



Union Soil and Water Conservation District
10507 N. McAlister Rd., Rm. 7 – La Grande, OR 97850 – Phone (541) 963-1313

LANDOWNER CONSERVATION AGREEMENT

This Conservation Agreement (Agreement) is entered into by and between the Union Soil and Water Conservation District (USWCD), acting through its Board of Directors, and John P. Hassinger, Trudy Hassinger (Owner). This Agreement shall be effective as of the date of the last signature affixed below.

The purpose of this Agreement is to promote sound resource management and implement conservation practices that will achieve benefits for fish and wildlife habitat, water quality, and soil and water conservation on the Owner Property shown on Exhibit A and described under Section 1 below. By entering into this agreement, the signatory attest and certify that he/she has ownership property rights or power of attorney for the below described property.

RECITALS

- A. The USWCD is the sponsor for the Elmer Dam Fish Passage and Flow Improvement Project (Project) located on Owner Property. The Project will include several components with intent to improve fish passage and improve flow regimes through the project area.
- B. The Project will be completed through a partnership between the USWCD and the Owner. Project funding and technical review will be provided by the Trout Unlimited (TU), Grande Ronde Model Watershed (GRMW), Oregon Department of Fish and Wildlife (ODFW), Confederated Tribes of the Umatilla Indian Reservation (CTUIR), National Marine Fisheries Service (NMFS), U. S. Fish and Wildlife Service (USFWS), Oregon Watershed Enhancement Board (OWEB), and Bonneville Power Administration (BPA).
- C. The USWCD seeks to work cooperatively with the Owner and other partners to restore and protect habitat critical to the survival of native fish and wildlife species, while protecting the Owners' ability to improve and continue farming operations, by providing project management services and obtaining funding for improving fish passage at the Elmer Dam through construction of a fishway and dam modification (System) on Owner property.

AGREEMENT

1. Owner Property. Work performed under this Agreement shall be performed on, and for the benefit of, the property as shown in Exhibit A (Owner Property), more particularly described as follows:

The Catherine Creek stream channel and associated floodplain within Union County Tax Lot 3200, located in the East Half of the Northwest quarter, and the Northwest, Southwest, and Southeast quarters of the Northeast Quarter of Section 30, Township 02 South, Range 40 East.

2. Description of Work. Implement construction ready designs for improving passage conditions for native aquatic species with emphasis on juvenile and adult spring/summer Chinook salmon (*Oncorhynchus tshawytscha*) and summer steelhead (*Oncorhynchus mykiss*) during periods of migration that achieve ODFW and NMFS fish passage criteria to the greatest extent possible, while also maintaining access and use of irrigation water for water rights holders and irrigators.
3. Cost. Costs to modify or construct the System for improved fish passage shall be borne and managed by the USWCD but are subject to availability of funding.
4. Term. This Agreement shall be effective as of the last signature affixed below and shall terminate on the last day of the fifteenth (15th) year thereafter.
5. USWCD Duties and Obligations. USWCD shall be responsible for the following:
 - A. Administer the funding required to complete project tasks.
 - B. Manage construction contract and construction actions in coordination with Owner.
 - C. Conduct annual property visits to inspect the Project and monitor compliance with terms and conditions of this Agreement. Access will be coordinated in a timely manner with Owner and will be subject to Owner approval.
 - D. Monitor all conservation practices for the term of this Agreement.
 - E. At no expense to the Owner, obtain and comply with all necessary governmental permits, authorizations and approvals prior to commencement of any work performed pursuant to this Agreement.
6. Owner's Duties and Obligations. Owner shall be responsible for the following:
 - A. Allow access to the Owner's Property for the USWCD, its authorized personnel, employees, agents, contractors and consultants, and its partners (including the OWEB Board and its representatives) to conduct project specific surveys, evaluations, inspections, and monitoring during and after construction to maintain effective restoration conditions that sustain the value of the Project following implementation.
 - B. Enter into agreements to accomplish the following:

