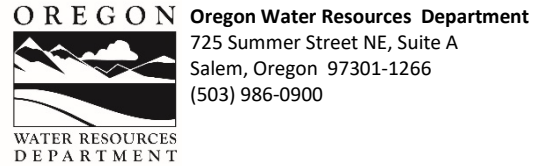


Application for
Surface Water
Allocation of Conserved Water
 Part 1 of 4 – Minimum Requirements Checklist



This application will be returned if Parts 1 through 4 and all required attachments are not completed and included.
 For questions, please call (503) 986-0900, and ask for Allocation of Conserved Water Section.

Check all items included with this application. (N/A = Not Applicable)

- Part 1 – Completed Minimum Requirements Checklist.
- Part 2 – Completed Applicant Information and Signature.
- Part 3 – Completed Water Right Information and Conservation Measures. Please include a separate Part 3 for each water right. List all water right certificates involved in this application here: **3162**.
- Part 4 – Completed Mitigation, Proposed Use, Project Schedule, Funding, and Fee Calculation.

Attachments:

- Fees – Amount enclosed: \$ **680** (From last page of application). **Please deduct from Trout Unlimited’s Customer Account**
- Application Map. Must have sufficient detail to locate and describe the facilities and areas involved in the conservation measures. Must show the place of use where water is being used if the rate or duty are changing.
- Land Use Information Form with approval and signature. **(Not required if 100% of Conserved Water is being transferred instream.) or**
 Land Use Notice - Notice of the intent to create an instream water right must be provided to each affected county, city, municipal corporation, or tribal government along the proposed instream reach.
- Completed Evidence of Use Affidavit and Supporting Documentation.
- N/A Affidavit(s) of Consent.
- N/A Letter of approval from Irrigation or Water Control District. For water rights served by or issued in the name of a District; this must be provided when the applicant is not the District.
- N/A Irrigation or Water Control District’s adopted policy on allocation of conserved water.
- N/A If construction of the project has begun or been completed and if more than 25 percent of the project costs have been expended before applying for allocation of conserved water, evidence that you have attempted to identify and resolve the concerns of water right holders in the area, governmental entities or other organizations who have asked to be consulted regarding the allocation of conserved water.
- N/A Evidence for Fee Waiver.
- N/A Notice of Completion.
- N/A Request for Finalization. (The entire conservation project listed on the application must be complete. No partial finalization will be recognized.)

Part 2 of 4 – Applicant Information and Signature

Applicant Information

| | | | |
|--|-------------|---------------------------|---------------------------------------|
| APPLICANT/BUSINESS NAME Rocking M Cattle Company | | PHONE NO. 541-805-9985 | ADDITIONAL CONTACT NO. |
| ADDRESS 70208 WARNOCK RD | | | FAX NO. |
| CITY WALLOWA | STATE OR | ZIP 97885 | E-MAIL JEREMY.MCCULLOCH1@GMAIL.COM |

The applicant is an irrigation district organized under ORS Chapter 545 or a water control district organized under ORS Chapter 553. The District's OAR 690-018-0025 allocation of conserved water policy was adopted: ____ / ____ / 20 ____.

OR

The applicant is the sole owner of the land on which the water right, or portion thereof, proposed for conservation measures is located? Yes No

If NO, include signatures of all landowners (and mailing address if different than the applicant's) or attach affidavits of consent (and mailing addresses) from all landowners or individuals/entities to which the water right(s) has been conveyed.



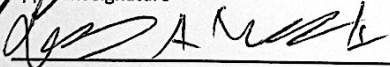
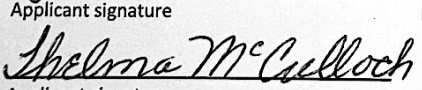
| | | | |
|----------------|-------|-----------|--------|
| LANDOWNER NAME | | PHONE NO. | |
| ADDRESS | | | |
| CITY | STATE | ZIP | E-MAIL |

Representative Information – The person(s) listed below is/are authorized to represent the applicant in all matters relating to this application.

