

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

In the Matter of Allocation of Conserved Water Application CW-142, Jackson County ) PRELIMINARY DETERMINATION PROPOSING APPROVAL OF ALLOCATION OF CONSERVED WATER CW-142, A CHANGE IN POINT OF DIVERISION, AND RE-DESCRIPTION OF THE PLACE OF USE FOR WATER RIGHT ) CERTIFICATES 17190 AND 83471

**Applicant**

Elizabeth M Sarthou, Trustee  
P.O. Box 191  
Eagle Point, OR 97524-0191

**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 February 12, 2024, Elizabeth M Sarthou, Trustee filed an allocation of conserved water application under Certificates 17190, 76175, and 83471. The Department assigned the application number CW-142.
2. The conservation project involves changing from a ditch diversion and flood irrigation to a pump and pivot system and wheel lines, with adjustable sprinklers below the pivot. The conversion from flood irrigation to a pivot system is a proven technology for conserving water.
3. Application CW-142 proposes a rate reduction of approximately 0.10 cubic foot per second (cfs) and proposes to reduce the annual volume by 37.3 acre-feet (AF) under Certificate 17190, a rate reduction of approximately 0.064 cfs and annual volume reduction by 23.6 AF under Certificate 76175, and a rate reduction of approximately 0.005 cfs and annual volume reduction by 3.35 AF under Certificate 83471.

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
17190	0.388	1/59.3	140.8	6.12	0.288	1/80	103.5	4.5	0.10	37.3
76175	0.127	1/39.3	46.1	9.22	0.063	1/80	22.5	4.5	0.064	23.6
83471	0.090	1/80	30.15	4.5	0.085	1/78.8	26.8	4.0	0.005	3.35
Totals	0.605		217.05		0.436		152.8		0.169	64.25

4. The portion of the first right to be modified by CW-142 is as follows:

**Certificate:** 17190 in the name of CHARLES HOEFFT (confirmed by SOUTH FORK LITTLE BUTTE (F) Decree)  
**Use:** IRRIGATION of 23.0 ACRES  
**Priority Date:** 1869  
**Rate:** 0.388 CUBIC FOOT PER SECOND  
**Source:** SOUTH FORK OF LITTLE BUTTE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	33	NE SW	15.0
36 S	2 E	WM	33	NW SW	8.0
Total					23.0

5. The Department has received information from the applicant that better describes the authorized point of diversion under Certificate 17190:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	NE NE	200 FEET SOUTH AND 1590 FEET EAST FROM THE N1/4 CORNER OF SECTION 4

6. The portion of Certificate 17190 involved in the Allocation of Conserved Water application describes the authorized place of use as a combined total of 23.0 acres in the SW 1/4 of Section 33, Township 36 South, Range, 2 East, Willamette Meridian, in Jackson County, Oregon, being on the south side of South Fork Little Butte Creek.
7. The Allocation of Conserved Water application map depicts the place of use under Certificate 17190 as being consistent with the number of original acres in each ¼ ¼. Information from the applicant’s Certified Water Right Examiner (CWRE) indicates that previous CWREs and others did not consider meandering of the creek and the existence of Certificate 76175.
8. Based on the Jackson County Assessor’s Office survey map, it appears the course of the creek has changed slightly but does not offer any assistance in identifying the existing water right. The application map is consistent with the county Assessor’s office map in its portrayal of property lines and the layout of roads in the area. A review of the information supports that the CWRE based his re-tracement on reference points established or re-established by government land surveyors. The Department concludes that the land to which the right has always been appurtenant should be re-described, consistent with the application map prepared by the CWRE, and is described in the table below.

