolfe filed a transfer application to change the place of use and the character of use under Certificates 62054, 93513, 93515, 93517, 93519, 93523, 93525, 93527, 93531, 93533, and 93536 to instream use. The Department assigned the application number T-12853.
2. Notice of the application for transfer was published on February 27, 2018, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements and prior to submission of the instream transfer, the applicant provided a Land Use Information Form to Wallowa County, notifying them of the instream transfer. The Land Use Information Form was completed February 2, 2018, by Wallowa County indicating the proposed water use was allowed outright or is not regulated by Wallowa County comprehensive plan.
4. On June 21, 2018, the Department contacted the Applicants' agent regarding a few items in the application that needed clarification.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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5. On July 10, 2018, the Department received an amended application including the underlying supplemental irrigation water rights, Certificates 11642 and 81507.
6. On July 16, 2018, the Department received signed Supplemental Form D from Cross Country Canal Company and Minam Lake Reservoir Company.
7. On July 30, 2018, the Department received a Table 2 of the application for a supplemental water right Certificate 81507 proposing to change the place of use.
8. On August 8, 2018, the Applicants submitted an amended Table 2 for Certificate 81507.
9. On August 9, 2018, the Applicants amended Page 8 of the July 10, 2018 amended application clarifying the proposed instream period and use.
10. On September 6, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12853 to the Applicants. The draft Preliminary Determination cover letter set forth a deadline of October 1, 2018, for the applicants to respond. The Applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
11. The portion of the first right to be transferred is as follows:

**Certificate:** 62054 in the name of THOMAS J. WILLETT  
(perfected under Permit S-44750)

**Use:** IRRIGATION OF 20.8 ACRES

**Priority Date:** OCTOBER 30, 1979

**Rate:** 0.52 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** WALLOWA RIVER, a tributary of GRANDE RONDE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	19	SE NE	3200 FEET NORTH AND 920 FEET WEST FROM THE SE CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	19	SE NE	3.0
1 N	43 E	WM	19	NE SE	2.3
1 N	43 E	WM	20	NE SW	6.6
1 N	43 E	WM	20	NW SW	3.0
1 N	43 E	WM	20	NW SE	5.9
<b>Total</b>					<b>20.8</b>

12. An annual volume of 72.8 acre-feet of water may be beneficially used under this right.

13. The portion of the second right to be transferred is as follows:

**Certificate:** 93513 in the name of H E. DRIVER (confirmed by the Wallowa River Decree, of record at Salem, in the Order Record of the State Water Board of the State of Oregon in Volume 5 at Page 162)

**Use:** IRRIGATION OF 13.9 ACRES, DOMESTIC AND LIVESTOCK

**Priority Date:** 1883

**Limit/Duty:** The amount of water to which this right is entitled for irrigation shall not exceed 1.5 acre-feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year, and thereafter not to exceed 1.0 acre-foot per acre during the entire remainder of the irrigation season.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	29	NW SW	0.3
1 N	43 E	WM	30	NE SE	2.0
1 N	43 E	WM	30	NW SE	1.5
1 N	43 E	WM	30	SW SE	2.5
1 N	43 E	WM	30	SE SE	7.6
<b>Total</b>					<b>13.9</b>

14. Certificate 93513 does not describe the location of the point of diversion. However, information is available from the Applicants and Department records indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

15. An annual volume of 76.45 acre-feet of water may be beneficially used under this right.

16. The portion of the third right to be transferred is as follows:

**Certificate:** 93515 in the name of CLEARWATER DITCH COMPANY (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 115-156)

**Use:** IRRIGATION OF 1.3 ACRES, DOMESTIC AND LIVESTOCK

**Priority Date:** MAY 1897

**Limit/Duty:** The amount of water to which this right is entitled for irrigation shall not exceed 1.5 acre-feet 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

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	31	NE NE	1.3

17. Certificate 93515 does not describe the location of the point of diversion. However, information is available from the Applicants and Department records indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

18. A total of 7.15 acre-feet of water may be beneficially used annually under this right.  
 19. The portion of the fourth right to be transferred is as follows:

**Certificate:** 93517 in the name of J.T. WILLETT BY C.N. WILLETT  
 (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 202)

**Use:** IRRIGATION OF 8.2 ACRES, DOMESTIC AND LIVESTOCK

**Priority Date:** 1883

**Limit/Duty:** The amount of to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	30	NW NE	2.3
1 N	43 E	WM	30	SW NE	1.0
1 N	43 E	WM	30	SE NE	4.9
<b>Total</b>					<b>8.2</b>

20. Certificate 93517 does not describe the location of the point of diversion. However, information is available from the Applicants indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

21. A total of 45.1 acre-feet of water may be beneficially used annually under this right.

22. The portion of the fifth right to be transferred is as follows:

**Certificate:** 93519 in the name of GIDEON WOLFE  
 (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 205)

**Use:** IRRIGATION OF 7.9 ACRES AND LIVESTOCK

**Priority Date:** 1883 FOR 1.3 ACRES and 1889 FOR 6.6 ACRES

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Place of Use:**

IRRIGATION						
Priority	Twp	Rng	Mer	Sec	Q-Q	Acres
1889	1 N	43 E	WM	31	NE NE	2.1
1883	1 N	43 E	WM	31	NE NE	1.3
1889	1 N	43 E	WM	31	NW NE	4.5
<b>Total</b>						<b>7.9</b>

23. Certificate 93519 does not describe the location of the point of diversion. However, information is available from the Applicants and Department records indicating the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER/MID VALLEY DITCH: 350 FEET SOUTH AND 800 FEET WEST FROM THE CENTER OF SECTION 4 (Latitude: 45.50716; Longitude: -117.45096)

24. An annual volume of 43.45 acre-feet (AF) of water; being 7.15 AF with a priority date of 1883 and 36.3 AF with a priority date of 1889, may be beneficially used under this right.