| | | | |
|--|-----------------|---------------------------|---------------------------------------|
| REPRESENTATIVE/BUSINESS NAME JESSICA HUMPHREYS/ TROUT UNLIMITED | | PHONE NO. 541-913-3750 | ADDITIONAL CONTACT NO. |
| ADDRESS 401 NE 1 ST STREET | | | FAX NO. |
| CITY ENTERPRISE | STATE OREGON | ZIP 97828 | E-MAIL JESSICA.HUMPHREYS@GMAIL.COM |

I understand that I will be required to submit payment to the Department for publication of a notice in a newspaper with general circulation in the area where the water right is located, once per week for two consecutive weeks. If more than one qualifying newspaper is available, I suggest publishing the notice in the following paper: Wallowa County Cheiftain.

I (we) affirm that the information contained in this application is true and accurate.

| | | | |
|---|---|--------------------------------------|---------|
|  |  | Jeremy McCulloch | 4/20/22 |
| | Applicant signature | Print Name (and Title if applicable) | Date |
| |  | Donald A McCulloch Tr | 4/20/22 |
| Applicant signature | Print Name (and Title if applicable) | Date | |
|  | Thelma McCulloch | 4/20/22 | |
| Applicant signature | Print Name (and Title if applicable) | Date | |

In your own words tell us what physical conservations measures you have made or propose to make and the reason for the change(s): The landowner has been on the property more than 40 years and currently produces alfalfa and orchard grass, with forage grain in rotations, to feed his herd of registered Texas Longhorns. After acquiring an adjacent property in 2020, the landowner worked with a local irrigation contractor and Trout Unlimited project manager to develop a plan to convert the current flood irrigation system to center pivot and protect excess irrigation water instream. The plan proposes that three pivots be installed to cover 110 acres of the currently irrigated ground in an effort to conserve water and more efficiently irrigate their crop for increased quality and quantity. The irrigated ground is covered by 2 water rights, 34931 is from a spring that originates on the property with a 3.5 af/acre duty and the other, 3162, is a senior Lostine River water right with a 5.5 af/acre duty. This conserved water application is for the ground covered by the 3162 water right. Of the 103.5 acres on water right 3162, 65.27 acres will be covered by pivots. The landowner would like to apply to have all the acres on water right 3162 reduced by the same amount through the conserved water process as they will be using big gun moveable sprinklers to cover areas not covered by the pivots until they can transfer some of those acres under a new pivot in the NW corner of the property.



To meet State Land Use Consistency Requirements, you must list all local governments (each county, city, municipal corporation, or tribal government) within whose jurisdiction the conservation project and/or proposed instream reach will be located.

| | | |
|-------------------------------|-----------------------------------|--------------|
| ENTITY NAME WALLOWA COUNTY | ADDRESS 101 SOUTH RIVER STREET | |
| CITY ENTERPRISE | STATE OREGON | ZIP 97828 |

| | | |
|---|-----------------------------|--------------|
| ENTITY NAME CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION | ADDRESS 46411 TIMINE WAY | |
| CITY PENDLETON | STATE OREGON | ZIP 97801 |

| | | |
|-------------|---------|-----|
| ENTITY NAME | ADDRESS | |
| CITY | STATE | ZIP |

| | | |
|-------------|---------|-----|
| ENTITY NAME | ADDRESS | |
| CITY | STATE | ZIP |

| | | |
|-------------|---------|-----|
| ENTITY NAME | ADDRESS | |
| CITY | STATE | ZIP |

Part 3 of 4 – Water Right Information and Conservation Measures

Please use a separate Part 3 for each water right involved in the proposed allocation of conserved water.

