

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

In the Matter of Instream Lease Application) DETERMINATION and
SL-48, Grant County) FINAL ORDER ON 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

Confederated Tribes of Warm Springs
Reservation of Oregon (CTWSR)
Robert Bruno, General Manager
320 W. Main Street
John Day, Oregon 97845

Lessee

The Freshwater Trust (TFT)
Attn: Spencer Sawaske
700 SW Taylor, Suite 200
Portland, Oregon 97205

Findings of Fact

1. On May 23, 2019, CTWSR and TFT filed an application to lease the entirety of Certificate 24833 for instream use. The Department assigned the application number SL-48.
2. The right to be leased is as follows:

Certificate: 24833 in the name of Levi Anderson (confirmed by decree of the Circuit Court of State of Oregon for Grant County recorded in Volume 15, at page 461)

Use: Irrigation of 76.0 acres

Season of Use: April 1 to September 30

Priority Date: 1866

Quantity: **Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated from April 1 to Sept. 30; further limited to one acre-foot (AF) per acre per calendar month to July 1 and 3/4 acre-foot per acre thereafter; total 5.0 acre-feet per acre for season, measured at point of diversion.

Source: John Day River, tributary to Columbia River

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

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	33 E	WM	12	SW NE	30.0
13 S	33 E	WM	12	NE NW	7.0
13 S	33 E	WM	12	NW NW	20.0
13 S	33 E	WM	12	SE NW	19.0
Total Acres					76.0

3. Certificate 24833 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor and Lessee, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	SURVEY COORDINATES
13 S	33 E	WM	12	SE NE	LATITUDE: 44.4539 LONGITUDE: -118.6780

4. 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.
5. Certificate 24833 is limited to 1.0 acre-foot per acre in 30 day periods to July 1 and 3/4 acre-foot per acre in 30 day periods after July 1. And a seasonal limit of 5.0 acre-feet per acre.
6. Certificate 24833 is limited to 76.0 AF in the month of June and 57.0 AF per month in July, August and September.
7. 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 rate and volume specified in the below table consistent with the water right limits identified in Finding of Fact No 2.

Existing Use Rate (CFS)	Existing Use Volume (AF)	Existing Use Period
1.53	76.0	June 6 through June 30
0.93	57.0	July 1 through July 31
2.46	133.0	Totals

8. The instream use is as follows:
John Day River, tributary to the Columbia River

Instream Point: At the POD (as described in Finding of Fact No. 3)

Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
0.93	57.0	August 1 through August 31
0.96	57.0	September 1 through September 30
1.89	114.0	Totals

9. Other conditions to prevent injury and enlargement are:

The Lessee and Lessor shall measure and report the use of the existing water right and the instream water right. The Freshwater Trust will work with the Watermaster and the Watermaster may also request to read the Lessor's meter to verify meter readings supplied by the Lessor and/or Lessee and/or request more frequent reporting.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. The protection of flows at the authorized point 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.
12. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
13. 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.
14. 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.
15. 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.
16. 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.
17. The Lessor and Lessee have requested that the lease terminate on September 30, 2019. The lease may commence on the date this final order is signed.

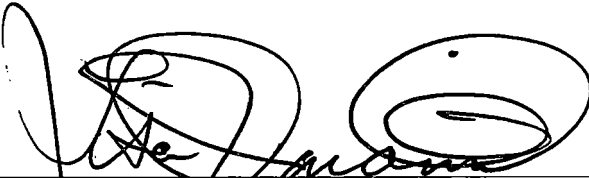
Conclusions of Law

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 (up to 1.53 CFS during the period June 6 through June 30 and up to 0.93 CFS during the period July 1 through July 31) as part of Certificate 24833 for irrigation use.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2019.

Dated at Salem, Oregon this day SEP 05 2019



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

Mailing date: SEP 06 2019

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.