

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

In the Matter of Allocation of Conserved Water Application CW-111, Wallowa County) PRELIMINARY DETERMINATION) PROPOSING APPROVAL OF ALLOCATION OF CONSERVED WATER CW-111; and) APPROVING AN ADDITIONAL POINT OF DIVERSION AND CHANGES IN PLACES OF USE)

Applicants
Ken and Bobbie Baker
81705 Hwy 82
Wallowa, OR 97885

Applicant
Perry Johnston
81703 Hwy 82
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.

Pursuant to OAR 690-018-0050, any person objecting to the proposed allocation may file a protest to this Preliminary Determination with the Water Resources Commission within 60 days of the mailing of this determination.

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, 2019, Ken and Bobbie Baker and Perry Johnston filed an allocation of conserved water application under Certificates 3153, 94327, and 94163. In addition, the Applicants requested an additional point of diversion under Certificate 94163, and to change the place of use for a portion of Certificates 3153 and 94327. The Department assigned the application number CW-111.
2. The conservation project involves converting from flood irrigation to high efficiency pivot irrigation and piping the supply ditches bypassing a portion of open earthen ditches. The conversion of flood irrigation to sprinkler irrigation and piping ditches are proven technologies for conserving water.
3. On May 2, May 17, and May 22, 2019, the Applicants amended the application and maps to correct scrivener’s errors.
4. Application CW-111 proposes a rate reduction of approximately 1.98 cubic feet per second (cfs) and proposes to reduce the annual volume by 353.4 acre-feet (AF). The conservation project proposes to affect the rate and duty of the Certificates during the period of May 1 through July 31.

Conserved Water Description										
Certificate	Certificate				Needed				Conserved Water	
	Rate		Duty		Rate		Duty		Rate	Duty
	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Maximum CFS	Maximum AF
3153	1.85	1/40	337.95	4.5	1.23	1/61	225.30	3.0	0.62	112.65
94327	2.21	1/40	403.65	4.5	1.47	1/61	269.10	3.0	0.74	134.55
94163	1.75	1/40	318.60	4.5	1.16	1/61	212.40	3.0	0.58*	106.20
Totals	5.81		1060.20		3.86		706.80		1.94	353.40

* - Actual calculations may be slightly different due to rounding

5. The portion of the first right to be modified by CW-111 is as follows:

Certificate: 3153 in the name of WILLIAM SHEROD, confirmed by the Wallowa River Decree

Use: IRRIGATION of 75.1 ACRES, DOMESTIC AND STOCK USE

Priority Date: 1883

Rate: Not listed in decree

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; and said right shall be subject to all other conditions and limitations contained in said decree.

Source: South Fork of Wallowa River (aka Lostine River), tributary to the Wallowa River

Authorized Point of Diversion: Not listed on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	29	SW SW	7000	14.4
1 N	43 E	WM	29	SE SW	7000	3.0
1 N	43 E	WM	32	NW NW	7000	21.5
1 N	43 E	WM	32	NE NW	7000	35.0
1 N	43 E	WM	32	NW NE	7000	1.2
Total						75.1

6. Certificate 3153 does not list the point of diversion. Information from the decree, other water rights, and the Watermaster indicate the authorized point of diversion for Certificate 3153 is 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

7. The applicants propose to change the place of use of a portion of the lands under Certificate 3153 (Finding of Fact #5) to accommodate pivot irrigation as follows:

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Modified Acres	Not Modified Acres
1 N	43 E	WM	29	SW SW	7000	1.0	13.4
1 N	43 E	WM	29	SE SW	7000	0.8	2.2
1 N	43 E	WM	32	NW NW	7000	0.1	21.4
1 N	43 E	WM	32	NE NW	7000	0.6	34.4
1 N	43 E	WM	32	NW NE	7000	0.8	0.4
Total						3.3	71.8

8. The Applicants propose to change the place of use of Certificate 3153 to the following:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	29	SW SW	7000	1.0
1 N	43 E	WM	32	NE NW	7000	2.1
1 N	43 E	WM	32	NW NE	7000	0.2
Total						3.3

9. The portion of second right to be modified by CW-111 is as follows:

Certificate: 94327 in the names of KENNETH M. and BOBBIE LOU BAKER, confirmed by the Wallowa River Decree

Use: IRRIGATION of 89.7 ACRES and STOCK

Priority Date: 1883

Rate: Not listed in decree

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; and said right shall be subject to all other conditions and limitations contained in said decree.

