

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1441, Wasco County) 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

Will Ford
3775 Fifteenmile Road
The Dalles, OR 97058

Lessee

The Freshwater Trust (TFT)
700 SW Taylor Street, Suite 200
Portland, Oregon 97204

Findings of Fact

1. On May 7, 2019, Will Ford and TFT filed an application to renew instream lease IL-1441, involving the entirety of Certificate 90164.
2. The right to be leased is as follows:

Certificate: 90164 in the name of John F. Stanek (perfected under the Fifteenmile Creek Decree, in the Order Record of the Water Resources Director in Volume 7, at Page 406)

Use: Irrigation of 63.5 acres

Priority Date: 1878 for Tract 1 and 1875 for Tract 2

Quantity: **Volume:** 190.5 Acre-Feet (AF)

Limit: limited to an amount actually beneficially used for said purpose, and shall not exceed 3.0 AF per acre in any irrigation season

Source: Fivemile Creek (for Tract 1) and Eightmile Creek (for Tract 2), tributaries of Fifteenmile Creek

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	14 E	WM	4	SE SW	NEW No. 2: 250 FEET NORTH AND 1350 FEET EAST FROM THE SW CORNER OF SECTION 4
1 N	14 E	WM	9	SE NW	NEW No. 1: 1550 FEET SOUTH AND 2400 FEET EAST FROM THE NW CORNER OF SECTION 9

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 No.	POD	Acres
1 N	14 E	WM	4	NW SW	2		0.7
1 N	14 E	WM	4	SW SW	1		5.3
1 N	14 E	WM	9	NW NE	2	1 & 2	1.8
1 N	14 E	WM	9	SW NE	2	1 & 2	6.4
1 N	14 E	WM	9	NE NW	2	1 & 2	13.2
1 N	14 E	WM	9	NW NW	1		19.4
1 N	14 E	WM	9	SW NW	1		11.7
1 N	14 E	WM	9	SE NW	2	1 & 2	1.6
1 N	14 E	WM	9	NW SW	1		3.4
Total Acres							63.5

- Certificate 90164 describes the annual duty of the right as 3.0 acre-feet (AF) per acre; however, the Fifteenmile Creek Decree further describes the duty in the following 30-day volumes: Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30-day period. From July 1st, the diversion is limited to ¾ AF per acre in any 30-day period.
- Certificate 90164 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree indicates that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40th of Cubic Foot per Second (CFS) per acre after July 1st, except in case of rotation.

Certificate	Tract No.	Max Rate After July 1 st
90164	1	1.00 CFS
	2	0.58 CFS

- Certificate 90164 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
- Certificate 90164 does not provided a description of the location of the point of diversion associated with a portion of Tract 2 and all of Tract 1. Based upon review of Department records and additional information provided by the Watermaster, for purposes of this instream lease, the additional points of diversion and associated place of use are as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	14 E	WM	4	NW SW	POD No. 3: Latitude: 45.597562 Longitude: -121.080726
1 N	14 E	WM	9	NW SW	POD No. 4: Latitude 45.5804722700 Latitude: -121.08295650382

Twp	Rng	Mer	Sec	Q-Q	Tract No.	POD	Acres
1 N	14 E	WM	4	NW SW	2	3	0.7
1 N	14 E	WM	4	SW SW	1	4	5.3
1 N	14 E	WM	9	NW NW	1	4	19.4
1 N	14 E	WM	9	SW NW	1	4	11.7
1 N	14 E	WM	9	NW SW	1	4	3.4

7. There are two supplemental irrigation water rights, Certificates 30858 and 63645, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor and Lessee have not requested that these water rights be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended.
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 lease application requested to protect water instream from Fivemile Creek into Eightmile Creek and then from Eightmile Creek into Fifteenmile Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Fivemile Creek and Eightmile Creek) but may be protected further if measurable in the receiving stream (Fifteenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be protected instream from Fivemile Creek is measurable into Eightmile Creek and may be protected instream in Eightmile Creek. The quantity that may be protected instream from Eightmile Creek is measurable into Fifteenmile Creek and may be protected instream in Fifteenmile Creek.
10. The instream use is as follows:

Fivemile Creek, tributary to Eightmile Creek

Instream Reach: From POD No. 4 (as described in Finding of Fact No. 6) to the mouth of Fivemile Creek (at the confluence with Eightmile Creek)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90164	1878	0.50	119.4	June 2 through September 30

Eightmile Creek, tributary to Fifteenmile Creek

Instream Reach No. 1: From New POD No. 1 (as described in Finding of Fact No. 2) to the confluence with Fivemile Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90164	1875	0.29	69.0	June 2 through September 30

Instream Reach No. 2: From the confluence with Fivemile Creek to the Pump POD No. 3 (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90164	1875	0.29	69.0	June 2 through September 30
	1878	0.50	119.4	
Total Instream		0.79	188.4	

Instream Reach No. 3: From Pump POD No. 3 to the mouth of Eightmile Creek (at the confluence with Fifteenmile Creek)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90164	1875	0.30	71.1	June 2 through September 30
	1878	0.50	119.4	
Total Instream		0.80	190.5	

Fifteenmile Creek, tributary to the Columbia River

Instream Reach: From the confluence with Eightmile Creek to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90164	1875	0.30	71.1	June 2 through September 30
	1878	0.50	119.4	
Total Instream		0.80	190.5	

11. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

The instream use may also be conditioned to allow for more or less water to be protected instream below the PODs based upon instream measurements conducted by Department staff or other approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at the.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Instream flows may be monitored in Fifteenmile Creek at the gage near The Dalles (14105550).

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. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
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 Eightmile and Fivemile Creeks reach do not exceed the estimated average natural flow.
 16. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the Fifteenmile Creek reach do exceed the estimated average natural flow in the month of September.
 17. The Department has identified that during the term of this lease, the quantities protected instream may be additive to other existing instream water rights established within the same reach under ORS 537.341 (state agency instream water right application process), 537.346 (minimum streamflow conversion process), 537.348 (instream transfer and instream lease process) or 537.470 (allocation of conserved water process) during the month of September. During the other months being protected, this instream use will be additive to instream rights created under ORS 537.348 and 537.470 and replace portions of instream rights created under ORS 537.341 and 537.346.
 18. 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.
 19. 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.
 20. 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.
 21. The Lessor and Lessee have requested that the lease terminate in September of 2023, however the last day of the irrigation season is October 31. The lease will terminate on October 31, 2023. The lease may commence on the date this final order is signed.
 22. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

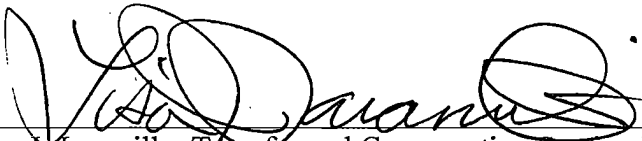
Conclusions of Law

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 each year of 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, 2023. For multiyear leases, the lessor and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (June 2 through September 30) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day JUN 06 2019.



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

Mailing date: JUN 07 2019

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