25. The portion of the sixth right to be transferred is as follows:

**Certificate:** 93523 in the name of ESTATE OF ADDISON L. TULLEY, JESSE E. TULLEY, ADMINSTRATOR (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 197)

**Use:** IRRIGATION OF 15.1 ACRES, DOMESTIC AND LIVESTOCK

**Priority Date:** 1900 FOR TRACT 3

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY HILL DITCH

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract	Priority
1 N	43 E	WM	19	NE SE	4.0	3	1900
1 N	43 E	WM	19	NW SE	10.3	3	1900
1 N	43 E	WM	19	SE SE	0.8	3	1900
<b>Total</b>					<b>15.1</b>		

26. Certificate 93523 does not describe the measured distances of the point of diversion. However, information is available from the Applicants and Department records indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY HILL DITCH – 1080 FEET NORTH AND 2559 FEET EAST FROM THE SW CORNER OF SECTION 29 (Latitude: 45.533175; Longitude: -117.469878)

27. An annual volume of 83.05 acre-feet of water may be beneficially used under this right.
28. The portion of the seventh right to be transferred is as follows:

**Certificate:** 93525 in the name of S.W. MILES  
(confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Pages 184-185)

**Use:** IRRIGATION OF 31.0 ACRES

**Priority Date:** 1882 for Tract 1 and 1896 for Tract 3

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Latitude/Longitude
1 S	43 E	WM	9	SE NE	POD 1: MILES DITCH; TRACT 1
1 S	43 E	WM	9	NE SE	POD 3: MILES MAGILL DITCH; TRACT 3

**Authorized Place of Use:**

TRACT 1 – PRIMARY IRRIGATION							
Priority	Twp	Rng	Mer	Sec	Q-Q	Acres	POD ID
1882	1 N	43 E	WM	32	SE SE	4.2	1
1882	1 S	43 E	WM	4	NW NW	3.3	
1882	1 S	43 E	WM	4	SW NW	2.7	1
1882	1 S	43 E	WM	4	NE SW	1.9	
1882	1 S	43 E	WM	4	NW SW	0.8	
1882	1 S	43 E	WM	4	SW SW	0.5	
1882	1 S	43 E	WM	4	SE SW	1.4	
1882	1 S	43 E	WM	5	NE NE	3.4	
1882	1 S	43 E	WM	5	SE NE	7.1	
1882	1 S	43 E	WM	5	NE SE	0.6	
1882	1 S	43 E	WM	9	NW NE	2.4	
<b>Total</b>						<b>28.3</b>	

TRACT 3 – PRIMARY IRRIGATION							
Priority	Twp	Rng	Mer	Sec	Q-Q	Acres	POD ID
1896	1 S	43 E	WM	9	NE NW	2.7	3

29. An annual volume of 170.5 acre-feet (AF) of water; being 155.65 AF with a priority date of 1882 and 14.85 AF with a priority date of 1896, may be beneficially used under this right.
30. Certificate 93525 does not describe the coordinates for the points of diversion. However, information is available from the Applicants and Department records indicating that the points of diversion is located are further described follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude/Longitude
1 S	43 E	WM	9	SE NE	POD 1: MILES DITCH; TRACT 1 Latitude: 45.494134; Longitude: -117.438922
1 S	43 E	WM	9	NE SE	POD 3: MILES MAGILL DITCH; TRACT 3 Latitude: 45.4920258487; Longitude: -117.4380355698

31. The portion of the eighth right to be transferred is as follows:

**Certificate:** 93527 in the name of C. J. ALLEN (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Pages 143-144)

**Use:** IRRIGATION OF 0.2 ACRE, DOMESTIC AND LIVESTOCK

**Priority Date:** 1889 for Tract 4

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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.

**Source:** LOSTINE RIVER (aka SOUTH FORK OF WALLOWA RIVER), a tributary of the WALLOWA RIVER

**Authorized Place of Use:**

TRACT 4 – PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	5	NW NE	0.2

32. Certificate 93527 does not describe the location of the point of diversion. However, information is available from the Applicants and Department records indicating the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER/MID VALLEY DITCH: 350 FEET SOUTH AND 800 FEET WEST FROM THE CENTER OF SECTION 4 (Latitude: 45.50716; Longitude: -117.45096)

33. A total of 1.1 acre-feet of water may be beneficially used annually under the existing right.

34. The portion of the ninth right to be transferred is as follows:

**Certificate:** 93531 in the name of WOLFE HEREFORD RANCH, WTK, INC.  
(confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 182)

**Use:** IRRIGATION OF 1.7 ACRES

**Priority Date:** 1881

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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, if available at the original point of diversions, or its equivalent in case of rotation, measured at the points of diversion from the source.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH: 1080 FEET NORTH AND 2559 FEET EAST FROM THE SW CORNER OF SECTION 29

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	29	NW NW	1.7

35. An annual volume of 9.35 acre-feet of water may be beneficially used under this right.



36. The portion of the tenth right to be transferred is as follows:

**Certificate:** 93533 in the name of WOLFE HEREFORD RANCH, WTK, INC. (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 200-202)