9. The following table lists the place of use as described in existing Certificate 17190 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	¼-¼	Acres	¼-¼	Acres	Current Tax Lot
17190	NE SW	15.0	NE SW	17.8	36S 2E 33 - 1001
17190	NW SW	8.0	NW SW	5.2	36S 2E 33 - 1001
	Total	23.0	Total	23.0	
Township 36 South, Range 2 East, Section 33					

10. The portion of the second right to be modified by CW-142 is as follows:

**Certificate:** 76175 in the name of R. A. PECK (confirmed by SOUTH FORK LITTLE BUTTE (F) Decree)  
**Use:** IRRIGATION of 5.0 ACRES  
**Priority Date:** 1895  
**Rate:** 0.127 CUBIC FOOT PER SECOND  
**Source:** SOUTH FORK OF LITTLE BUTTE CREEK, a tributary of LITTLE BUTTE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
36 S	2 E	WM	33	SE NW	1003	5.0

11. The Department has received information from the applicant that better describes the authorized point of diversion under Certificate 76175:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	NE NE	200 FEET SOUTH AND 1590 FEET EAST FROM THE N1/4 CORNER OF SECTION 4

12. The third right to be modified by CW-142 is as follows:

**Certificate:** 83471 in the name of MIKE HANLEY (perfected by Permit S-3727)  
**Use:** IRRIGATION of 6.7 ACRES  
**Priority Date:** MARCH 7, 1918  
**Rate:** 0.09 CUBIC FOOT PER SECOND  
**Limit:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** SOUTH FORK LITTLE BUTTE CREEK, tributary to ROGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 E	WM	33	NE SW	SOUTH 79 DEGREES 45 MINUTES EAST, 2045 FEET FROM THE WEST 1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	33	SW NW	2.5
36 S	2 E	WM	33	SE NW	4.2
Total					6.7

13. Certificate 83471 describes the authorized place of use as a combined total of 6.7 acres in the S ½ of the NW ¼ of Section 33, Township 36 South, Range, 2 East, Willamette Meridian, in Jackson County, Oregon, being on the south side of South Fork Little Butte Creek.
14. The Allocation of Conserved Water application map depicts the place of use under Certificate 83471 as being consistent with the number of original acres in each ¼ ¼, but cannot be positively described because the Department does not have an original Final Proof Survey map on record. The original water right was Certificate 4785, perfected under Permit S-3727, and was not the result of a Final Proof Survey or a Claim of Beneficial Use. Certificate 83471 is a remaining right that is a result of previous transfers under Certificate 4785. The original landowner submitted a Form A (Beginning of Construction), a Form B (Completion of Construction), and a "Proof of Application," indicating beneficial use of the water was made. However, the only map on record is the original application map, which did not identify changes made when the Proof of Application was submitted.
15. Based on the Jackson County Assessor's Office survey map, it appears the course of the creek has changed slightly but does not offer any assistance in identifying the existing water right. The application map is consistent with the county Assessor's office map in its portrayal of property lines and the layout of roads in the area. A review of the information supports that the CWRE based his re-tracement on reference points established or re-established by government land surveyors. The Department concludes that the land to which the right has always been appurtenant should be re-described, consistent with the application map prepared by the CWRE, and is described in the table below.

16. The following table lists the place of use as described in existing Certificate 83471 and a proposed re-description based on the above findings:

Certificate	Original Description of Place of Use		Proposed Re-Description of Place of Use		
	¼-¼	Acres	¼-¼	Acres	Current Tax Lot
83471	SW NW	2.5	SW NW	4.9	36S 2E 33 - 1001
83471	SE NW	4.2	SE NW	1.8	36S 2E 33 - 1001
	Total	6.7	Total	6.7	
Township 36 South, Range 2 East, Section 33					

17. The applicant proposes to change the points of diversion for the existing uses identified in Findings of Fact #4, #10, and #12, from the original point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance downstream from original points of diversion in feet (ft.)	
36 S	2 E	WM	33	NE SW	75 FEET SOUTH AND 2240 FEET EAST FROM THE W1/4 CORNER OF SECTION 33	Certificates 17190 and 76175	Certificate 83471
						3,651 ft.	571 ft.

18. Certificates 17190 and 76175 identify a period of use as being April 1 to October 1. The Little Butte Creek (F) Decree, also describes the irrigation season of use is April 1 to October 1.
19. 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.
20. 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.
21. The Applicant requests that the conserved water be allocated as follows:

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF
17190	100%	0.100	37.30	0%	0	0	100%	0.100	37.30
76175	100%	0.064	23.6	0%	0	0	100%	0.064	23.6
83471	100%	0.005	3.35	0%	0	0	100%	0.005	3.35
Total		0.169	64.25				100%	0.169	64.25

22. The Applicant requests that the priority dates for any conserved water be one minute junior to the originating rights.
23. The applicant received state and federal funds for approximately 90% of the projected cost of this conservation project.

