

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1871, 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.

Lessors

Pooled Instream Lease for several water right holders

Co-Lessor

Wallowa Lake Irrigation District
65196 Dobbin Road
Joseph, OR 97846

Findings of Fact

1. On May 11, 2021, Wallowa Lake Irrigation District, on behalf of several water right holders, filed an application to lease a portion of Certificates 3009, 48313, 7716, 91137, 53267 and 48313 for instream use. The Department assigned the application number IL-1871.

2. The portion of the first right to be leased is as follows:

Certificate: 3009, in the name of Dobbin Ditch Company (confirmed by the Wallowa River Decree)

Use: Irrigation of 0.4 acres

Priority Date: August 10, 1900

Quantity: **Rate:** 0.01 Cubic Foot per Second (CFS)

Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD): Not specified on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	16	SW NW	600	0.3
2 S	45 E	WM	16	SW NW	800	0.1
Total Acres						0.4

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.

3. Certificate 3009 does not specify the location of the point of diversion. However, the Department records indicate the location of the point of diversion is approximately:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
3 S	45 E	WM	6	SE SE	LATITUDE: 45.3235822302 LONGITUDE: -117.2303385601

4. The portion of the second right to be leased is as follows:

Certificate: 48313, in the name of Silver Lake Water Ditch Co. (confirmed by the Wallowa River Decree)
Use: Irrigation of 17.4 acres
Priority Date: 1893
Quantity: **Rate:** 0.44 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
3 S	45 E	WM	5	NE NW	4	SILVER LAKE DITCH: 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	25	SW SW	8600	2.0
2 S	45 E	WM	24	NE SW	7600	5.0
2 S	45 E	WM	24	NW SW	7600	0.6
2 S	45 E	WM	24	SW SW	7600	4.7
2 S	45 E	WM	24	SE SW	7600	0.7
2 S	45 E	WM	24	NW SE	7600	3.3
2 S	45 E	WM	25	SW SW	7801	1.1
Total Acres						17.4

5. The portion of the third right to be leased is as follows:

Certificate: 7716, in the name of Big Bend Water Ditch Company (confirmed by the Wallowa River Decree)
Use: Irrigation of 1.1 acres
Priority Date: February 1884
Quantity: **Rate:** 0.03 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: Wallowa River, tributary of Grande Ronde River

Authorized Point of Diversion (POD): Not specified on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	29	NW NE	100	0.7
2 S	45 E	WM	22	NW NE	4000	0.4
Total Acres						1.1

6. Certificate 7716 does not specify the location of the point of diversion however Department records indicate the location of the point of diversion is approximately:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	30	SE SE	LATITUDE: 45.3522119886 LONGITUDE: -117.2334651171

7. The portion of the fourth right to be leased as follows:

Certificate: 91137, in the name of Farmers Water Ditch Company (confirmed by the Wallowa River Decree)
Use: Irrigation of 1.0 acres
Priority Date: 1900
Quantity: **Rate:** 0.03 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD): FARMERS DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	45 E	WM	33	NW SE	3600	0.3
1 S	45 E	WM	33	SW SE	3600	0.7
Total Acres						1.0

8. Certificate 91137 provides a general description of the point of diversion. However, the Department records indicate that the location of the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	32	SW SW	FARMERS DITCH: Latitude: 45.337650° Longitude: -117.227488°

9. The portion of the fifth right to be leased is as follows:

Certificate: 53267, in the name of Leonard Melville (perfected under Permit S-37507)
Use: Irrigation of 1.1 acres
Priority Date: November 4, 1974
Quantity: **Rate:** 0.06 Cubic Foot per Second (CFS)
Limit: One-Fortieth of one cubic foot per second per acre and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Unnamed Stream, tributary to Prairie Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	45 E	WM	32	SE SE	50 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	45 E	WM	32	SW NE	2505	0.1
1 S	45 E	WM	32	SE NE	3001	1.0
Total Acres						1.1

10. The portion of the sixth right to be leased is as follows:

Certificate: Permit S-54870, in the name of Jon Vanderzanden, VZ Farms LLC (Application S-87953) (constructed under Permit R-347)

Use: Irrigation of 0.5 acres

Priority Date: January 27, 2014

Period of Use: May 1 through October 1

Quantity: **Rate:** 0.01 Cubic Foot per Second (CFS)
Limit: 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 a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Wallowa Lake, tributary to Wallowa River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	45 E	WM	32	SE SE	300 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	45 E	WM	32	SE SE	2501	0.5

11. Certificate 3009, 7716, 48313, 91137, and 53267 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.
12. There may be other primary or supplemental irrigation water rights appurtenant to all or a portion of the lands described in Finding of Fact Nos. 2, 4, 5, 7, 9, and 10. The Lessors and Co-Lessors have requested that those water rights not be included as part of this lease application. During the term of the lease, water use under those rights will also be suspended.
13. 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.

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

Source: Wallowa River, tributary to Grande Ronde

Instream Points: At the POD's (at described in Finding of Fact No's 3, 4, 6, 8)

	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3009	8/10/1900	0.01	0.60	June 1 through June 30
7716	2/1884	0.03	1.65	
48313	1893	0.44	26.10	
91137	1900	0.03	1.50	

Source: Unnamed Stream, tributary to Prairie Creek

Instream Points: At the POD's (at described in Finding of Fact No. 9)

	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53267	11/4/1974	0.06	3.85	June 1 through June 30

Source: Wallowa Lake, tributary to Wallowa River

Instream Points: At the POD's (as described in Finding of Fact No. 10)

	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
S-54870	1/27/2014	0.01	0.75	June 1 through June 30

15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

16. The protection of flows at the authorized points of diversion 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 point of the instream water right

17. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.

18. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.

19. 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.

20. 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.
21. 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.
22. The Lessors and Co-Lessors have requested that the lease terminate in June 2021, however the last day of the irrigation season is September 30. The lease will terminate on September 30, 2021 and commence on the date this final order is signed.
23. The Lessors and Co-Lessors have requested that there not be an option to terminate the lease.

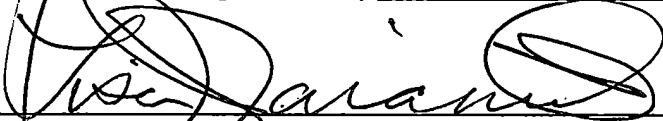
Conclusions of Law

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 the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2021.

Dated at Salem, Oregon this day JUL 21 2021.



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

Mailing date: JUL 23 2021

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