**Use:** IRRIGATION OF 1.0 ACRES, DOMESTIC AND STOCK

**Priority Date:** MARCH 27, 1901

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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, if available at the original point of diversion, or its equivalent in case of rotation, measured at the points of diversion from the source.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY HILL DITCH - 1080 FEET NORTH AND 2559 FEET EAST FROM THE SW CORNER OF SECTION 29

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	20	SW SW	1.0

37. An annual volume of 5.5 acre-feet of water may be beneficially used under this right.
38. Certificate 93533 contains a scrivener's error in the priority date. The certificate incorrectly lists the priority date as March 7, 1901. The priority date should be March 27, 1901.
39. The portion of the eleventh right to be transferred is as follows:

**Certificate:** 93536 in the name of WESTSIDE IRRIGATION AND WATER DITCH CO. (confirmed under the Wallowa River Decree, of record at Salem, in the Order of the State Water Board of the State of Oregon in Volume 5 at Page 200-202)

**Use:** IRRIGATION OF 1.2 ACRES, DOMESTIC AND LIVESTOCK

**Priority Date:** MARCH 27, 1901

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.5 acre-feet 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, if available at the original point of diversions, or its equivalent in case of rotation, measured at the points of diversion from the source.

**Source:** LOSTINE RIVER (aka SOUTH FORK WALLOWA RIVER), a tributary to the WALLOWA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NW SE	WESTSIDE DITCH: 152 FEET SOUTH AND 200 FEET EAST FROM THE CENTER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	31	NW SE	1.2

40. An annual volume of 6.6 acre-feet of water may be beneficially used under this right.

41. The portion of the twelfth right to be transferred is as follows:

**Certificate:** 11642 in the name of CROSS COUNTRY CANAL COMPANY (perfected under Permit S-11695)

**Use:** SUPPLEMENTAL IRRIGATION of 49.5 ACRES

**Priority Date:** JUNE 6, 1935

**Rate:** 1.24 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, shall not exceed 11/2 acre feet per acre during any thirty-day period from May 1 to July 31, and thereafter shall not exceed 1.0 acre foot per acre for the remainder of the irrigation season ending October 1, and the total quantity allowed under this and any other right for these lands described herein shall not at any time exceed the quantity of water allowed herein.

**Source:** WALLOWA RIVER, a tributary of GRANDE RONDE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	11	NW SE

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	29	NW SW	0.3
1 N	43 E	WM	30	NW NE	2.3
1 N	43 E	WM	30	SW NE	1.0
1 N	43 E	WM	30	SE NE	4.9
1 N	43 E	WM	30	NE SE	2.0
1 N	43 E	WM	30	NW SE	1.5
1 N	43 E	WM	30	SW SE	2.5
1 N	43 E	WM	30	SE SE	7.6
1 N	43 E	WM	31	NE NE	1.3
1 N	43 E	WM	32	SE SE	4.2
1 S	43 E	WM	4	NW NW	3.3
1 S	43 E	WM	4	SW NW	2.7
1 S	43 E	WM	4	NE SW	1.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	4	NW SW	0.8
1 S	43 E	WM	4	SW SW	0.5
1 S	43 E	WM	4	SE SW	1.4
1 S	43 E	WM	5	NE NE	3.4
1 S	43 E	WM	5	SE NE	7.1
1 S	43 E	WM	5	NE SE	0.6
1 S	43 E	WM	9	NW NE	0.2
Total					49.5

42. Certificate 11642 does not describe the exact location of the point of diversion. However, based on current mapping and information available from the Applicants and the Watermaster, the headgate for the Cross Country Ditch is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	11	SW SE	CROSS COUNTRY CANAL: 912 FEET NORTH AND 2000 FEET WEST FROM THE SE CORNER OF SECTION 11

43. Certificate 11642 is supplemental to the portions of Certificates 93513, 93515, 93517, and 93525 proposed to be transferred instream.
44. Transfer Application T-12853 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values for Certificates 62054, 93513, 93515, 93517, 93519, 93523, 93525, 93527, 93531, 93533, 93536, and 11642.
45. Transfer Application T-12853 proposes to change the character of use and places of use of the rights to create an instream reach from the PODs (as described in Findings of Fact Nos. 11, 14, 17, 20, 23, 26, 30, 32, 34, 36, 39, and 42) to the mouth of the Wallowa River.
46. The portion of the thirteenth right to be transferred is as follows:

**Certificate:** 81507 in the name of MINAM LAKE RESERVOIR COMPANY  
(perfected under Permit S-3271)

**Use:** SUPPLEMENTAL IRRIGATION of 78.8 ACRES

**Priority Date:** MAY 29, 1916

**Rate:** 0.42 CUBIC FOOT 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 ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigate during the irrigation season of each year.

**Source:** MINAM LAKE RESERVOIR, CONSTRUCTED UNDER PERMIT R-396, a tributary of MINAM LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	19	NE SE	4.0
1 N	43 E	WM	19	NW SE	10.3
1 N	43 E	WM	19	SE SE	0.8
1 N	43 E	WM	29	NW SW	0.3
1 N	43 E	WM	30	NW NE	2.3
1 N	43 E	WM	30	SW NE	1.0
1 N	43 E	WM	30	SE NE	4.9
1 N	43 E	WM	30	NE SE	2.0
1 N	43 E	WM	30	NW SE	1.5
1 N	43 E	WM	30	SW SE	2.5
1 N	43 E	WM	30	SE SE	7.6
1 N	43 E	WM	31	NE NE	4.7
1 N	43 E	WM	31	NW NE	4.5
1 N	43 E	WM	31	NW SE	1.2
1 N	43 E	WM	32	SE SE	4.2
1 S	43 E	WM	4	NW NW	3.3
1 S	43 E	WM	4	SW NW	2.7
1 S	43 E	WM	4	NE SW	1.9
1 S	43 E	WM	4	NW SW	0.8
1 S	43 E	WM	4	SW SW	0.5
1 S	43 E	WM	4	SE SW	1.4
1 S	43 E	WM	5	NE NE	3.4
1 S	43 E	WM	5	NW NE	0.2
1 S	43 E	WM	5	SE NE	7.1
1 S	43 E	WM	5	NE SE	0.6
1 S	43 E	WM	9	NW NE	2.4
1 S	43 E	WM	9	NE NW	2.7
Total					78.8