24. The Applicant submitted a completed Land Use Form from Jackson County that indicated the proposed use was allowed outright or is not regulated by Jackson County's comprehensive plan.
25. The Applicant anticipates implementation of the conservation measures to occur on or before December 31, 2026.
26. The Applicant proposes that 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.
27. The Applicant requested the Department protect the new instream water rights created from the conserved water under Certificates 17190, 76175, and 83471 from the authorized points of diversion to the mouth of the South Fork Little Butte River.
28. The Applicant requested the deadline for submitting the Notice of Completion of December 31, 2026. The Applicant will submit a Request for Finalization of the allocation on or before December 31, 2028.
29. The application meets the requirements of OAR 690-018-0040.
30. 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. Based on the Department's Water Availability Reporting System, the South Fork Little Butte Creek instream water rights (Certificates 59822 and 75997) associated with the stream reach the applicant's POD is located in (South Fork Little Butte Creek at the mouth) are unfulfilled May-March. ESA listed fish (Coho Salmon), sensitive species (summer steelhead, spring Chinook Salmon, and Pacific Lamprey), and other game fish (winter steelhead, Coastal Cutthroat Trout, and fall Chinook Salmon) may be present in South Fork Little Butte Creek during the period of impact when instream flows are not being met. As such, water allocated to the state is necessary to support instream flow purposes including conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat. The ODFW recommends that the instream water rights to be protected from the applicant's POD to the mouth of South Fork Little Butte Creek as indicated in the application.
31. Notice of the proposed conservation project was published in the Department's weekly notice on March 5, 2024, and in the Grants Pass Daily Courier newspaper on March 5 and 12, 2024, 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]***

32. The proposed allocation of conserved water will result in a reduced diversion of the use allowed under the existing rights pursuant to OAR 690-0018-0050(4)(a). (Finding of Fact #3).

33. On April 18, 2024, the District #13 Watermaster performed a review of the proposed Allocation of Conserved Water Project. The Watermaster determined that the conservation project would not harm other water rights; therefore, no quantity of conserved water is needed to mitigate for harm to other water rights. OAR 690-018-0050(4)(b) and (d).
34. The conservation project is consistent with the local comprehensive land use plan requirements established in OAR 690-005-0045. OAR 690-018-0050(4)(c). (Finding of Fact #24).
35. 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-142 under Certificates 17190, 76175, and 83471 are as follows:

Certificate	Rate		Duty	
	Maximum CFS	CFS/AC	Maximum AF	AF/AC
17190	0.288	1/80	103.5	4.5
76175	0.063	1/80	22.5	4.5
83471	0.085	1/78.8	26.8	4.0

(Finding of Fact #3).

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

Certificate	Priority Date	Maximum Rate (cfs)	Maximum Duty (Volume) (AF)
17190	December 31, 1869, <i>plus one minute</i>	0.100	37.30
76175	December 31, 1895, <i>plus one minute</i>	0.064	23.6
83471	March 7, 1918, <i>plus one minute</i>	0.005	3.35

(Finding of Fact #21).

37. As required by OAR 690-018-0050(4)(f), the Department has determined that the instream right created will support public benefits. (Finding of Fact #30).
38. The new instream water rights created will be protected in the South Fork Little Butte Creek from the authorized point of diversions as described in Findings of Fact #5 and #11 at approximately River Mile 20.2, and Finding of Fact #12, at approximately River Mile 19.1 to the mouth. OAR 690-018-0050(4)(h); OAR 690-077-0015(8).

39. The instream rights under Certificates 17190 and 76175 shall allow the use and protection of flows as follows:

Source: South Fork Little Butte Creek, a tributary of Little Butte Creek

Certificate	Priority Date	Period	Rate (cfs)	Volume (AF)
17190	December 31, 1869, <i>plus one minute</i>	April 1 to October 1	0.100	37.30
76175	December 31, 1895, <i>plus one minute</i>	April 1 to October 1	0.064	23.6
Totals			0.164	60.9



From the point of diversion described in Findings of Fact (FOF) #5 and #11, at approximately River Mile (RM) 19.8:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	NE NE	200 FEET SOUTH AND 1590 FEET EAST FROM THE N1/4 CORNER OF SECTION 4

