

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

In the Matter of Instream Lease Application)
SL-46, Wallowa County) **DETERMINATION and**
) **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

Woody and Megan Wolfe
81544 Hwy 82
Wallowa, OR 97885

Lessee

The Freshwater Trust (TFT)
700 SW Taylor, Suite 200
Portland, Oregon 97205

Findings of Fact

1. On April 15, 2019, Woody and Megan Wolfe and The Freshwater Trust (TFT) filed an application to lease portions of Certificates 94150 and 94163, as split-season instream uses. The Department assigned the Split Season Lease Application number SL-46.

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

Certificate: 94163 in the name of S.W. Miles (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 5, at Page 184-185)

Use: Irrigation of 23.9 acres, being 6.1 acres in Tract 1 and 17.8 acres in Tract 3

Priority Date: 1882 for Tract 1 and 1896 for Tract 3

Quantity: Rate: 0.80 CFS, being 0.20 CFS under 1882 priority (Tract 1) and 0.60 CFS under 1896 priority (Tract 3)

Limit: Annual volume limitation of 133.9 AF, being 34.2 AF under 1882 priority (Tract 1) and 99.7 AF under 1896 priority (Tract 3), and shall not exceed 1.5 acre-foot per acre during any period of 30 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

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.

Source: Lostine River (aka South Fork Wallowa River), tributary to the Wallowa River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 S	43 E	WM	9	SE NE	TRACT 1: MILES DITCH – Latitude: 45.494134; Longitude: -117.438922
1 S	43 E	WM	9	NE SE	TRACT 3: MILES MAGILL DITCH – Latitude: 45.4920258487; Longitude: -117.4380355698

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 S	43 E	WM	9	NW NE	1	6.1
1 S	43 E	WM	9	NW NE	3	10.8
1 S	43 E	WM	9	NE NW	3	7.0
Total Acres						23.9

3. The second right to be leased is as follows:

Certificate: 94150 in the name Thomas J. Willett (perfected under Permit S-44750)

Use: Irrigation of 60.6 Acres

Priority Date: October 30, 1979

Quantity: Rate: 1.51 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 ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigate during the irrigation season of each year.

Source: Wallowa River, tributary to the Grande Ronde River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	19	SE NE	3200 FEET NORTH AND 920 FEET WEST FROM THE SE CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	20	NE SW	25.9
1 N	43 E	WM	20	NW SW	34.7
Total Acres					60.6

4. Certificates 94150 and 94163 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.

5. There are supplemental irrigation water rights, Certificates 94160 and 94161, appurtenant to all or a portion of the lands described in Findings of Fact Nos. 2 and 3. The Lessors and Lessee have requested that these water rights not be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended during the instream use period.
6. 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.
7. The instream lease application, as proposed, is a split season lease.

Use of water under the water rights included in this lease may continue for the existing use up to the rates and volumes specified in the below table consistent with the water right limitations identified in Findings of Fact Nos. 2 through 4.

Miles and Miles-Magill Ditch on the Lostine River:

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
94163 - 1892	0.15 CFS	28.10 AF	May 1 through July 31
94163 - 1896	0.45 CFS	81.90 AF	
Diversion	0.60 CFS	110.0 AF	

Wallowa River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
94150	0.83 CFS	151.5 AF	May 1 through July 31
Diversion	0.83 CFS	151.5 AF	

8. The Lessors and Lessee have requested to protect water instream from the PODs for Certificate 94163 on the Lostine River to the mouth of the Lostine River and into the Wallowa River to its mouth at the confluence with the Grand Ronde River. The Lessors and the Lessee have requested to protect water instream from the POD for Certificate 94150 on the Wallowa River to its mouth at the confluence with the Grand Ronde River.
9. A portion of the water diverted at the points of diversion returns to the Lostine and Wallowa Rivers within the proposed reaches 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 each point of diversion. The reduction in the instream water rights from the original quantities identified in Finding of Fact Nos. 2 and 3 are as follows:

Reach	Percent
From immediately below each of the points of diversion for Certificate 94163 on the Lostine River to the Clearwater Ditch located in the SWSW Section 33, T1N, R43E, W.M.	2%
From the Clearwater Ditch to the Mouth of the Lostine River at the confluence with the Wallowa River	10%

Reach	Percent
In the Wallowa River from the confluence with the Lostine River (approx. RM 26.0) at Latitude: 45.552227, Longitude: -117.490133 to the Wallowa River (approx. RM 25.7) at Latitude: 45.55639, Longitude: -117.49803	40%
From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa (approx. RM 23.8)	60%
From the Wallowa River at Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River (at RM 0.0) at the confluence with the Grande Ronde River	70%

OAR 690-077-0015(8).