47. Transfer Application T-12853 proposes to change the place of use of Certificate 81507 to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	20	SW SW	5.9
1 N	43 E	WM	29	NW NW	23.2
1 N	43 E	WM	29	SW NW	37.8
1 N	43 E	WM	29	SE NW	8.8
1 N	43 E	WM	29	NW SW	3.1
Total					78.8

48. Certificates 11642, 62054, 81507, 93513, 93515, 93517, 93519, 93523, 93525, 93527, 93531, 93533, and 93536 do not list a period of use. Pursuant to Wallowa River Decree, the irrigation season of use is May 1 to October 1.
49. Transfer Application T-12853 proposes to change the place of use of the right to create an instream reach from the authorized points of diversion to the mouth of the Wallowa River at the confluence with the Grande Ronde River.

50. The Applicants propose the following quantities of water to be transferred instream to be protected as follows:

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
		5/3 – 7/31	5/3 – 7/31	8/1 – 9/30	8/1 – 9/30	
93513	1883	0.350	62.6	0.115	13.9	May 3 through September 30
93515	May, 1897	0.033	5.9	0.011	1.3	
93517	1883	0.207	36.9	0.068	8.2	
93519	1883	0.033	5.9	0.011	1.3	
93519	1889	0.166	29.7	0.055	6.6	
93523	1900	0.381	68.0	0.125	15.1	
93525	1882	0.713	127.4	0.234	28.3	
93525	1896	0.068	12.2	0.022	2.7	
93527	1889	0.005	0.9	0.002	0.2	
93531	1881	0.043	7.7	0.014	1.7	
93533	3/27/1901	0.025	4.5	0.008	1.0	
93536	3/27/1901	0.030	5.4	0.010	1.2	
11642(IS)	6/6/1935	1.238	222.8	0.041	49.5	
62054	10/30/1979	0.240	43.4	0.240	29.4	
Totals		3.532	633.3	0.956	160.4	

51. The Applicants propose that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The Applicants also propose any instream water right established as a result of this instream transfer replace a portion of any existing instream rights establishes pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with an earlier priority date.

***Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)***

52. Water has been used within the last five years according to the terms and condition of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
53. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
54. A portion of the water diverted at the points of diversion returns to the Lostine and Wallowa Rivers 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 each point of diversion. The reduction in the instream water rights from the original quantities identified in Finding of Fact No. 50 is as follows:

Reach	Percent
From immediately below each of the points of diversion to the Clearwater Ditch Point of Diversion located in the SWSW Section 33, T1N, R43E, W.M.	2%
From the Clearwater Ditch Point of Diversion to the Mouth of the Lostine River at the confluence with the Wallowa River	10%
In the Wallowa River from the confluence with the Lostine River (approx. RM 25.9) at Latitude: 45.552227, Longitude: -117.490133 to the Wallowa River (approx. RM 25.6) at Latitude: 45.55639, Longitude: -117.49803	40%
From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa (approx. RM 23.8)	60%
From the Wallowa River at Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River at the confluence with the Grande Ronde River	70%

OAR 690-077-0015(8).

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

**LOSTINE RIVER, tributary to the Wallowa River**

**Instream Point No. 1:**

At the Westside Ditch Point of Diversion (POD), described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NW SE	WESTSIDE DITCH: 152 FEET SOUTH AND 200 FEET EAST FROM THE CENTER OF SECTION 27

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.030	0.010	5.40	1.20	May 3 through September 30

**Instream Reach No. 1:**

From immediately below the Westside Ditch POD to Miles-Magill Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30

To: Miles-Magill Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	NE SE	MILES - MAGILL DITCH: Latitude: 45.4920258487; Longitude: -117.4380355698

**Instream Point No. 2:**

At the Miles-Magill Ditch POD:

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.068	0.022	12.20	2.70	
Total		0.097	0.032	17.49	3.88	

**Instream Reach No. 2:**

Immediately below the Miles-Magill Ditch POD to the Miles Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
Total		0.096	0.032	17.25	3.83	

To: The Miles Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	SE NE	MILES DITCH: Latitude: 45.494134; Longitude: -117.438922

**Instream Point No. 3:**

At the Miles Ditch POD (described in Reach No. 2 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.713	0.234	127.40	28.30	
Total		0.809	0.266	144.65	32.13	

**Instream Reach No. 3:**

From: Immediately below the Miles Ditch POD to the Foster/Mid-Valley Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
Total		0.795	0.261	142.10	31.56	

To: Foster/Mid-Valley Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER/MID-VALLEY DITCH - 350 FEET SOUTH AND 800 FEET WEST FROM THE CENTER OF SECTION 4 (Latitude: 45.50716; Longitude: -117.45096)

**Instream Point No. 4:**

At Foster/Mid-Valley POD (described in Reach No. 3 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.166	0.055	29.70	6.60	
93519	1883	0.033	0.011	5.90	1.30	
93527	1889	0.005	0.002	0.90	0.20	
	Total	0.999	0.329	178.60	39.66	