Source: Lostine River, tributary to the Wallowa River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	SW NE	8600	39.7
1 N	43 E	WM	32	SE NE	8600	16.0
1 N	43 E	WM	32	NE SE	8600	34.0
Total						89.7

10. The applicants propose to change the place of use of a portion of the lands under Certificate 94327 (Finding of Fact #9) to accommodate pivot irrigation as follows:

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Modified Acres	Not Modified Acres
1 N	43 E	WM	32	SW NE	8600	—	39.7
1 N	43 E	WM	32	SW NE	8600	2.3	13.7
1 N	43 E	WM	32	NE SE	8600	4.9	29.1
Total						7.2	82.5

11. The Applicants propose to change the place of use of Certificate 94327 to the following:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	SE NE	8600	4.6
1 N	43 E	WM	32	NE SE	8600	2.6
Total						7.2

12. The portion of third right to be modified by CW-111 is as follows:

Certificate: 94163 in the name of S.W. MILES, confirmed by the Wallowa River Decree
Use: IRRIGATION of 70.8 ACRES, DOMESTIC AND LIVESTOCK
Priority Date: 1882 (Tract 1)
Rate: Not listed in decree
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used for said purposes, 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; and said right shall be subject to all other conditions and limitations contained in said decree.

Source: Lostine River, tributary to the Wallowa River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	SE NE	POD 1: MILES DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	NW SE	8600	36.0
1 N	43 E	WM	32	SW SE	8600	34.8
Total						70.8

13. Certificate 94163 does not list the measured distances for the point of diversion. However, information is available from the Department's records and the Watermaster indicating the Miles Ditch point of diversion is located as follows:

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

14. The Applicant's propose an additional point of diversion for Certificate 94163 approximately 1.2 miles downstream from the Miles Ditch as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096

15. Certificates 3153, 94327, and 94163 do not list a period of use. Pursuant to Wallowa River Decree, the irrigation season of use is May 1 to October 1.

16. The Applicants request that the conserved water for the season of May 1 through July 31 be allocated as follows:

		Conserved Water Description								
		State's Portion			Applicant's Portion			Conserved Water		
Certificate	Priority	Percentage	Max. Rate (CFS)	Max. Duty (Volume) AF	Percentage	Max. Rate (CFS)	Max. Duty (Volume) AF	Percentage	Max. Rate (CFS)	Maximum Volume (AF)
3153	1883	100%	0.62	112.65	0%	0.00	0.00	100%	0.62	112.65
94327	1883	100%	0.74	134.55	0%	0.00	0.00	100%	0.74	134.55
94163	1882	100%	0.58	106.20	0%	0.00	0.00	100%	0.58	106.20
			1.94	353.40		0.00	0.00		1.94	353.40

17. The Applicants requests 100% of the conserved water be dedicated to instream use. Therefore, there is no location proposed for out-of-stream use of the conserved water.
18. The Applicants requests that the priority date for any conserved water be the same as the originating right.
19. The Applicant received non-reimbursable State funds for the conservation project. The Applicants propose an allocation to the State of 100% of the combined total of conserved water from all certificates involved in the conservation measure.
20. The Applicants submitted a completed Land Use Form from Wallowa County which indicated the proposed use was allowed outright or is not regulated by Wallowa County's comprehensive plan.
21. The implementation of the conservation measures had not begun prior to the submission of the application.
22. The Applicants propose any instream water right created be for the purposes of conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
23. The Applicants requested the Department protect the new instream water right created from the conserved water under the certificates in the Lostine River from the Foster Ditch to the mouth of the Lostine River and into the Wallowa River to the mouth of the Wallowa River at its confluence with the Grande Ronde River.
24. The Applicants requested the deadline for submitting the Notice of Completion of November 30, 2019. The Applicant will submit a Request for Finalization on or before finalization of the allocation on or before December 1, 2019.
25. The application meets the requirements of OAR 690-018-0040.
26. The Department has consulted with the Oregon Department of Fish and Wildlife (ODFW) to ascertain whether the proposed instream flows are necessary to support instream flow uses.