WATER RIGHT INFORMATION:

Water Right Subject to Transfer (check and complete **ONE** of the following):

| | | | |
|-------------------------------------|---|--|--|
| <input checked="" type="checkbox"/> | Certificated Right | 3162 | Wallowa River |
| | | Certificate Number | Permit Number or Decree Name |
| <input type="checkbox"/> | Adjudicated, Un-certificated Right | _____ | _____ |
| | | Name of Decree | Page Number |
| <input type="checkbox"/> | Permit for which Proof has been Approved | _____ | _____ |
| | | Permit Number | Special Order Volume _____, Page _____ |
| <input type="checkbox"/> | Transferred Right for which Proper Proof of the change has been filed | _____ | _____ |
| | | Previous Certificate / Transfer Number | Date Claim of Beneficial Use Submitted |

County: Wallowa

Describe the pre-project water delivery system. Include information on the diversion structure, pumps, and conveyance facilities (including canals, pipelines and sprinklers used to divert, convey and apply the water at the authorized place of use). *Provide sufficient detail for the Department to determine the system capacity.* Irrigation water is diverted at the Fitzpatrick diversion on the Lostine River and carried for ~3miles in an open earthen ditch where it then enters the property and is diverted via side ditches, tarps are used along the ditches to back up water to flood sections of the property

Table 1: Pre-Project Description

List: A) the maximum rate and annual duty (volume) of water that may be diverted **as stated on the water right of record**; and B) the maximum amount of water that can be diverted using the pre-project facilities (“**system capacity**”). If there are multiple priority dates on the water right, list the rate and duty associated with each priority date. *(If the water right is only limited by rate, do not list a duty. Conversely, if the water is only limited by duty, do not list a rate).*

| PRE-PROJECT DESCRIPTION | | | | | | | | |
|---------------------------|----------|-------|-----------------------|--------|------------|-------|-----------------|------------|
| | | | Column A | | | | Column B | |
| | | | Water Right of Record | | | | System Capacity | |
| | | | Rate | | Duty | | Rate | Duty |
| Originating Water Right # | Priority | Acres | Maximum CFS | CFS/AC | Maximum AF | AF/AC | Maximum CFS | Maximum AF |
| 3162 | 1883 | 72.29 | 1.8 | 1/40 | 325.31 | 4.5/1 | 1.8 | 325.31 |
| Totals | | | | | | | | |

Note: 1 miner’s inch = 1/40 cfs; 1 cfs = 448.8 gpm 1 cfs = 1.983471 ac-ft/day

CONSERVATION MEASURES:

Describe the type of conservation measures, check all that apply:

- On-Farm efficiency project
- Distribution project, such as a ditch piping or lining project
- Other: _____

Describe the proposed changes to the physical system, operations and application methods that will result in the conservation of water. If these proposed changes will change the point of diversion, you must meet the ODFW fish screen and bypass requirements pursuant to ORS 540.525. *Please include a description and details of how the estimate of water conserved was determined. Please provide sufficient detail for the Department to provide notice of the project.* The landowners carefully evaluated the terrain and structure in place on the property at 70012 Warnock Road, and 70208 Warnock Road in Wallowa, OR. After looking at the waste in the current ditch, the loss of groundwater, and the loss to runoff, a reduction in acre-feet was worked out by consulting with multiple sources including the Regional Water Master, Pivot Engineer, NRCS Conservation Specialist, and other landowners. They concluded that a reduction to enhance infrastructure made a great deal of sense due to the location of the property from the water source (Lostine River) and the savings of a new system. Coupled with the piping of the ditch itself, the viability of the cropland will be enhanced as well. The pivot efficiency allows for the comfortable reduction in water right.

Existing Point(s) of Diversion:

| Twp | | Rng | | Sec | ¼ | ¼ | Tax Lot | Gvt Lot or DLC | Measured Distances or Latitude and Longitude | |
|-----|---|-----|---|-----|----|----|---------|----------------|--|--|
| 1 | N | 43 | E | 28 | SE | NW | | | 45.499396, -117.442333 | |

Place of Use Involved in Conservation Measures: *Entire Certificate*

List only the part of the right that will be affected. If the entire right is being affected, just state “entire Certificate.”

| Twp | | Rng | | Sec | ¼ | ¼ | Tax Lot | Gvt Lot or DLC | Acres | Type of Use listed On Certificate | Priority Date |
|--------------|---|-----|---|-----|----|----|---------|----------------|--------------|-----------------------------------|---------------|
| 2 | S | 9 | E | 15 | NE | NW | 200 | 43 | 153.0 | EXAMPLE | 1/1/1865 |
| 1 | N | 43 | E | 28 | SE | NW | 6300 | | 24.27 | IR | 1883 |
| 1 | N | 43 | E | 28 | NE | NW | 6300 | | 34.94 | IR | 1883 |
| 1 | N | 43 | E | 28 | NW | NW | 6400 | | 0.41 | IR | 1883 |
| 1 | N | 43 | E | 28 | SW | NW | 6400 | | 12.67 | IR | 1883 |
| Total | | | | | | | | | 72.29 | | |