**Instream Reach No. 4:**

From: Immediately below the Foster/Mid-Valley Ditch POD to the Clearwater Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.163	0.054	29.11	6.47	
93519	1883	0.032	0.011	5.78	1.27	
93527	1889	0.005	0.002	0.88	0.20	
	Total	0.995	0.328	177.87	39.50	

To: The Clearwater Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

**Instream Point No. 5:**

At the Clearwater Ditch POD (described in Reach No. 4 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.163	0.054	29.11	6.47	
93519	1883	0.032	0.011	5.78	1.27	
93527	1889	0.005	0.002	0.88	0.20	
93513	1883	0.350	0.115	62.60	13.90	
93515	May 1897	0.033	0.011	5.90	1.30	
93517	1883	0.207	0.068	36.90	8.20	
	Total	1.585	0.522	283.27	62.90	



**Instream Reach No. 5:**

From: Immediately below the Clearwater Ditch POD to the Tulley-Hill Ditch POD  
(described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
Total		1.445	0.477	258.21	57.33	

To: The Tulley-Hill Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH: 1080 FEET NORTH AND 2559 FEET EAST FROM THE SW CORNER OF SECTION 29 (Latitude: 45.533175; Longitude: -117.469878)

**Instream Point No. 6:**

At the Tulley-Hill POD (described in Reach No. 5 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
93523	1900	0.381	0.125	68.00	15.10	
93531	1881	0.043	0.014	7.70	1.70	
93533	3/27/1901	0.025	0.008	4.50	1.00	
Total		1.894	0.624	338.41	75.13	

**Instream Reach No. 6:**

From: Immediately below the Tulley-Hill POD to the mouth of the Lostine River (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
93523	1900	0.343	0.113	61.20	13.59	
93531	1881	0.039	0.013	6.93	1.53	
93533	3/27/1901	0.023	0.007	4.05	0.90	
Total		1.850	0.610	330.39	73.35	

To: The mouth of the Lostine River at RM 0.00 at the Confluence with the Wallowa River (approx. RM 25.9), located within the NWSE of Sec. 19, T1N, R43E, W.M. (Latitude: 45.5522272; Longitude: -117.490133)

**WALLOWA RIVER, tributary to the Grande Ronde River**

**Instream Reach No. 7:**

From the authorized POD for Certificate 11642 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	11	SW SE	CROSS COUNTRY CANAL: 912 FEET NORTH AND 2000 FEET WEST FROM THE SE CORNER OF SECTION 11

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	1.238	0.041	222.8	49.5	May 3 through September 30

To: The authorized POD for Certificate 62054 (as described below):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	19	SE NE	3200 FEET NORTH AND 920 FEET WEST FROM THE SE CORNER OF SECTION 19

**Instream Reach No. 8:**

At the authorized POD for Certificate 62054 to the confluence of the Lostine River (as described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	1.238	0.041	222.8	49.5	May 3 through September 30
62054	10/30/1979	0.240	0.240	43.40	29.40	
Total		1.478	0.281	266.2	78.90	

To: The confluence with the Lostine River in the NWSE of Sec. 19, T1N, R43E, WM (approx. RM 25.9) at Latitude: 45.552227, Longitude: -117.490133

**Instream Reach No. 9:**

From the mouth of the Lostine River (approx. RM 25.9) (as described in Reach No. 6):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.743	0.025	133.68	29.70	May 3 through September 30
62054	10/30/1979	0.144	0.144	26.04	17.64	
93536	3/27/1901	0.018	0.006	3.24	0.72	
93525	1896	0.041	0.013	7.32	1.62	
93525	1882	0.428	0.140	76.44	16.98	
93519	1889	0.100	0.033	17.82	3.96	
93519	1883	0.020	0.007	3.54	0.78	
93527	1889	0.003	0.001	0.54	0.12	
93513	1883	0.210	0.069	37.56	8.34	
93515	May 1897	0.020	0.007	3.54	0.78	
93517	1883	0.124	0.041	22.14	4.92	
93523	1900	0.229	0.075	40.80	9.06	
93531	1881	0.026	0.008	4.62	1.02	
93533	3/27/1901	0.015	0.005	2.70	0.60	
Total		2.121	0.574	379.98	96.24	

To: A location in the NWNW of Sec. 19, T1N, R43E, W.M. (approx. RM 26.4) at Latitude: 45.55639, Longitude: -117.48803.

**Instream Reach No. 10:**

From the location in NWNW of Sec. 19, T1N, R43E, W.M. (approx. RM 26.4) (as described in Reach No. 9):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.495	0.016	89.12	19.80	May 3 through September 30
62054	10/30/1979	0.096	0.096	17.36	11.76	
93536	3/27/1901	0.012	0.004	2.16	0.48	
93525	1896	0.027	0.009	4.88	1.08	
93525	1882	0.285	0.094	50.96	11.32	
93519	1889	0.066	0.022	11.88	2.64	

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93519	1883	0.013	0.004	2.36	0.52	May 3 through September 30
93527	1889	0.002	0.001	0.36	0.08	
93513	1883	0.140	0.046	25.04	5.56	
93515	May 1897	0.013	0.004	2.36	0.52	
93517	1883	0.083	0.027	14.76	3.28	
93523	1900	0.152	0.050	27.20	6.04	
93531	1881	0.017	0.006	3.08	0.68	
93533	3/27/1901	0.010	0.003	1.80	0.40	
	Total	1.411	0.382	253.32	64.16	

To: The location in the SESE of Sec. 11, T1N, R43E, WM (approx. RM 23.75) at Latitude: 45.57406, Longitude: -117.52571