The ODFW asserted the Lostine River spring Chinook and bull trout populations are limited by water availability annually which is listed in the recovery plans as the primary limitation factor for these species. The proposed reach is in a high priority area for streamflow restoration.

27. Notice of the proposed conservation project was published in the Department's weekly notice on May 28, 2019, and in the Wallowa Chieftain newspaper on May 29, and June 5, 2019, as required under OAR 690-018-0050(1)(a) and (2). No comments were filed in response to the notices.

Allocation of Conserved Water Review Criteria [OAR 690-018-0050]

28. Water has been used within the five-year period prior to submission of the allocation of conserved water application, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
29. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of the application.
30. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing right pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #4).
31. On May 16, 2019, the District #7 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project could harm other water rights through the loss of return flows. The return flows reappear downstream from the points of diversion in the Lostine River and also the Wallowa River, where they are relied upon by other users. There are no formal studies on the total quantity of return flows for this area; however, based on the best available measurements and information, the instream water rights will be adjusted to mitigate for the loss of return flows in the appropriate reaches. Therefore, no additional quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).

The Watermaster has stated the Applicants have been utilizing the proposed additional point of diversion on the Foster Ditch for delivery of water to lands under Certificate 94163. Therefore, the Watermaster has determined to prevent injury, the instream water right for Certificate 94163 should begin at the proposed point of diversion on the Foster Ditch.

32. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. (Finding of Fact #20). OAR 690-018-0050(4)(c).

33. Pursuant to OAR 690-018-0050(4)(e), the new reduced rate and duty for the existing uses involved in Allocation of Conserved Water Application CW-111 under Certificates 3153, 94327, and 94163 are as follows:

Certificate	Rate		Duty		Acreage	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC	Acres	Inchoate Acres
3153	1.23	1/58	225.3	3.0	71.8	3.3
94327	1.47	1/58	269.1	3.0	82.5	7.2
94163	1.16	1/58	212.4	3.0	--	70.8
	3.86		706.8			

(Finding of Fact #4).

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

Certificate	Priority	Max. Rate (cfs)	Max. Duty (Volume) AF
94163	1883	0.62	112.65
94327	1883	0.74	134.55
3153	1882	0.58	106.20
		1.94	353.40

(Finding of Fact #16).

35. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. The proposed instream water right will help to meet the flows necessary for spring Chinook and bull trout populations. (Finding of Fact #26).
36. Pursuant to ORS 537.470(3) and OAR 690-018-0050(4)(g), the entire quantity of conserved water is being allocated to the State of Oregon for an instream water right. Therefore, the quantity of water does not need to be adjusted. (Finding of Fact #19).
37. The new instream water right created will be protected in the Lostine River from the authorized points of diversion as described in Findings of Fact #6, #9, and #14, to the mouth of the Lostine River and into the Wallowa River to the mouth of the Wallowa River at the confluence with the Grande Ronde River. An instream reach is generally from the point of diversion to the mouth of the source stream (Lostine River), but may be protected further if measurable into the receiving stream (Wallowa River). The quantity of water that may be protected from the Lostine River is measurable into the Wallowa River. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).
38. Portions of the water diverted at the points of diversion return 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 to the instream water right from the original quantities identified in Finding of Fact #34 is as follows:

Reach	Percent
From immediately below the point of diversion on the Foster Ditch 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%
From the mouth of the Lostine River to the Wallowa River at the coordinates: Latitude: 45.55639, Longitude: -117.49803	40%
From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa	60%
From the Wallowa River at Latitude: 45.47406, 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 690-018-0050(4)(h); OAR 690-077-0015(8).