Are there other water right certificates, water use permits, ground water registrations, or uncertificated decreed rights associated with the above lands? Yes No. If YES, list the certificates, water use permits, groundwater registrations, or uncertificated decree numbers: 95646, 95647

Is the project within the boundaries of an irrigation district or water control district? Yes No If YES, and applicant is not a District, you must provide a letter of approval from the District.

Table 2: Conserved Water

In Column A, list the smaller of A or B from Table 1 (Pre-Project Description). In Column B, list the amount of water that will be needed for the existing, authorized use(s) after implementing the conservation measures. In Column C, subtract Column B from Column A and enter the results (e.g., A – B = C). (If the water right is only limited by rate, do not list a duty; and conversely, if the water is only limited by duty, do not list a rate.)

| Conserved Water Description | | | | | | | | | | |
|-----------------------------|-----------------------------|--------|------------|-------|-------------|--------|------------|-------|-----------------|------------|
| | Column A | | | | Column B | | | | Column C | |
| | Table 1 – Smaller of A or B | | | | Needed | | | | Conserved Water | |
| | Rate | | Duty | | Rate | | Duty | | Rate | Duty |
| Priority | Maximum CFS | CFS/AC | Maximum AF | AF/AC | Maximum CFS | CFS/AC | Maximum AF | AF/AC | Maximum CFS | Maximum AF |
| 1883 | 1.8 | 1/40 | 328.05 | 4.5 | | | 180.73 | 2.5 | | 147.32 |
| Totals | 1.8 | 1/40 | 328.05 | 4.5 | | | | 2.5 | | 147.32 |

Table 3: Allocation of Conserved Water

List the portions of the conserved water that will be allocated to the state and applicant. Note: Column A plus Column B should total Column C (e.g., A + B = C).

| Conserved Water Allocation | | | | | | | | |
|----------------------------|--------------|-----------------------|---------------------|--------------|-----------------------|-----------------|--------------|-----------------------|
| Column A | | | Column B | | | Column C | | |
| State's Portion | | | Applicant's Portion | | | Conserved Water | | |
| Percentage* | Maximum Rate | Maximum Duty (Volume) | Percentage | Maximum Rate | Maximum Duty (Volume) | Percentage | Maximum Rate | Maximum Duty (Volume) |
| 100% | | 147.32 | 0% | | 00 | 100% | | 147.32 |

* must be at least 25%

The priority for the conserved water is requested to be:

- The same as the original right, or
- One minute junior to the original right.

**Part 4 of 4 – Mitigation, Proposed Use,
Project Schedule, Funding, and
Fee Calculation**

MITIGATION:

Describe any expected effects from the proposed allocation of conserved water on other water rights. Describe what currently happens to the water that is proposed to be conserved. No impact is expected to other users as the water is currently diverted and used for irrigation of the 72.29 acres in its full allocated amount.

Describe any mitigation or other measures that are planned to avoid harm to other water rights. Water use will be measured at each of the pivots with totalizing flow meters and documented to ensure water use between 5/1 and 7/31 stays within the new 2.5af/ac duty.

PROPOSED USE:

New Out-of Stream Uses:

N/A For new out-of-stream uses, describe the intended use and boundaries of the expected area within which the diversion structures and places of use of the applicants’ conserved water right will be located. This is land other than that to which this water right is appurtenant. Intended Use: _____; Boundaries: _____.

Will the new use require a change or additional point of diversion/appropriation?

