

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
SL-50, Wallowa County) 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.

Lessors

Pacific Grasslands, LLC
Aimee Danch, Owner
PO Box 511
Wallowa, Oregon 97885

Lessee

The Freshwater Trust
Attn: Jessica Humphreys
400 NE 1st Street
Enterprise, Oregon 97828

Pacific Grasslands, LLC
Jeremiah Stent
PO Box 511
Wallowa, Oregon 97885

Findings of Fact

1. On April 17, 2020, Pacific Grasslands, LLC, and The Freshwater Trust (TFT) filed an application to lease a portion of Certificates 94348 and 94156, as a split season instream use. The Department assigned the Split Season Lease Application number SL-50.
2. On June 8, 2020, the Department contacted the Lessee about a deficiency in the application, being acres that were not able to be dried up. On June 16, 2020, the Lessee submitted amended pages removing acreage and resolving the deficiency.
3. The portion of the first right to be leased is as follows:

Certificate: 94348 in the name of S.L. Magill (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 5, at Page 181)

Use: Irrigation of 188.3 Acres in Tract 3

Priority Date: 1889 for Tract 3

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.

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 of Wallowa River (Lostine River), a tributary of the Wallowa River

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

Authorized Place of Use:

| IRRIGATION – Track 3 | | | | | |
|----------------------|------|-----|-----|-------|--------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 N | 43 E | WM | 32 | SE NW | 25.5 |
| 1 N | 43 E | WM | 32 | SW NW | 40.0 |
| 1 N | 43 E | WM | 32 | NW SW | 36.0 |
| 1 N | 43 E | WM | 32 | NE SW | 33.9 |
| 1 N | 43 E | WM | 32 | SW SW | 15.0 |
| 1 N | 43 E | WM | 32 | SE SW | 37.9 |
| Total Acres | | | | | 188.3 |

4. Certificate 94348 does not include a rate limitation. The on-farm rate of 4.64 cubic feet per second (CFS) (rounded) identified by the Lessors 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: 94156 in the name of C. J. Allen (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 5 at Pages 143-144)

Use: Irrigation of 72.5 Acres in Tract 4

Priority Date: 1889 for Track 4

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: Lostine River (South Fork of Wallowa River), tributary of the Wallowa River

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

Authorized Place of Use:

| IRRIGATION – Track 4 | | | | | |
|----------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 N | 43 E | WM | 5 | SE NW | 31.7 |
| 1 N | 43 E | WM | 5 | NE NW | 34.3 |
| 1 N | 43 E | WM | 5 | NE SW | 6.5 |
| Total | | | | | 72.5 |

6. Certificate 94156 does not include a rate limitation. The on-farm rate of 1.79 CFS (rounded) identified by the Lessors and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.
7. Certificates 94348 and 94156 do not provide a description of the point of diversion. However, based upon additional information provided by the Lessee, a review of the Department's records, and the Department's Watermaster, the Lessors have been utilizing Foster Ditch as a point of diversion. For purposes of this instream lease, the point of diversion from the Lostine River, is described approximately as follows:

| Twp | Rng | Mer | Sec | Q-Q | Latitude / Longitude |
|-----|------|-----|-----|-------|--|
| 1 S | 43 E | WM | 4 | NE SW | FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096 |

8. Certificates 94348 and 94156 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 through September 30.
9. 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. 3 and 5. 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 for the lands covered under this lease for the water rights as described will also be suspended during the instream use period.
10. 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.
11. 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. 3 through 8. The rates have been modified from the original lease application and are identified as follows:

Foster Ditch:

| Certificate | On-Farm Rate (CFS) | On-Farm Volume (AF) | On-Farm Use Period |
|-------------|--------------------|---------------------|-----------------------|
| 94348 | 4.75 | 866.18 | May 1 through July 31 |
| 94156 | 1.83 | 333.50 | May 1 through July 31 |
| Total | 6.58 | 1199.68 | |

12. A portion of the water diverted at the points of diversion returns to the Lostine River 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 protections are as follows:

| Reach | Percent |
|--|---------|
| From immediately below the Foster Ditch points of diversion to the Clearwater Ditch Point of Diversion located in the SWSW Section 33, T1N, R43E, W.M. | 2% |
| From the Clearwater Ditch Point of Diversion to the Mouth of the Lostine River at the confluence with the Wallowa River | 20% |

OAR 690-077-0015(8).

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

Instream Point No. 1: At the Foster Ditch POD (as described in Finding of Fact No. 7)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-----------------------|---------------|---------------------|----------------------|-------------------------------|
| 94348 | 1889 | 1.56 | 188.30 | August 1 through September 30 |
| 94156 | 1889 | 0.60 | 72.50 | |
| Total Instream | | 2.16 | 260.80 | |

Instream Reach No. 1: From immediately below the Foster Ditch POD to the Clearwater Ditch POD (in the SWSW Section 33, T1N, R43E, W.M.)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-----------------------|---------------|---------------------|----------------------|-------------------------------|
| 94348 | 1889 | 1.53 | 184.53 | August 1 through September 30 |
| 94156 | 1889 | 0.59 | 71.05 | |
| Total Instream | | 2.12 | 255.58 | |

Instream Reach No. 2: From the Clearwater 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 |
|-----------------------|---------------|---------------------|----------------------|-------------------------------|
| 94348 | 1889 | 1.22 | 147.63 | August 1 through September 30 |
| 94156 | 1889 | 0.47 | 56.84 | |
| Total Instream | | 1.69 | 204.47 | |

14. 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.

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

16. 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.
17. 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.
18. 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.
19. 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.
20. Based upon review of the application, information provided by the Department's Watermaster, and other available information, this 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 rights.
21. 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.
22. The Lessors and Lessee have requested that the lease terminate on October 1, 2021. The lease may commence on the date this final order is signed.
23. The Lessors and Lessee have requested that there not be an option to terminate the lease.

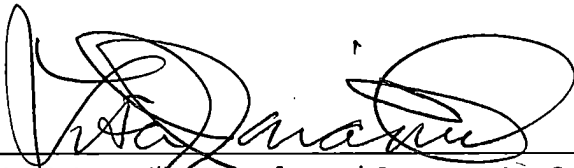
Conclusions of Law

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. 11 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 will commence upon approval of this instream lease, and terminate on October 1, 2021.

Dated at Salem, Oregon this day JUL 08 2020.



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

Mailing date: JUL 09 2020

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