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

LOSTINE RIVER, tributary to Wallowa River

Instream Point No. 1:

At the Foster Ditch (as described in Findings of Fact #9 and #14) at approximately River Mile (RM) 4:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.62	112.65	May 1 through July 31
94327	1883	0.74	134.55	May 1 through July 31
Totals		1.36	247.20	

Instream Reach No. 1:

From immediately below the Foster Ditch to the Clearwater Ditch (as described in Finding of Fact #5):

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
Totals		1.34	242.26	

Instream Point No. 2:

At the Clearwater Ditch (as described in Finding of Fact #5) at approximately RM 3.2:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
3153	1883	0.58	106.20	May 1 through July 31
Totals		1.92	348.46	

Instream Reach No. 2:

From immediately below the Clearwater Ditch to the mouth of the Lostine River at RM 0.0, at the confluence of the Wallowa River:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.56	101.39	May 1 through July 31
94327	1883	0.67	121.10	May 1 through July 31
3153	1882	0.52	95.58	May 1 through July 31
Totals		1.75	318.07	

WALLOWA RIVER, tributary to Grande Ronde River**Instream Reach No. 3:**

From the mouth of the Lostine River to the Wallowa River at the coordinates: Latitude: 45.55639, Longitude: -117.49803

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.37	67.59	May 1 through July 31
94327	1883	0.44	80.73	May 1 through July 31
3153	1882	0.35	63.72	May 1 through July 31
Totals		1.16	212.04	

Instream Reach No. 4:

From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.25	45.06	May 1 through July 31
94327	1883	0.30	53.82	May 1 through July 31
3153	1882	0.23	42.48	May 1 through July 31
Totals		0.78	141.36	

Instream Reach No. 5:

From the Wallowa River at Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River at the confluence with the Grande Ronde River

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.19	33.80	May 1 through July 31
94327	1883	0.22	40.37	May 1 through July 31
3153	1882	0.17	31.86	May 1 through July 31
Totals		0.58	106.03	

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

41. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river within the proposed reach of the instream water right and have been accounted for.

OAR 690-077-0015(8).
42. The combination of instream rights for the proposed reach on the Lostine River does not exceed the amount needed to provide increased public benefits, and does not exceed the estimated average natural flow or level occurring from the drainage system. OAR 690-077-0015(4) and (11).
43. Existing instream Certificate 59814 established pursuant to ORS 537.341 (minimum flow conversion), within the proposed reach on the Lostine River, is sufficient to protect the monthly quantities of water necessary for supporting aquatic life, but is not always met. By replacing a portion of this instream water right and other water rights established under ORS 537.336 (state agency process), any instream water right created as a result of this allocation will provide protection of stream flows identified as necessary for supporting aquatic life under earlier priority dates.
44. By adding to other instream water rights established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process) located within the proposed reach, any new instream water rights established by this conserved water project would provide protection for additional flows identified as necessary for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values. OAR 690-077-0015(11).
45. There are no proposed areas within which the conserved water is proposed to be used for out-of-stream uses. (Finding of Fact #17). OAR 690-018-0050(4)(h).
46. The deadline for submitting a Notice of Completion is November 30, 2019. The deadline for submitting a Request for Finalization is December 1, 2019. (Finding of Fact #24). OAR 690-018-0050(4)(i).
47. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights. (Finding of Fact #31). OAR 690-018-0050(4)(j).

Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-111, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. The additional point of diversion and changes in places of use are consistent with the requirements of

ORS 540.505 to 540.580 and OAR 690-380-5000. *If protests are not filed pursuant to OAR 690-018-0050(6), the conserved water application will be approved.*

If Allocation of Conserved Water Application CW-111 is approved, the Order Approving will include the following:

1. *The proposed change will result in a reduced diversion for the uses allowed under the original water right. Findings of Fact #4 and #30.*
2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #31.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Findings of Fact #20 and #32.*
4. *The changes proposed in CW-111, the additional point of diversion, and the changes in places of use are approved.*
5. *The quantities of water conserved and allocated are as follows:*

Conserved Water Description										
		State's Portion			Applicant's Portion			Conserved Water		
<i>Certificate</i>	<i>Priority</i>	<i>Percentage</i>	<i>Max. Rate (CFS)</i>	<i>Max. Duty (Volume) AF</i>	<i>Percentage</i>	<i>Max. Rate (CFS)</i>	<i>Max. Duty (Volume) AF</i>	<i>Percentage</i>	<i>Max. Rate (CFS)</i>	<i>Maximum Volume (AF)</i>
3153	1883	100%	0.62	112.65	0%	0.00	0.00	100%	0.62	112.65
94327	1883	100%	0.74	134.55	0%	0.00	0.00	100%	0.74	134.55
94163	1882	100%	0.58	106.20	0%	0.00	0.00	100%	0.58	106.20
			1.94	353.40		0.00	0.00		1.94	353.40

6. *The right to the use of the water is restricted to beneficial use at the places of use described, and is subject to all other conditions and limitations contained in Certificates 94163, 94327, 3153, and any related decree.*

Upon filing the Notice of Completion:

7. *Water Right Certificate 3153 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and a superseding Certificate will be issued for the existing use and place of use as described in Finding of Fact #5 and not modified by Finding of Fact #7, at the reduced rate and duty as follows:*

Use: IRRIGATION of 71.8 ACRES
Priority Date: 1883
Rate: 1.17 CUBIC FOOT PER SECOND
Limit/Duty: 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.

Source: South Fork of Wallowa River (aka Lostine River), tributary to the Wallowa River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	29	SW SW	7000	13.4
1 N	43 E	WM	29	SE SW	7000	2.2
1 N	43 E	WM	32	NW NE	7000	0.4
1 N	43 E	WM	32	NE NW	7000	34.4
1 N	43 E	WM	32	NW NW	7000	21.4
Total						71.8

After satisfactory proof of beneficial use is received, a new certificate confirming the change in place of use (Finding of Fact #8) will be issued at the reduced rate for the following lands as follows:

Use: IRRIGATION of 3.3 ACRES

Priority Date: 1883

Rate: 0.06 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled for irrigation 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.

Source: South Fork of Wallowa River (aka Lostine River), tributary to the Wallowa River

Authorized Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	29	SW SW	7000	1.0
1 N	43 E	WM	32	NW NE	7000	0.2
1 N	43 E	WM	32	NE NW	7000	2.1
Total						3.3

8. Water Right Certificate 94327 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application, and a superseding Certificate will be issued for the existing use and place of use as described in Finding of Fact #9 and not modified in Finding of Fact #10, at the reduced rate and duty as follows:

Use: IRRIGATION of 82.5 ACRES and STOCK

Priority Date: 1883

Rate: 1.35 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which this right is entitled for irrigation 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.
Source: Lostine River, tributary to the Wallowa River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	SW NE	8600	37.4
1 N	43 E	WM	32	SE NE	8600	16.0
1 N	43 E	WM	32	NE SE	8600	29.1
Total						82.5

After satisfactory proof of beneficial use is received, a new certificate confirming the change in place of use (Finding of Fact #11) will be issued at the reduced rate for the following lands as follows:

Use: IRRIGATION of 7.2 ACRES and STOCK
Priority Date: 1883
Rate: 0.12 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which this right is entitled for irrigation 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.
Source: South Fork of Wallowa River (aka Lostine River), tributary to the Wallowa River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	4	NE SW	FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	SE NE	8600	4.6
1 N	43 E	WM	32	NE SE	8600	2.6
Total						7.2

- Water Right Certificate 94163 is cancelled. A new certificate will be issued for that portion of the water right not affected by this Allocation of Conserved Water application. After satisfactory proof of beneficial use is received, a new certificate confirming the change in point of diversion will be issued at the reduced rate as follows:

Use: IRRIGATION of 70.8 ACRES, DOMESTIC AND LIVESTOCK

Priority Date: 1882 (Tract 1)

Rate: 1.16 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled for irrigation 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.