To: the mouth at the confluence with Little Butte Creek

40. The instream right under Certificate 83471 shall allow the use and protection of flows as follows:

Source: South Fork Little Butte Creek, tributary to Rogue River

Certificate	Priority Date	Period	Rate (cfs)	Volume (AF)
83471	March 7, 1918, <i>plus one minute</i>	April 1 to October 1	0.005	3.35

From the point of diversion described in Finding of Fact (FOF) #12, at approximately River Mile (RM) 19.1:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	SOUTH 79 DEGREES 45 MINUTES EAST, 2045 FEET FROM THE WEST 1/4 CORNER OF SECTION 33

To: the mouth at the confluence with Little Butte Creek

41. 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).
42. 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 downstream of the reach of the instream water right.
- OAR 690-077-0015(8).
43. The combination of instream rights for the proposed reach on the South Fork Little Butte Creek 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).
44. The existing instream water rights established pursuant to ORS 537.341 (minimum flow conversion) or ORS 537.336 (state agency process), within the proposed reach on the South Fork Little Butte Creek are sufficient to protect the monthly quantities of water necessary for supporting aquatic life and anadromous and resident fish habitat, but are not always met. By replacing a portion of these instream water rights, any instream water right created as a

result of this allocation will provide protection of stream flows identified as necessary for supporting aquatic life and anadromous and resident fish habitat under earlier priority dates.

45. 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).
46. The deadline for submitting a Notice of Completion is December 31, 2026. The deadline for submitting a Request for Finalization is December 31, 2028. (Finding of Fact #28). 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 #33). OAR 690-018-0050(4)(j).

### Determination and Proposed Action

The project described in Allocation of Conserved Water Application CW-142, is consistent with the criteria in ORS 537.455 to 537.500, and OAR Chapter 690, Divisions 018 and 077. 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-142 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 #3 and #21.*
2. *The proposed allocation of conserved water will not harm existing water rights. Finding of Fact #33 and #47.*
3. *The application is consistent with the requirements established in OAR 690-005-0045. Finding of Fact #24 and #34.*
4. *The changes proposed in CW-142 are approved.*
5. *The quantities of water conserved and allocated are as follows:*

Certificate	State's Portion			Applicant's Portion			Conserved Water		
	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF	Percentage	Maximum Rate (CFS)	Max. Duty (Volume) AF
17190	100%	0.100	37.30	0%	0	0	100%	0.100	37.30
76175	100%	0.064	23.6	0%	0	0	100%	0.064	23.6
83471	100%	0.005	3.35	0%	0	0	100%	0.005	3.35
Total		0.169	64.25				100%	0.169	64.25

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 17190, 76175, and 83471, and any related decree.

Upon filing the Notice of Completion:

7. Water Right Certificate 17190 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 (described in Finding of Fact #4) and place of use (described in Finding of Fact #9) at the reduced rate and duty as follows:

**Use:** IRRIGATION of 23.0 ACRES  
**Priority Date:** 1869  
**Rate:** 0.288 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, shall be limited to ONE-EIGHTIETH (1/80) of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 103.5 acre-feet per year.  
**Source:** SOUTH FORK OF LITTLE BUTTE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	75 FEET SOUTH AND 2240 FEET EAST FROM THE W1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	33	NE SW	17.8
36 S	2 E	WM	33	NW SW	5.2
Total					23.0

8. Water Right Certificate 76175 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 (described in Finding of Fact #10) at the reduced rate and duty as follows:

**Use:** IRRIGATION of 5.0 ACRES  
**Priority Date:** 1895  
**Rate:** 0.063 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, shall be limited to ONE-EIGHTIETH (1/80) of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year,

and is further limited to an annual volume limitation of 22.5 acre-feet per year.

**Source:** SOUTH FORK OF LITTLE BUTTE CREEK, a tributary of LITTLE BUTTE CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	75 FEET SOUTH AND 2240 FEET EAST FROM THE W1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	33	SE NW	5.0

9. Water Right Certificate 83471 is cancelled. A superseding Certificate will be issued for the existing use (described in Finding of Fact #12) and place of use (described in Finding of Fact #16) at the reduced rate and duty as follows:

**Use:** IRRIGATION of 6.7 ACRES

**Priority Date:** MARCH 7, 1918

**Rate:** 0.085 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, shall be limited to ONE-SEVENTY-EIGHTIETH AND EIGHT TENTHS (1/78.8) of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year, and is further limited to an annual volume limitation of 26.8 acre-feet per year.