**Instream Reach No. 11:**

From the location in the SESE of Sec. 11, T1N, R42E, WM (at approx. RM 23.75) at Latitude: 45.57406, Longitude: -117.52571

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.371	0.012	66.84	14.85	May 3 through September 30
62054	10/30/1979	0.072	0.072	13.02	8.82	
93536	3/27/1901	0.009	0.003	1.62	0.36	
93525	1896	0.020	0.007	3.66	0.81	
93525	1882	0.214	0.070	38.22	8.49	
93519	1889	0.050	0.017	8.91	1.98	
93519	1883	0.010	0.003	1.77	0.39	
93527	1889	0.002	0.001	0.27	0.06	
93513	1883	0.105	0.035	18.78	4.17	
93515	May 1897	0.010	0.003	1.77	0.39	
93517	1883	0.062	0.020	11.07	2.46	
93523	1900	0.114	0.038	20.40	4.53	
93531	1881	0.013	0.004	2.31	0.51	
93533	3/27/1901	0.008	0.002	1.35	0.30	
	Total	1.060	0.287	189.99	48.12	

To: The mouth of the Wallowa River (RM 0.0) at the confluence with the Grande Ronde River (approx. RM 100.0) located within the SWNW of Sec. 23, R3N, R40E, WM.

56. Transfer application requests to protect water instream from the Lostine River into the Wallowa River. An instream reach is generally from the point of diversion to the mouth of the source stream (Lostine), but may be protected further if measurable in the receiving stream (Wallowa) (OAR 690-077-0015(8)). The quantity of water that may be transferred instream in the Lostine River is measurable into the Wallowa River and may be protected instream in the Wallowa River.

57. Certificate 11642 is supplemental to Certificates 93513, 93515, 93517, and 93525. The portion of Certificate 11642 being transferred instream shall only be protected instream if the full rate and duty under Certificates 93513, 93515, 93517, and 93525 is not available.
58. The proposed changes would not result in enlargement of the right.
59. The proposed changes would not result in injury to other water rights.
60. The amount of the proposed instream flow and the timing of the proposed instream flow are allowable within the limits and use of the original water right.
61. The protection of flows within the proposed reaches is appropriate, considering:
  - a) The instream water right 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) Return flow resulting from the exercise of the existing water rights would re-enter the river within the reaches of the instream water rights below the points of diversions. The quantity of water to be protected has been reduced to account for return flows.
62. Within the proposed reaches there are several existing instream water rights for the same reaches as that proposed for the new instream water right. One existing instream water right, Certificate 59814 on the Lostine River, established under ORS 537.346 (minimum streamflow conversion) for the purposes of supporting aquatic life and carries a priority date of November 3, 1983. There is an instream water right, Certificate 73023 on the Wallowa River, established under ORS 537.341 (state agency application process) for the purposes of anadromous and resident fish habitat and carries a priority date of November 22, 1991. The remaining instream water rights, Certificates 87709, 59808, and 93535, were established under ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process).
63. The existing instream water rights, established under ORS 537.346 (minimum stream flow conversion, and ORS 537.341 (state agency application process), within the proposed reaches are sufficient to protect the monthly quantities of water necessary for support aquatic life and anadromous and resident fish habitat. By replacing a portion of these instream water rights, any instream water right created as a result of this transfer will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.
64. By adding to other instream water rights, established pursuant to ORS 537.348 (instream transfer process and instream lease) and ORS 537.470 (allocation of conserved water process) within the proposed reaches, and new instream water right established by the transfer 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.

65. During the period of May 3 through September 30, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346, and may be in addition to instream water rights established pursuant to ORS 537.348 and ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
66. 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 and do not exceed the estimated average natural flow.

### **Determination and Proposed Action**

The proposed changes in place of use and changes in character of use to instream use proposed in application T-12853 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

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

1. *The changes in character of use and place of use to instream use proposed in application T-12853 are approved.*
2. *The change in place of use of Certificate 81507 proposed in application T-12853 is approved.*
3. *The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 11642, 62054, 81507, 93513, 93515, 93517, 93519, 93523, 93525, 93527, 93531, 93533, and 93536 and any related decree.*
4. *Certificates 11642, 62054, 93513, 93515, 93517, 93519, 93523, 93525, 93527, 93531, 93533, and 93536 are cancelled and a new instream water right for the portion of the right transferred to instream use shall be issued. New certificates for the remaining portions of the rights not modified by this transfer shall also be issued. Certificate 81507 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
5. *The instream water right shall provide for the protection of streamflows from the points of diversion, as described in Findings of Fact Nos. 11, 14, 17, 20, 23, 26, 30, 32, 34, 36, 39, and 42, to the mouth of the Wallowa River.*

6. The quantity of water to be protected under the instream water right is:

**LOSTINE RIVER, tributary to the Wallowa River**

**Instream Point No. 1:**

At the Westside Ditch Point of Diversion (POD) as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NW SE	WESTSIDE DITCH: 152 FEET SOUTH AND 200 FEET EAST FROM THE CENTER OF SECTION 27

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.030	0.010	5.40	1.20	May 3 through September 30

**Instream Reach No. 1:**

From immediately below the Westside Ditch POD to Miles-Magill Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30

To: Miles-Magill Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	NE SE	MILES - MAGILL DITCH: Latitude: 45.4920258487; Longitude: -117.4380355698

**Instream Point No. 2:**

At the Miles-Magill Ditch POD:

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.068	0.022	12.20	2.70	
Total		0.097	0.032	17.49	3.88	