Source: Lostine River, tributary to the Wallowa River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	9	SE NE	MILES DITCH: (Latitude: 45.494134; Longitude: -117.438922).
1 S	43 E	WM	4	NE SW	FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 N	43 E	WM	32	NW SE	8600	36.0
1 N	43 E	WM	32	SW SE	8600	34.8
Total						70.8

10. **Water use measurement conditions:**

- a. Before water use may begin under this order, the Director may require the water users to install a totalizing flow meter or other suitable measuring devices at each point of re-diversion from the ditch to the pivots. If the Director notifies the water users to install totalizing flow meters or other measuring devices, the water users shall install such devices specified by the Director within the period allowed in the notice.
- b. The water users shall maintain the meters or measuring devices in good working order.
- c. The water users shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

11. All conserved water shall be managed instream until a Request for Finalization is submitted as follows:

LOSTINE RIVER, tributary to Wallowa River

Instream Point No. 1:

At the Foster Ditch (as described in Findings of Fact #9 and #14) at approximately River Mile (RM) 4:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.62	112.65	May 1 through July 31
94327	1883	0.74	134.55	May 1 through July 31
Totals		1.36	247.20	

Instream Reach No. 1:

From immediately below the Foster Ditch to the Clearwater Ditch (as described in Finding of Fact #5):

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
Totals		1.34	242.26	

Instream Point No. 2:

At the Clearwater Ditch (as described in Finding of Fact #5) at approximately RM 3.2:

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
3153	1883	0.58	106.20	May 1 through July 31
Totals		1.92	348.46	

Instream Reach No. 2:

From immediately below the Clearwater Ditch to the mouth of the Lostine River at RM 0.0, at the confluence of the Wallowa River:

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.56	101.39	May 1 through July 31
94327	1883	0.67	121.10	May 1 through July 31
3153	1882	0.52	95.58	May 1 through July 31
Totals		1.75	318.07	

WALLOWA RIVER, tributary to Grande Ronde River

Instream Reach No. 3:

From the mouth of the Lostine River to the Wallowa River at the coordinates: Latitude: 45.55639, Longitude: -117.49803:

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.37	67.59	May 1 through July 31
94327	1883	0.44	80.73	May 1 through July 31
3153	1882	0.35	63.72	May 1 through July 31
Totals		1.16	212.04	

Instream Reach No. 4:

From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.25	45.06	May 1 through July 31
94327	1883	0.30	53.82	May 1 through July 31
3153	1882	0.23	42.48	May 1 through July 31
Totals		0.78	141.36	

Instream Reach No. 5:

From the Wallowa River at Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River at the confluence with the Grande Ronde River:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.19	33.80	May 1 through July 31
94327	1883	0.22	40.37	May 1 through July 31
3153	1882	0.17	31.86	May 1 through July 31
Totals		0.58	106.03	

Upon Filing the Request for Finalization:

12. The project is complete and no additional time is needed for finalization.
13. The Department shall issue a new instream water right certificate for the conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values as follows:

LOSTINE RIVER, tributary to Wallowa River

Instream Point No. 1:

At the Foster Ditch (as described in Findings of Fact #9 and #14) at approximately River Mile (RM) 4:

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.62	112.65	May 1 through July 31
94327	1883	0.74	134.55	May 1 through July 31
Totals		1.36	247.20	

Instream Reach No. 1:

From immediately below the Foster Ditch to the Clearwater Ditch (as described in Finding of Fact #5):

Certificate	Priority	Instream Rate (CFS)	Instream (Volume) AF	Period Protected
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
Totals		1.34	242.26	

Instream Point No. 2:

At the Clearwater Ditch (as described in Finding of Fact #5) at approximately RM 3.2:

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.61	110.40	May 1 through July 31
94327	1883	0.73	131.86	May 1 through July 31
3153	1883	0.58	106.20	May 1 through July 31
<i>Totals</i>		1.92	348.46	