**Source:** SOUTH FORK OF LITTLE BUTTE CREEK, tributary to ROGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	75 FEET SOUTH AND 2240 FEET EAST FROM THE W1/4 CORNER OF SECTION 33

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	2 E	WM	33	SW NW	4.9
36 S	2 E	WM	33	SE NW	1.8
Total					6.7

10. Water use measurement conditions:

- a. The water user shall maintain the meters or measuring devices in good working order.
- b. The water user 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, being the State's portion shall be managed instream until a Request for Finalization is submitted as follows:

Certificate	Priority Date	Period	Rate (cfs)	Volume (acre-feet)
17190	December 31, 1869, plus one minute	April 1 to October 1	0.100	37.30
76175	December 31, 1895, plus one minute	April 1 to October 1	0.064	23.6
Totals			0.164	60.9

South Fork Little Butte Creek, a tributary of Little Butte Creek

From the authorized point of diversion at approximately River Mile (RM) 19.8:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	NE NE	200 FEET SOUTH AND 1590 FEET EAST FROM THE N1/4 CORNER OF SECTION 4

To: the mouth of the South Fork Little Butte Creek at the confluence with Little Butte Creek

Certificate	Priority Date	Period	Rate (cfs)	Volume (acre-feet)
83471	March 7, 1918, plus one minute	April 1 to October 1	0.005	3.35

South Fork Little Butte Creek, tributary to Rogue River

From the authorized point of diversion at approximately River Mile (RM) 19.1:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	SOUTH 79 DEGREES 45 MINUTES EAST, 2045 FEET FROM THE WEST 1/4 CORNER OF SECTION 33

To: the mouth of the South Fork Little Butte Creek at the confluence with Little Butte Creek

Upon Filing the Request for Finalization:

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

Certificate	Priority Date	Period	Rate (cfs)	Volume (acre-feet)
17190	December 31, 1869, plus one minute	April 1 to October 1	0.100	37.30
76175	December 31, 1895, plus one minute	April 1 to October 1	0.064	23.6

South Fork Little Butte Creek, a tributary of Little Butte Creek

From the authorized point of diversion at approximately River Mile (RM) 19.8:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 E	WM	4	NE NE	200 FEET SOUTH AND 1590 FEET EAST FROM THE N1/4 CORNER OF SECTION 4

To: the mouth of the South Fork Little Butte Creek at the confluence with Little Butte Creek

Certificate	Priority Date	Period	Rate (cfs)	Volume (acre-foot)
83471	March 7, 1918, plus one minute	April 1 to October 1	0.005	3.35

South Fork Little Butte Creek, tributary to Rogue River

From the authorized point of diversion at approximately River Mile (RM) 19.1:

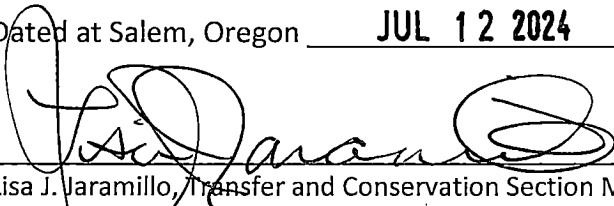
Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	33	NE SW	SOUTH 79 DEGREES 45 MINUTES EAST, 2045 FEET FROM THE WEST 1/4 CORNER OF SECTION 33

To: the mouth of the South Fork Little Butte Creek at the confluence with Little Butte Creek

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original 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 rights 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.

Dated at Salem, Oregon JUL 12 2024.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
IVAN GALL, DIRECTOR  
Oregon Water Resources Department

Mailing Date: JUL 15 2024

## 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).

If a protest is withdrawn, or any party to a hearing notifies the Department or the administrative law judge that the party will not appear, or if the party fails to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that parties have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

Any party may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public or private organization if the Department determines that appearance of a person by an

authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice Regarding Servicemembers:** Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

*Protests should be addressed to the attention of Allocation of Conserved Water Program, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*