Yes No Unknown at this time

New Point of Diversion:

| Twp | Rng | Sec | ¼ | ¼ | Tax Lot | Gvt Lot or DLC | Measured Distances or Latitude and Longitude |
|-----|-----|-----|---|---|---------|----------------|--|
| | | | | | | | |

New Instream Uses to be Created (State’s Portion):

| Originating Surface Water Right (as identified in Part 3) | Priority Date | Source | Proposed Instream Period | Rate (cfs)* | Volume (ac-ft)** |
|---|---------------|---------------|--------------------------|-------------|------------------|
| 3162 | 1883 | Lostine River | 5.1-7.31 | 0.81 | 147.32 |
| TOTAL VOLUME | | | | | 147.32 |

* To calculate rate (if other than the rate allowed by the right), divide the volume by the number of days in the period and then divide by 1.983471; or

** To calculate volume, multiply the rate by the number of days in the instream period and then multiply by 1.983471.

Note: The instream rate may not exceed the maximum rate conserved and the total volume may not exceed to maximum duty or volume conserved (Table 3, Column C).

Location of the proposed instream water right.

Water is requested to be protected within a reach. Location of the proposed reach (identify the extent of the reach): (e.g., from the upstream POD located at RM ___ to downstream location at

the mouth at RM _____) Water is requested to be protected from the Fitzpatrick POD (RM 5) on the Lostine to the confluence of the Wallowa and Grande Ronde River (RM 0)

OR

- Water is requested to be protected at a point at the following location (i.e. legal description of the point of diversion (POD)): _____

Public Use for which conserved water right should be managed under an instream right (check at least one box):

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
- Recreation and scenic attraction.
- Water Quality (e.g. pollution abatement).

List any existing instream water rights at the same point or within the same requested reach(es):

- None.
- Instream Water Right Certificates: 59814, 87709, 93535, 94162, 94870, 95651

- N/A Is it your intent to have the proposed instream water right transfer be additive to any instream water right established under ORS 537.348 (instream transfer application process) and ORS 537.470 (allocation of conserved water) and replace a portion of any instream water right established under ORS 537.341 (state agency application process) and ORS 537.346 (conversion of minimum perennial streamflows) with an earlier priority date?

- Yes No. If no, please explain your intent below:

Is the requested instream flow intended to exceed the estimated average natural flow or natural lake level occurring from the drainage system?

- No; **OR**
- Yes (Provide supporting documentation that demonstrates why additional flows are significant for the public use requested.); **OR**
- Yes, and it is presumed that flows that exceed the estimated average natural flow or natural lake levels are significant because:
- The requested flow does not exceed the maximum amount of any instream water right applied for under ORS 537.338 (state agency instream water right application process); the requested public use is for the same public use; and the requested reach covers a portion or same reach as the state agency instream water right; **and**
 - The stream is in an ODFW flow restoration priority watershed during the requested instream period; **or**
 - The stream is listed as water quality limited by DEQ.

PROJECT SCHEDULE:

N/A For a project that has **not** been completed, please provide the dates on which the applicant intends to do the following:

| Begin Construction | Complete Construction and File Notice of Completion | Request that Entire Conserved Water Allocation be Finalized |
|--------------------|---|---|
| Date: 6/1/2022 | Date: 11/30/2022 | *Date: 12/1/2022 |

** Must be within 5 years from the date of filing the Notice of Completion.*

Note: If construction of the project has begun or has been completed, and if more than 25 percent of the project costs have been expended before submitting this application, you must submit evidence that you have attempted to identify and resolve the concerns of water right holders in the area, governmental entities or other organization who have asked to be consulted regarding the allocation of conserved water.

N/A For a project that has been completed, provide the dates when the conservation measures were implemented and the date by which the applicant intends to request the allocation be finalized. Complete and attach Notice of Completion form.

| Conservation Measures Were Implemented | Request that Entire Conserved Water Allocation be Finalized |
|--|---|
| *Date: | **Date: |

