

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
SL-54, Wallowa County ) PROPOSED SPLIT SEASON 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**

Sam Wade  
79265 Wade Gulch Lane  
Lostine, Oregon 97857

**Lessee**

The Freshwater Trust  
Jessica Humphreys  
401 NE 1<sup>st</sup> Street  
Enterprise, Oregon 97828

**Lessor**

Traci Frye  
79353 Wade Gulch Lane  
Lostine, Oregon 97857

**Findings of Fact**

1. On May 28, 2020, Sam Wade, Traci Frye and The Freshwater Trust filed an application to lease a portion of Certificate 45010, as a split season instream use. The Department assigned the Split Season Lease Application number SL-54.
2. On July 6, 2020, the Department contacted the Lessee about a deficiency in the application, being acres that were under roads or buildings and not able to be leased instream. On July 7, 2020, the Lessee submitted amended pages resolving the deficiency.
3. The portion of the right to be leased is as follows:

**Certificate:** 3170 in the name of Sam Wade (confirmed by the Wallowa River Decree)  
**Use:** Irrigation of 93.5 acres  
**Priority Date:** 1888  
**Quantity:** **Rate/Duty/Limit:** not exceed 1.5 acre feet per acre during any period of 30 days prior to July 31<sup>st</sup> 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):** None described

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
1 S	43 E	WM	13	SW NE	31.0
1 S	43 E	WM	13	SE NW	7.0
1 S	43 E	WM	13	NE SW	1.0
1 S	43 E	WM	13	SE SW	5.5
1 S	43 E	WM	13	NW SE	35.0
1 S	43 E	WM	13	SW SE	14.0
Total Acres					93.5

- Certificate 3170 does not include a rate limitation. The on-farm rate of 2.36 CFS identified by the Department as part of the split season lease is equivalent to approximately 1/40<sup>th</sup> CFS per acre.
- Certificate 3170 does not provide a location for the point of diversion. Based upon additional information provided by the Lessors and Lessee, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	24	NE SW	LATITUDE: 45.463 LONGITUDE: -117.387

- Certificate 3170 does not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 through September 30.
- 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.
- 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 limitations identified in Findings of Fact Nos. 3 through 6. The rates have been modified from the original lease application and are identified as follows:

Certificate	On-Farm Rate (CFS)	On-Farm Volume (AF)	On-Farm Use Period
3170	2.36	243.1	June 10 through July 31

- A portion of the water diverted at the point of diversion returns to the Wallowa River within the proposed reach 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 protection is as follows:

Reach	Percent
From immediately below the Point of Diversion to the confluence of the Grande Ronde River.	20 %

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 POD (as described in Finding of Fact No. 5)**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3170	1888	0.77	93.5	August 1 through September 30

**Instream Reach: From immediately below the POD to the confluence of Grande Ronde River**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3170	1888	0.62	74.8	August 1 through September 30

11. Other conditions to prevent injury and enlargement are:

The Lessor or Lessee shall measure and report the use of the existing water right and the instream water right. The Lessor or Lessee 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.

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

13. 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. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected instream has been reduced below the affected POD to account for return flows.

14. 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.

15. 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.

16. 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.

17. 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.
18. 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.
19. The Lessor and Lessee have requested that the lease terminate on October 1, 2020. 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 as identified in Finding of Fact No. 8 during the period June 10 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, or any other layered water rights for irrigation use, including groundwater registrations
3. The term of the lease will commence upon approval of this instream lease, and terminate on October 1, 2020.

Dated at Salem, Oregon this day     AUG 04 2020    .

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

Mailing date:     AUG 05 2020    

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