

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

In the Matter of Instream Lease Application) DETERMINATION and
SL-43, Wallowa County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE WITH
) MODIFICATIONS

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)
65 SW Yamhill St., Suite 200
Portland, Oregon 97204

Findings of Fact

1. On March 16, 2017, Woody and Megan Wolfe and The Freshwater Trust (TFT) filed an application to lease a portion of Certificates 93525 and 62054, as a split season instream use. The Department assigned the Split Season Lease Application number SL-43.

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

Certificate: 93525 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 8.5 acres in Tract 1 and 15.4 acres in Tract 3

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

Quantity: **Limit:** shall not exceed 1.5 acre-feet per acre during any period of 30 days prior to July 31st of each year, and thereafter not to exceed 1.0 acre-foot per acre during the entire remainder of the irrigation season

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

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	Tract	Acres
1 S	43 E	WM	9	NW NE	1	8.5
1 S	43 E	WM	9	NW NE	3	8.4
1 S	43 E	WM	9	NE NW	3	7.0
Total Acres						23.9

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Tract No.	Ditch Name
1 S	43 E	WM	9	SE NE	1	MILES DITCH
1 S	43 E	WM	9	NE SE	3	MILES MAGILL DITCH

3. Certificate 93525 does not provide the specific locations of the points of diversion. Based upon additional information provided by the Lessor, Lessee, a review of the Department's records, and the Department's Watermaster, for purposes of this instream lease, the points of diversion are on the Lostine River, tributary to the Wallowa River, and are described and located approximately as follows:

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

4. Certificate 93525 does not include a rate limitation. The on-farm rate of 0.60 CFS (rounded) identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.
5. The portion of the second right to be leased is as follows:

Certificate: 62054 in the name of Thomas J. Willett (perfected under permit S-44750)
Use: Irrigation of 60.6 Acres
Priority Date: October 30, 1979
Quantity: **Rate:** 1.51 CFS
Volume: 212.1 Acre-Feet (AF)
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 CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5 AF for each acre irrigated during the irrigation season of each year
Source: Wallowa River, tributary to the Grande Ronde River

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

Authorized Point of Diversion (POD):

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

6. Certificates 62054 and do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.
7. There are supplemental irrigation water rights, Certificates 81507 and 11642, appurtenant to all or a portion of the lands described in Findings of Fact Nos. 2 and 5. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended during the instream use period.
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. 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 6.

Miles and Miles Magill Ditch on the Lostine River:

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
93525 – Tract 1	0.21 CFS	39.1 AF	May 1 through July 31
93525 – Tract 3	0.39 CFS	70.8 AF	
Diversion	0.60 CFS	109.9 AF	

Point of Diversion on the Wallowa River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
62054	1.51 CFS	151.5 AF	May 1 through July 31

10. The Department concurs with of 0.79 CFS (rounded) identified by the Lessor and Lessee as part of the split season lease under Certificate 93525. However, the Department finds for purposes of this instream lease, the rate is limited to 0.60 and 109.9 AF, during the irrigation season of May 1 through July 31.
11. The Lessor and Lessee have requested to protect water instream from the authorized points of diversion for Certificate 93525 on the Lostine River and into the Wallowa River and then into the Grande Ronde River to the Oregon border. A portion of the water diverted at the POD returns to the Lostine River (approximately 2%) 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 each POD.
12. A portion of the water diverted under Certificate 93525 returns to the Wallowa River (approximately 10%) below the confluence with the Lostine River. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream in the Wallowa River requires modification and return flows should be accounted

for immediately below the confluence with the Lostine River. No return flows were identified in association with the diversion of water under Certificate 62054 from the Wallowa River.

13. The Lessor and Lessee request to protect water instream under Certificate 93525 from the Lostine River into the Wallowa River and then into the Grande Ronde 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 and Grande Ronde River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Lostine River is measurable into the Wallowa River but not into the Grande Ronde River. Water may only be protected instream under these water rights from the Lostine River and into the Wallowa River.
14. The Lessor and Lessee request to protect water instream under Certificate 62054 from the Wallowa River into the Grande Ronde River. The quantity that may be leased instream from the Wallowa River is not measurable into the Grande Ronde River. Water may only be protected instream under this water right in the Wallowa River.
15. 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 Reach No. 1: At the Miles Magill Ditch POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.13	15.4	August 1 through September 30

Instream Reach No. 2: From immediately below the Miles Magill Ditch POD to the Miles Ditch POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.12	15.1	August 1 through September 30

Instream Reach No. 3: At the Miles Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.12	15.1	August 1 through September 30
93525	1882 – Tract 1	0.07	8.5	
Total Instream		0.19	23.6	

Instream Reach No. 4: From immediately below the Miles Ditch POD to the mouth of the Lostine River (RM 0.0) at the confluence with the Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.12	15.1	August 1 through September 30
93525	1882 – Tract 1	0.06	8.3	
Total Instream		0.18	23.4	

Wallowa River, tributary to the Grande Ronde River

Instream Reach No. 11: From immediately below the confluence of the Lostine River to the POD for Certificate 62054 (as described in Finding of Fact No. 5)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.11	13.6	August 1 through September 30
93525	1882 – Tract 1	0.06	7.5	
Total Instream		0.17	21.1	

Instream Reach No. 12: From the POD for Certificate 62054 to the mouth of the Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93525	1896 – Tract 3	0.11	13.6	August 1 through September 30
93525	1882 – Tract 1	0.06	7.5	
62054	10/30/1979	0.50	60.6	
Total Instream		0.67	81.7	

16. Other conditions to prevent injury and enlargement are:

The Lessor 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 Lessor shall report the readings using the Split Season Measurement Reporting Form.

For Certificate 93525, where a staff gage is installed, an observer shall read the staff gage and record the reading at uniform intervals, and as close as practical before and after the time regulation of the diversion flow rate occurs. At no time shall the periodic interval be greater than three days. A continuous stage recorder may be used in lieu of periodic staff gage readings. The Watermaster may also request to read the Lessor's meter and staff gage(s) to verify readings supplied by the Lessor and/or Lessee and/or request more frequent reporting. The measurement device is a flume located within each diversion ditch in close proximity to each POD.

For Certificate 62054, the Lessor and Lessee shall also report 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: 45.5541235108; Longitude: -117.4835923076). The Watermaster may also request to read the Lessor's meter to verify readings supplied by the Lessor and/or Lessee and/or request more frequent reporting.

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

18. 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 (except Certificate 62054). The quantity of water to be protected instream has been reduced below each affected POD to account for return flows.
19. 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.
 20. 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.
 21. 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.
 22. 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.
 23. 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.
 24. The Lessor and Lessee have requested that the lease terminate on October 1, 2018. 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. 9 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 81507 and 11642), or any other layered water rights for irrigation use, including groundwater registrations

3. The term of the lease will commence on May 1, 2018, and terminate on October 1, 2018.

Dated at Salem, Oregon this 16th day of May, 2018.



Dwight French, Water Right Services Division Administrator, for
THOMAS M. BYLER, Director
Oregon Water Resources Department

Mailing date: MAY 16 2018

*This document was prepared by Teri Hranac.
If you have any questions, please call
503-986-0881.*