** Must be within 5 years prior to the date of filing this application.*

*** Must be within 5 years from the date of filing this Application and Notice of Completion.*

FUNDING

- N/A Federal or state public funds that are not subject to repayment are to be used for the project. Refer to OAR 690-018-0040(18)(a)-(d) for further information in completing this section.
- Source of Funding: Federal: _____ State: OWRD
- Total cost for project engineering \$ _____
Total cost for construction \$ 659,228
- The present value of any incremental changes in the cost of operations and maintenance that are directly attributable to the project that would not be incurred or realized in the absence of the project is \$ _____.
- The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental changes in the costs of operations and maintenance to be provided from federal or state public funds that are not subject to repayment is \$ _____.
- The amount of funding and the value of any in-kind contributions for project engineering and construction and for any incremental change since costs of operations and maintenance to be provided from other funds is \$ _____.
- N/A Enter the percentage from Table 3, Column B (Applicant's Portion of Conserved Water) 0%. If this is more than 25%, what portion of project funds (expressed as a percentage) come from federal or state public sources? _____%
- N/A The Oregon Watershed Enhancement Board (OWEB) has a contractual interest in this project. The OWEB project number is _____.

FEE CALCULATION

| | |
|--|--|
| Fee Schedule – ORS 536.050 https://www.oregon.gov/OWRD/Forms/Pages/default.aspx | |
| \$1,360.00 - Base (1 st Water Right) | Add \$480.00 for each additional right |
| $\$1,360 + (0 \times \$480) = \text{Total Fee } \1360 | |

| Fee Waiver Worksheet | |
|---|--|
| To qualify for a waiver of up to 50%, you must provide evidence to establish your application meets the following criteria: | |
| | (a) Will be converted to an instream right pursuant to ORS 537.348; or |
| | (b) Is necessary to complete a project funded under ORS 541.375 (OWEB); or |
| | (c) Is approved by the Oregon Department of Fish and Wildlife as a project that will result in a net benefit to fish and wildlife habitat. See OAR 690-018-0040(25). |
| If the project meets one of the above standards, use the following formula to calculate the fees: | |
| | (d) Enter Percentage from Table 3, Column A = <u>100%</u> |
| | (e) Deduct 25% from percentage in (d) above = <u>75%</u> |
| | (f) Enter the lesser of (e) above or 50% <u>50%</u> |
| | (g) Total Fee x % waived (f) = Fee Waiver <u>\$680</u> |
| <i>Example: (d) = 100% - 25% (e) = 75% (max 50% waived) = Fee x 50% = Fee Waiver</i> | |
| Total Fee \$1360 – Fee Waiver (g) \$680 = Amount Due \$680 | |

Application for Water Right Transfer

Evidence of Use Affidavit



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.wrd.state.or.us

Please print legibly or type. Be as specific as possible. Attach additional pages if you need more spacing. Supporting documentation must be attached.

State of Oregon)
) ss
 County of WALLOWA)

I, JEREMY MCCULLOCH, in my capacity as LANDOWNER,
 mailing address 70012 WARNOCK RD WALLOWA, OREGON
 telephone number (541)805-9985, being first duly sworn depose and say:

1. My knowledge of the exercise or status of the water right is based on (check one):

- Personal observation Professional expertise

2. I attest that:

Water was used during the previous five years on the **entire** place of use for Certificate # 3162; **OR**

My knowledge is specific to the use of water at the following locations within the last five years:

| Certificate # | Township | Range | Mer | Sec | ¼ ¼ | Gov't Lot or DLC | Acres (if applicable) |
|---------------|----------|-------|-----|-----|-----|------------------|-----------------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
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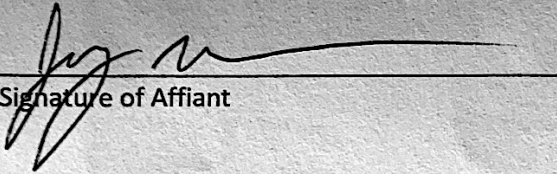
OR

- Confirming Certificate # _____ has been issued within the past five years; **OR**
- Part or all of the water right was leased instream at some time within the last five years. The instream lease number is: SL-59 (Note: If the entire right proposed for transfer was not leased, additional evidence of use is needed for the portion not leased instream.); **OR**
- The water right is not subject to forfeiture and documentation that a presumption of forfeiture for non-use would be rebutted under ORS 540.610(2) is attached.
- Water has been used at the actual current point of diversion or appropriation for more than 10 years for Certificate # _____ (For Historic POD/POA Transfers)

(continues on reverse side)

3. The water right was used for: (e.g., crops, pasture, etc.): CROPS AND PASTURE

4. I understand that if I do not attach one or more of the documents shown in the table below to support the above statements, my application will be considered incomplete.