**Instream Reach No. 2:**

Immediately below the Miles-Magill Ditch POD to the Miles Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
Total		0.096	0.032	17.25	3.83	

To: The Miles Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	SE NE	MILES DITCH: Latitude: 45.494134; Longitude: -117.438922

**Instream Point No. 3:**

At the Miles Ditch POD (described in Reach No. 2 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.713	0.234	127.40	28.30	
	<i>Total</i>	0.809	0.266	144.65	32.13	

**Instream Reach No. 3:**

From: Immediately below the Miles Ditch POD to the Foster/Mid-Valley Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
	<i>Total</i>	0.795	0.261	142.10	31.56	

To: Foster/Mid-Valley Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER/MID-VALLEY DITCH - 350 FEET SOUTH AND 800 FEET WEST FROM THE CENTER OF SECTION 4 (Latitude: 45.50716; Longitude: -117.45096)

**Instream Point No. 4:**

At Foster/Mid-Valley POD (described in Reach No. 3 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.166	0.055	29.70	6.60	
93519	1883	0.033	0.011	5.90	1.30	
93527	1889	0.005	0.002	0.90	0.20	
	<i>Total</i>	0.999	0.329	178.60	39.66	

**Instream Reach No. 4:**

From: Immediately below the Foster/Mid-Valley Ditch POD to the Clearwater Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.163	0.054	29.11	6.47	
93519	1883	0.032	0.011	5.78	1.27	
93527	1889	0.005	0.002	0.88	0.20	
	<i>Total</i>	0.995	0.328	177.87	39.50	



To: The Clearwater Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

**Instream Point No. 5:**

At the Clearwater Ditch POD (described in Reach No. 4 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.029	0.010	5.29	1.18	May 3 through September 30
93525	1896	0.067	0.022	11.96	2.65	
93525	1882	0.699	0.229	124.85	27.73	
93519	1889	0.163	0.054	29.11	6.47	
93519	1883	0.032	0.011	5.78	1.27	
93527	1889	0.005	0.002	0.88	0.20	
93513	1883	0.350	0.115	62.60	13.90	
93515	May 1897	0.033	0.011	5.90	1.30	
93517	1883	0.207	0.068	36.90	8.20	
	Total	1.585	0.522	283.27	62.90	

**Instream Reach No. 5:**

From: Immediately below the Clearwater Ditch POD to the Tulley-Hill Ditch POD (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
	Total	1.445	0.477	258.21	57.33	

To: The Tulley-Hill Ditch POD:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH: 1080 FEET NORTH AND 2559 FEET EAST FROM THE SW CORNER OF SECTION 29 (Latitude: 45.533175; Longitude: -117.469878)

**Instream Point No. 6:**

At the Tulley-Hill POD (described in Reach No. 5 above):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
93523	1900	0.381	0.125	68.00	15.10	
93531	1881	0.043	0.014	7.70	1.70	
93533	3/27/1901	0.025	0.008	4.50	1.00	
	<b>Total</b>	<b>1.894</b>	<b>0.624</b>	<b>338.41</b>	<b>75.13</b>	

**Instream Reach No. 6:**

From: Immediately below the Tulley-Hill POD to the mouth of the Lostine River (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
93536	3/27/1901	0.027	0.009	4.86	1.08	May 3 through September 30
93525	1896	0.061	0.020	10.98	2.43	
93525	1882	0.642	0.211	114.66	25.47	
93519	1889	0.149	0.050	26.73	5.94	
93519	1883	0.030	0.010	5.31	1.17	
93527	1889	0.005	0.002	0.81	0.18	
93513	1883	0.315	0.104	56.34	12.51	
93515	May 1897	0.030	0.010	5.31	1.17	
93517	1883	0.186	0.061	33.21	7.38	
93523	1900	0.343	0.113	61.20	13.59	
93531	1881	0.039	0.013	6.93	1.53	
93533	3/27/1901	0.023	0.007	4.05	0.90	
	<b>Total</b>	<b>1.850</b>	<b>0.610</b>	<b>330.39</b>	<b>73.35</b>	

To: The mouth of the Lostine River at RM 0.00 at the Confluence with the Wallowa River (approx. RM 25.9), located within the NWSE of Sec. 19, T1N, R43E, W.M. (Latitude: 45.5522272; Longitude: -117.490133)

**WALLOWA RIVER, tributary to the Grande Ronde River**

**Instream Reach No. 7:**

From the authorized POD for Certificate 11642, as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	11	SW SE	CROSS COUNTRY CANAL: 912 FEET NORTH AND 2000 FEET WEST FROM THE SE CORNER OF SECTION 11

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642	6/6/1935	1.238	0.041	222.8	49.5	May 3 through September 30

To: the authorized POD for Certificate 62054 (described below):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	19	SE NE	3200 FEET NORTH AND 920 FEET WEST FROM THE SE CORNER OF SECTION 19

**Instream Reach No. 8:**

At the authorized POD for Certificate 62054 to the confluence of the Lostine River (described below):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	1.238	0.041	222.8	49.5	May 3 through September 30
62054	10/30/1979	0.240	0.240	43.40	29.40	
Total		1.478	0.281	266.2	78.90	

To: The confluence with the Lostine River in the NWSE of Sec. 19, T1N, R43E, WM (approx. RM 25.9) at Latitude: 45.552227, Longitude: -117.490133

