

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

In the Matter of Instream Lease Application     )  
IL-1389, Umatilla County                             )  
   )  
   )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

**Authority**

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor**

Rhiannon Stallings  
56964 North Fork Road  
Milton-Freewater, OR 97862  
[rhiannonstallings@sbcglobal.net](mailto:rhiannonstallings@sbcglobal.net)

**Lessee**

The Freshwater Trust (TFT)  
65 SW Yamhill St., Suite 200  
Portland, Oregon 97204

**Findings of Fact**

1. On March 25, 2014, the TFT and Rhiannon Stallings, filed an application to renew instream lease IL-551, involving a portion of Certificate 12787.
2. The original lease application was in the name of Keith Truax. The property involved in the lease application is now owned by Rhiannon Stallings, the new Lessor.
3. During the review process, the Department identified that the instream reach, identified in the Final Order approving IL-551, evidenced by Special Order Volume 78, Page 110, required modification. Therefore, the Department has assigned the application a new lease number, IL-1389, to differentiate it from the original lease.
4. The portion of the right to be leased has been modified from the lease application and is as follows:

**Certificate:** 12787 in the name of C. L. G. HOPPER (confirmed by Walla Walla River Decree)

**Use:** IRRIGATION of 3.0 ACRES

**Priority Date:** 1880

**Limit/Duty:** 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 1.5 miner's inches per acre measured at the point of diversion.

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:** NORTH FORK WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	24	NE SE	3.0

5. Certificate 12787 does not specify a rate per acre and a duty per acre. Rather the certificate specifies that the limit per acre is 1.5 miner's inch, which is equivalent to 0.11 cubic feet per second (cfs) for irrigation of 3.0 acres. The original lease application requested a volume equivalent to 3.93 Acre-Feet (AF) per acre, which appears to be a reasonable amount of water use per acre.
6. Certificate 12787 does not provide a description of the location of the point of diversion. Based upon additional information provided by the applicant, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	37 E	WM	19	SW SE	BRADSHAW-HOPPER DITCH

The location of the point of diversion also appears to be near River Mile 4.

7. Certificate 12787 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250, for the purposes of instream leasing, an irrigation season of March 1 through October 31 shall be used to establish when water may be protected instream.
8. 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.
9. A portion of the water diverted to the place of use returns to the North Fork Walla Walla River within the proposed reach. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream below the point of diversion requires modification to account for return flows. The Watermaster clarified that the amount of water protected instream below the point of diversion should be the consumptive use portion.
10. Streamflows are lost within the proposed reach due to evaporation. Reductions of 2% per mile in the quantities that may be protected instream are necessary to prevent injury to downstream water users and enlargement of the right.
11. Based upon the review of the application, the Department has determined that the proposed instream flow will only reach to approximately 1.5 miles downstream from the point of diversion. Therefore, the instream reach for instream lease IL-1389 will be modified as described in Finding of Fact No. 12.



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

North Fork Walla Walla River, tributary to the Walla Walla River

**Instream Reach:** From the POD (as described in Finding of Fact No. 6, near River Mile 4) to approximately 1.5 miles downstream in the South Fork Walla Walla River

Certificate	Priority Date	At POD		Below the POD		1.5 Miles Below POD		Period Protected Instream
		Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
12787	1880	0.11	11.8	0.03	3.4	0.0	0.0	July 10 - August 31

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:

- The instream water use begins at the recorded point of diversion;
- The location of confluences with other streams downstream of the point of diversion.
- There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion. There are known losses to stream flow due to evaporative losses. Losses of 2% per mile to account for evaporative losses have been accounted for in Finding of Fact No. 12; and
- Return flows resulting from the exercise of the existing water right would re-enter the river below the POD. The quantity of water to be protected instream below the POD has been reduced 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 for 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 Lessor and Lessee have requested that the lease terminate on October 31, 2014. 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 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 October 31, 2014.

Dated at Salem, Oregon this 24 day of April 2014.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0890.*

Mailing date: APR 25 2014