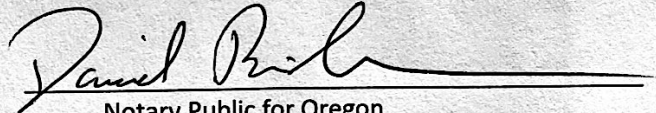


 Signature of Affiant

4/12/2022

 Date

Signed and sworn to (or affirmed) before me this 12th day of April, 2022.



 Notary Public for Oregon

My Commission Expires: 7/19/25

| Supporting Documents | Examples |
|--|---|
| <input type="checkbox"/> Copy of a water right certificate that has been issued within the last five years. (not a remaining right certificate) | Copy of confirming water right certificate that shows issue date |
| <input type="checkbox"/> Copies of receipts from sales of irrigated crops or for expenditures related to use of water | <ul style="list-style-type: none"> ● Power usage records for pumps associated with irrigation use ● Fertilizer or seed bills related to irrigated crops ● Farmers Co-op sales receipt |
| <input type="checkbox"/> Records such as FSA crop reports, irrigation district records, NRCS farm management plan, or records of other water suppliers | <ul style="list-style-type: none"> ● District assessment records for water delivered ● Crop reports submitted under a federal loan agreement ● Beneficial use reports from district ● IRS Farm Usage Deduction Report ● Agricultural Stabilization Plan ● CREP Report |
| <input checked="" type="checkbox"/> Aerial photos containing sufficient detail to establish location and date of photograph | <p>Multiple photos can be submitted to resolve different areas of a water right. If the photograph does not print with a "date stamp" or without the source being identified, the date of the photograph and source should be added.</p> <p>Sources for aerial photos: OSU – www.oregonexplorer.info/imagery OWRD – www.wrd.state.or.us Google Earth – earth.google.com TerraServer – www.terraserver.com</p> |
| <input checked="" type="checkbox"/> Approved Lease establishing beneficial use within the last 5 years | Copy of instream lease or lease number |

3162 POU

Aerial Imagery 7/2017

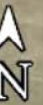
Legend

 3162

Google Earth

Manoek Rd

1000 ft



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

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

Authority

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

Lessor

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

Lessee

Trout Unlimited
401 NE First Street
Enterprise, OR 97828
Jessica.humphreys@tu.org

Findings of Fact

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

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Authorized Point of Diversion (POD): None Listed

Authorized Place of Use:

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

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

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

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

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

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

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

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

OAR 690-077-0015(8).

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

Instream Point No. 1: At the Fitzpatrick Ditch POD

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

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

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-------------------------------|
| 3162 | 1883 | 0.23 | 27.68 | August 1 through September 30 |

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

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-------------------------------|
| 3162 | 1883 | 0.17 | 20.76 | August 1 through September 30 |

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
12. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.

- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right are accounted for within the reaches of the instream water as identified in Findings of Fact Nos. 9 and 10.
13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
 14. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
 15. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
 16. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
 17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of any future transactions.
 18. The Lessor and Lessee have requested that the lease terminate on October 1, 2022. The lease has been submitted prior to the first day of the instream use season. The lease may commence on May 1, 2022.
 19. The Lessor and Lessee have requested that there not be an option to terminate the lease.

Conclusions of Law

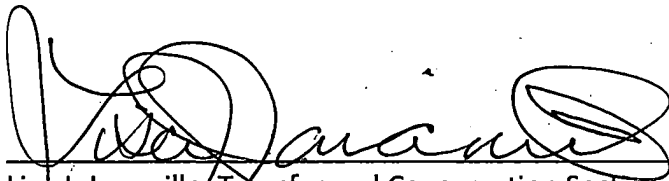
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.