**Instream Reach No. 9:**

From the mouth of the Lostine River (approx. RM 25.9) (described in Reach No.8):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.743	0.025	133.68	29.70	May 3 through September 30
62054	10/30/1979	0.144	0.144	26.04	17.64	
93536	3/27/1901	0.018	0.006	3.24	0.72	
93525	1896	0.041	0.013	7.32	1.62	
93525	1882	0.428	0.140	76.44	16.98	
93519	1889	0.100	0.033	17.82	3.96	
93519	1883	0.020	0.007	3.54	0.78	
93527	1889	0.003	0.001	0.54	0.12	
93513	1883	0.210	0.069	37.56	8.34	
93515	May 1897	0.020	0.007	3.54	0.78	
93517	1883	0.124	0.041	22.14	4.92	
93523	1900	0.229	0.075	40.80	9.06	
93531	1881	0.026	0.008	4.62	1.02	
93533	3/27/1901	0.015	0.005	2.70	0.60	
Total		2.121	0.574	379.98	96.24	

To: A location in the NWNW of Sec. 19, T1N, R43E, W.M. (approx. RM 26.4) at Latitude: 45.55639, Longitude: -117.48803.

**Instream Reach No. 10:**

From the location in NWNW of Sec. 19, T1N, R43E, W.M. (approx. RM 26.4) (as described in Reach No. 9):

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.495	0.016	89.12	19.80	May 3 through September 30
62054	10/30/1979	0.096	0.096	17.36	11.76	
93536	3/27/1901	0.012	0.004	2.16	0.48	
93525	1896	0.027	0.009	4.88	1.08	
93525	1882	0.285	0.094	50.96	11.32	
93519	1889	0.066	0.022	11.88	2.64	
93519	1883	0.013	0.004	2.36	0.52	
93527	1889	0.002	0.001	0.36	0.08	
93513	1883	0.140	0.046	25.04	5.56	
93515	May 1897	0.013	0.004	2.36	0.52	
93517	1883	0.083	0.027	14.76	3.28	
93523	1900	0.152	0.050	27.20	6.04	
93531	1881	0.017	0.006	3.08	0.68	
93533	3/27/1901	0.010	0.003	1.80	0.40	
Total		1.411	0.382	253.32	64.16	

To: The location in the SESE of Sec. 11, T1N, R43E, WM (approx. RM 23.75) at Latitude: 45.57406, Longitude: -117.52571

**Instream Reach No. 11:**

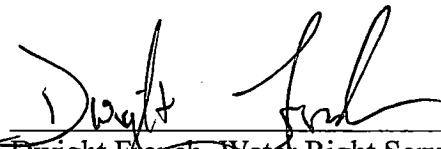
From the location in the SESE of Sec. 11, T1N, R42E, WM (approx. RM 23.75) at Latitude: 45.57406, Longitude: -117.52571

Certificate	Priority	Instream Rate (CFS)		Instream Volume (AF)		Period Protected
		5/3 - 7/31	8/1 - 9/30	5/3 - 7/31	8/1 - 9/30	
11642 (IS)	6/6/1935	0.371	0.012	66.84	14.85	May 3 through September 30
62054	10/30/1979	0.072	0.072	13.02	8.82	
93536	3/27/1901	0.009	0.003	1.62	0.36	
93525	1896	0.020	0.007	3.66	0.81	
93525	1882	0.214	0.070	38.22	8.49	
93519	1889	0.050	0.017	8.91	1.98	
93519	1883	0.010	0.003	1.77	0.39	
93527	1889	0.002	0.001	0.27	0.06	
93513	1883	0.105	0.035	18.78	4.17	
93515	May 1897	0.010	0.003	1.77	0.39	
93517	1883	0.062	0.020	11.07	2.46	
93523	1900	0.114	0.038	20.40	4.53	
93531	1881	0.013	0.004	2.31	0.51	
93533	3/27/1901	0.008	0.002	1.35	0.30	
Total		1.060	0.287	189.99	48.12	

To: The mouth of the Wallowa River (RM 0.0) at the confluence with the Grande Ronde River (approx. RM 100.0) located within the SWNW of Sec. 23, R3N, R40E, WM.

7. *Water rights upstream of the original points 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 points of diversion.*
8. *Within the specified stream reaches, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original points of diversion.*
9. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by an order approving a new instream water right under these statutes.*
10. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install a Parshall flume, or with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).*
  - 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 device(s); provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
11. *The former places of use of the transferred water shall no longer receive water as part of these rights.*
12. *Full beneficial use of water shall be made, consistent with the terms of this order, on or before October 1, 2020. A Claim of Beneficial Use prepared by a Certified Water Right examiner shall be submitted by the Applicant to the Department within one year after the deadline for completion of the change in Certificate 81507 and full beneficial use of water.*
13. *After satisfactory proof of beneficial use is received for Certificate 81507, a new certificate confirming the right transferred will be issued in the name of Minam Lake Reservoir Company.*

Dated at Salem, Oregon, OCT 29 2018.



Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at (503) 986-0881 or [teri.k.hranac@oregon.gov](mailto:teri.k.hranac@oregon.gov).

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 29, 2018

VIA E-MAIL

### Applicant

WOODY and MEGAN WOLFE

81544 HWY 82

WALLOWA, OR 97885

SUBJECT: Water Right Transfer Application T-12853

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12853. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Wallowa County Chieftain newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0881 or [Teri.K.Hranac@wrd.state.or.us](mailto:Teri.K.Hranac@wrd.state.or.us) if I may be of assistance.

Sincerely,

Teri Hranac

Transfer and Conservation Section

Enclosures

cc: T-12853

David D. Bates, District 7 Watermaster (*via e-mail*)

The Freshwater Trust, Agent for the applicant (*via e-mail*)

Westside Irrigation & Water Ditch Co.

Clearwater Ditch Co.

Minam Reservoir Company