Instream Reach No. 2:

From immediately below the Clearwater Ditch to the mouth of the Lostine River at RM 0.0, at the confluence of the Wallowa River:

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.56	101.39	May 1 through July 31
94327	1883	0.67	121.10	May 1 through July 31
3153	1882	0.52	95.58	May 1 through July 31
<i>Totals</i>		1.75	318.07	

WALLOWA RIVER, tributary to Grande Ronde River

Instream Reach No. 3:

From the mouth of the Lostine River to the Wallowa River at the coordinates: Latitude: 45.55639, Longitude: -117.49803

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.37	67.59	May 1 through July 31
94327	1883	0.44	80.73	May 1 through July 31
3153	1882	0.35	63.72	May 1 through July 31
<i>Totals</i>		1.16	212.04	

Instream Reach No. 4:

From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa

<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.25	45.06	May 1 through July 31
94327	1883	0.30	53.82	May 1 through July 31
3153	1882	0.23	42.48	May 1 through July 31
<i>Totals</i>		0.78	141.36	

Instream Reach No. 5:

From the Wallowa River at Latitude: 45.47406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River at the confluence with the Grande Ronde River

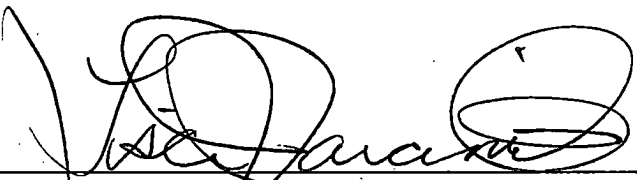
<i>Certificate</i>	<i>Priority</i>	<i>Instream Rate (CFS)</i>	<i>Instream (Volume) AF</i>	<i>Period Protected</i>
94163	1883	0.19	33.80	May 1 through July 31
94327	1883	0.22	40.37	May 1 through July 31
3153	1882	0.17	31.86	May 1 through July 31
Totals		0.58	106.03	

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. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.

The instream right established by this allocation 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 in an order approving a new instream water right under these statutes.

14. *Full beneficial use of the 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 changes in place of use and point of diversion and full beneficial use of the water.*

Dated at Salem, Oregon this **JUN 27 2019** .



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

NOTICE OF RIGHTS

The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to those actions. ORS 183.415. The Commission shall notify the applicant and any other person requesting notice, of the action the Commission intends to take under ORS 537.470(3). Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the Commission. ORS 537.470(4).

If a protest to the proposed allocation of conserved water is received by the Department within 60 days of the mailing of the preliminary determination pursuant to ORS 537.470(4) and OAR 690-018-0050(4), the Director may work with the applicant and any protestant to determine whether the issues can be resolved through mutually agreeable conditions, or by modifying the application. OAR 690-018-0050(6).

If protests are received raising issues that cannot be resolved pursuant to OAR 690-018-0050(6), the Director shall present the application, all protests and a recommendation for action to the Commission for review and action. OAR 690-018-0050(8).

The Commission shall examine the application, the protests and the Director's recommendation. If the Commission finds the allocation of conserved water is likely to injure existing water rights or is otherwise inconsistent with these rules, the Commission may direct the Department to hold a contested case hearing on the application pursuant to ORS 183.413 and OAR 690, Divisions 1 and 2 or to resume attempts to resolve the disputed issues. If the Commission finds the allocation of conserved water is not likely to injure existing rights and is otherwise consistent with OAR 690-018-0050, the Commission may authorize the Director to issue an order approving the application. OAR 690-018-0050(9).

In the event of a land use dispute, as defined in OAR 690-005-0015, the Director shall follow resolution procedures provided in 690-005-0040 (Resolution of Land Use Disputes). OAR 690-018-0050(10).

NOTICE REGARDING SERVICEMEMBERS: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act 50 U.S.C. App. §§ 501-597b. You may contact the Oregon State Bar at 800-452-8260, the Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.