1. Construct fish passage improvements that meet Owner requirements as well as local, state and federal regulations.
 2. Maintain flow in the newly constructed fishway, in accordance with the operations and maintenance manual, for all flows within the design criteria.
 3. Maintain or improve access to water for irrigation purposes.
- C. Allow the establishment and installation of physical modifications and plantings to the Catherine Creek channel and associated floodplain within established Conservation Easement Areas (if applicable) for the purposes of construction of the designed System.
- D. If applicable, maintain all riparian fences constructed by USWCD or its partners or Owner along the riparian corridor for the duration of this Agreement.
- E. As part of the rehabilitation effort, for the term of this Agreement be responsible for control of Class A and B weeds, as defined by Union County, Oregon Weed Control (<http://unioncountyweedcontrol.org/index.html>), within established Conservation Easement Areas (if applicable).
- F. The Owner and Owner's agents or lessees are restricted from the following activities (Restricted Activities) within the Project area or contained within the Conservation Easement Area (if defined) unless prior written consent is obtained from USWCD, which consent shall not be unreasonably withheld.
- Burning, removing or damaging planted or natural vegetation (non-invasive and not on the Union County weed list) in any way, including intentional livestock or domestic animal grazing.
 - Removing or altering dead and down trees, except in the case of fallen trees that damage project-related structure (i.e. livestock exclusion fencing) or create a flood or safety hazard.
 - Constructing buildings, bridges, fences or other structures.
 - Constructing trails, roads or stream fords.
 - Placing fill materials (rock, concrete, logs, soils, etc.) and/or removal of such materials, excepting customary maintenance of existing levees.
 - Draining, altering or otherwise disturbing wetland areas.

In the event the Owner is ordered by a governmental entity authorized to issue such an order to engage in a Restricted Activity on an emergency basis, owner may comply with such order without prior written consent of the USWCD only if it is impracticable to obtain consent within the time given for compliance with the order. Upon receipt of any such

order, Owner shall immediately inform and coordinate with the USWCD to limit the impact of the ordered action to the conservation goals of this Agreement.

7. Duties and Obligations of Both Parties.

- A. The parties shall cooperate in the planning and facilitation of riparian and upland management and improvement activities in the Project Area.
- B. The parties shall mutually manage the Project Area to promote riparian vegetation for the benefits of fish and wildlife habitat and soil and water conservation, while accommodating Owners interest in farming and ranching.

8. Public Information Acknowledgement. Owner acknowledges awareness that the application for project funding to OWEB and information relating to the project work, including monitoring data, is public record.

9. Consideration. The parties acknowledge the mutual obligations described herein as adequate consideration under this Agreement.

10. Standard of Performance. USWCD shall perform monitoring of all conservation improvements completed for the Elmer Dam Fish Passage and Flow Improvement Project in a professional and workmanlike manner.

11. No Ownership Rights. Nothing in this Agreement shall operate to vest USWCD with any right, title or interest to the Owner's property by adverse possession or otherwise.

12. Hold Harmless. Owner shall be liable for, and shall indemnify USWCD, its employees, agents, assigns, partners, and the partners' employees, agents and assigns from, any and all claims related to any intentional destruction or damage caused by the Owner, Owner's agents or lessees, to conservation improvements constructed or planted by the USWCD or its partners on the Owner's Property.

13. Liability and Indemnification. Subject to the limits of the Oregon Tort Claims Act and the Oregon Constitution, the USWCD agrees to defend, hold harmless, and indemnify the Owner and Owner's officers, agents, and employees (the "Indemnified Parties") against all losses, liabilities, claims, damages, costs or expenses, including reasonable attorneys' fees and expenses (collectively, "Claim") that are brought against the Indemnified Parties arising out of or related to (1) any personal injury, death or property damage caused by any act, omission, error, fault, mistake or negligence of the USWCD or its employees, agents, or subcontractors related to this agreement, (2) any act or omission by the USWCD that constitutes a non-trivial (from the perspective of a reasonable person in the position of the Indemnified Parties) breach of this agreement. The USWCD's obligation under this section shall not extend to any Claim primarily caused by the negligence or intentional misconduct of an Indemnified Party.

14. Early Termination.

- A. Either the Owner or USWCD may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach, or in the alternative, provided a plan and schedule for curing the breach acceptable to the non-breaching party within 30 days of the date of the notice of breach, then the party giving the notice may terminate the Agreement by written notice to the other party.
- B. In the event of a breach of this Agreement, the parties may pursue any remedies available at law or in equity.