10. The Lessors and Lessee request to protect water instream under Certificate 94163 from the POD on the Lostine River into the Wallowa River. An instream reach is generally from the point of diversion to the mouth of the source stream (Lostine River) but may be protected further if measurable in the receiving stream (the Wallowa River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Lostine River is measurable into the Wallowa River.
11. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Lostine River, tributary to the Wallowa River

Instream Point No. 1: At the Miles Magill Ditch POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.15	17.8	August 1 through September 30

Instream Reach No. 1: From immediately below the Miles Magill Ditch POD to the Miles Ditch POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.14	17.4	August 1 through September 30

Instream Point No. 2: At the Miles Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.14	17.4	August 1 through September 30
94163	1882 – Tract 1	0.05	6.1	
Total Instream		0.19	23.5	

Instream Reach No. 2: From immediately below the Miles Ditch POD to the Clearwater Ditch located in the SWSW, Section 33, T1N, R43E, W.M.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.14	17.4	August 1 through September 30
94163	1882 – Tract 1	0.05	6.0	
Total Instream		0.19	23.4	

Instream Point No. 3: At the Clearwater Ditch located in the SWSW, Section 33, T1N, R43E, W.M.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.14	17.4	August 1 through September 30
94163	1882 – Tract 1	0.05	6.0	
Total Instream		0.19	23.4	

Instream Reach No. 3: From immediately below the Clearwater Ditch to the mouth of the Lostine River at the confluence with the Wallowa River (NWSE of Sec. 19, T1N, R43E)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94163	1896 – Tract 3	0.13	16.0	August 1 through September 30
94163	1882 – Tract 1	0.05	5.5	
Total Instream		0.18	21.5	

Wallowa River, tributary to the Grande Ronde River

Instream Reach #4: From the authorized point of diversion for Certificate 94150 (as described in Finding of Fact No. 3) to the confluence with the Lostine River at approx. RM 26.0 (NWSE of Sec. 19, T1N, R43E)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94150	10/30/1979	0.50	60.6	August 1 through September 30

Instream Reach No. 5: From the confluence with the Lostine River at Latitude: 45.552227, Longitude: -117.490133 (approx. RM 26.0) to a point on the Wallowa River at 45.55639, Longitude: -117.49803 (approx. RM 25.7)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94150	10/30/1979	0.50	60.6	August 1 through September 30
94163	1896 – Tract 3	0.09	10.7	
94163	1882 – Tract 1	0.03	3.7	
Total Instream		0.62	75.0	

Instream Reach No. 6: From Latitude: 45.55639, Longitude: -117.49803 (approx. RM 25.7) to a point near the town of Wallowa at Latitude: 45.57406, Longitude: -117.52571 (approx. RM 23.8)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94150	10/30/1979	0.50	60.6	August 1 through September 30
94163	1896 – Tract 3	0.06	7.1	
94163	1882 – Tract 1	0.02	2.4	
Total Instream		0.58	70.1	

Instream Reach No. 8: From a point near the town of Wallowa at Latitude: 45.57406, Longitude: -117.52571 (approx. RM 23.8) to RM 0.0 at the confluence with the Grande Ronde River at (SWNW of Sec. 23, T3N, R40E)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94150	10/30/1979	0.50	60.6	August 1 through September 30
94163	1896 – Tract 3	0.04	5.3	
94163	1882 – Tract 1	0.02	1.8	
Total Instream		0.56	67.7	

12. Other conditions to prevent injury and enlargement are:

The Lessors in coordination with The Freshwater Trust (Lessee) shall report monthly measurements of use under each water right involved in this split-season lease. The Lessee and Lessors shall report the readings using the Split Season Measurement Reporting Form.

For Certificate 94150, the Lessors and Lessee shall also report monthly the beginning and ending meter readings for the full irrigation season. The measuring device is a totalizing flow meter installed on the pipeline at the POD (located approximately at Latitude: 45.55412; Longitude: -117.48359). The Watermaster may also request to read the Lessors' meter to verify readings supplied by the Lessors and/or Lessee and/or request more frequent reporting.

13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
14. 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 each POD. The quantity of water to be protected instream has been reduced below each affected POD to account for return flows.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. The Lessors and Lessee have requested that the lease terminate on October 1, 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 and modified 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. 7 during the period May 1 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 (including Certificates 94160 and 94161), or any other layered water rights for irrigation use, including groundwater registrations.
3. The term of the lease commenced upon signing of this order and will terminate on October 1, 2019.

Dated at Salem, Oregon this MAY 23 2019.



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

Mailing date: MAY 24 2019

*This document was prepared by Teri Hranac.
If you have any questions, please call
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