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

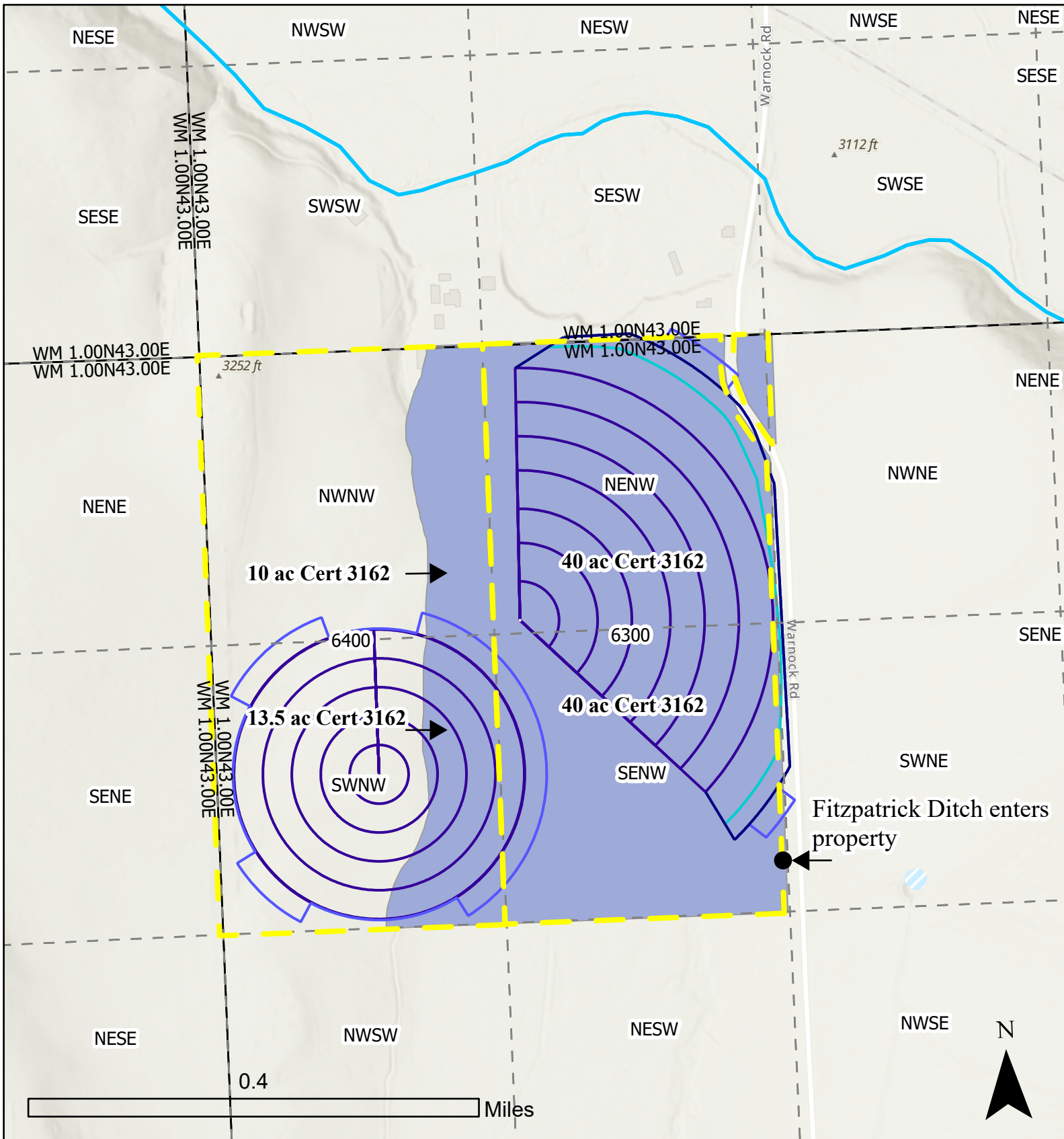
Dated at Salem, Oregon this day MAR 25 2022



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

Mailing date: MAR 28 2022

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



- Wallowa River
- - - Rocking M Cattle Company Taxlot
- 3162

ROCKING M. CATTLE COMPANY ALLOCATION OF CONSERVED WATER

*Purple outlines show footprints of pivots