14. Miscellaneous Provisions.

- A. This agreement may be amended only by mutual written consent of the USWCD and the Owner. Any such amendments shall be attached to this agreement as Exhibits.
- B. Subject to those Restricted Activities described in Paragraph 6.F, nothing in this Agreement shall prevent or deny the Owner or Owner's lessee's access to the area contained within the Project Area for any reason or purpose. The Owner specifically reserves the right on behalf of the Owner, the Owner's agents, employees and guests, to hunt game and fish in the Project Area.

15. Recording. USWCD shall be entitled to record this Agreement and any easements provided hereunder in the property records of Union County to ensure compliance by subsequent purchasers.

16. Liability Insurance. The USWCD shall maintain general liability insurance at a minimum of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, and automobile liability insurance at a combined single limit of \$1,000,000, that protects the USWCD from any and all claims, demands actions and suits for damage to property or personal injury, including death, arising from the USWCD's work under this agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by USWCD employees. In addition, all contractors or consultants hired for construction, restoration, technical design, assessment or monitoring are required to maintain the same minimum insurance coverages. The insurance policies shall not terminate or be cancelled without 30 days' written notice.

17. Compliance with Laws. In performing under this Agreement, both parties shall comply with all applicable laws, including statutes, ordinances, resolutions, rules, plans, decrees or orders, and applicable environmental and land use laws.

18. Assignment. USWCD shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the Owner, which Owner may withhold for any reason. The Owner understands that this Agreement is an encumbrance on the land and shall be binding upon the parties' heirs, assigns or successors in interest.
19. Subcontracting. If subcontractors are employed in the performance of this Agreement, the USWCD agrees to require the subcontractor to agree, as to the portions subcontracted, to fulfill all obligations of USWCD as specified in this Agreement. Notwithstanding the employment of subcontractors, USWCD shall remain obligated for full performance hereunder, and the Owner shall incur no obligation other than their obligations to USWCD hereunder. USWCD's subcontractors shall be subject to the applicable requirements and sanctions of ORS Chapter 656, worker's compensation.
20. Independent Contractor Status.
- A. USWCD shall perform the Work hereunder as an independent contractor.
 - B. USWCD, its subcontractors and their employees, are not employees of the Owner and are not eligible for any benefits through the Owner, including unemployment compensation and retirement benefits.
 - C. USWCD shall have complete control over its personnel and operations and shall be solely and completely responsible for working conditions on the job site, including the safety of all of its personnel and property during performance of this Agreement.
21. Authorized Representatives. Each party to this Agreement hereby appoints a representative who shall be fully authorized to carry out that party's obligations and execute any documents required by this Agreement. Either party may change their authorized representative upon written notice provided to the other party. Written inquiries or responses to the authorized representatives shall be mailed to appropriate address below:

A. For the Owner:

John P. Hassinger
68333 Kerns Loop.
Cove, OR 97824

B. For USWCD:

(1) James Webster (Administrative Contact) Tel: 541-963-1313
(2) Aaron Bliesner (Technical Contact) Tel: 541-963-1313
Union Soil and Water Conservation District
10507 North McAlister Road
La Grande, OR 97850

- 22. Notice. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the authorized representative described in Paragraph 21, or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the authorized representative at the address described in Paragraph 21.
- 23. Attorney Fees. In the event of any suit, action or arbitration proceeding arising at law or in equity out of or in connection with this Agreement, the prevailing party in such suit, action or arbitration and in any appeal there from shall be entitled to recover from the losing party the prevailing party's reasonable attorneys' fees, costs, and expenses determined by the court, or arbitrator before which the proceeding was tried or heard.
- 24. Severability. If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- 25. Integration. This Agreement contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements. No modification to this Agreement shall be valid unless written and signed by an authorized representative of the Owner and USWCD. The persons executing this Agreement on behalf of each party hereto warrants that they have full power and authority to do so on behalf of each party.


IT IS HEREBY AGREED.

Union Soil and Water Conservation District

By: 
Jarod Teeter, Chairman, Board of Directors

Date: 1-31-23

Property Owner

By: 
Trudy Hassinger, Hassinger Farms

Date: 1-30-23

By: 
John P. Hassinger, Hassinger Farms

Date: 1/30/2023

Exhibit A – Map of Owner Properties

