

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1919, Union 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.

Lessor

Confederated Tribes of the Umatilla Indian
Reservation
46411 Timine Way
Pendleton, OR 97801

Lessee

Trout Unlimited (TU)
Attn: Jessica Humphreys
401 NE 1st Street
Enterprise, Oregon 97828
jessica.humphreys@tu.org

Findings of Fact

1. On March 22, 2022, Confederated Tribes of the Umatilla Indian Reservation and TU filed an application to renew instream lease IL-1724, involving the entirety of Certificate 94012.
2. During the review process, the Department identified that the instream reach, identified in the Final Order approving IL-1724, evidenced by Special Order Volume 121, Page 216, requires modification. Therefore, the Department has assigned the application a new lease number, IL-1919, to differentiate it from the original lease.
3. The right to be leased is as follows:

Certificate: 94012 in the name of Confederated Tribes of the Umatilla Indian Reservation (confirmed by decree of the Circuit Court of the State of Oregon for Union County; Volume 8, Page 1)

Use: Irrigation of 43.0 acres

Priority Date: 1866

Quantity: **Rate:** 1.075 Cubic Foot per Second (CFS)
Volume: 129.0 Acre-Feet (AF)
Limit: One-Fortieth of one cubic foot per second (CFS) per acre, not to exceed 3.0 AF per acre per year

Source: Catherine Creek, tributary to Grande Ronde 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 Point of Diversion (POD):

Twsp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	34	SE SW	POD 1 – SAMS AND MILES DIVERSION (LOCALLY KNOWN AS SMITH DIVERSION) – 9035 FEET SOUTH AND 8065 FEET EAST FROM NW CORNER, SECTION 28

Authorized Place of Use:

Twsp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	28	SW SE	17.5
4 S	40 E	WM	28	SE SE	2.0
4 S	40 E	WM	33	NE NE	20.0
4 S	40 E	WM	33	NW NE	1.5
4 S	40 E	WM	33	SE NE	2.0
Total Acres					43.0

4. Certificate 94012 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.
5. 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.
6. A portion of the water diverted at the POD returns to the system below the confluence of Little Creek on Catherine Creek 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 to account for surface return flows. The Watermaster has identified a reduction of 20% below the confluence with Little Creek to mitigate for any injury as a result of the loss of any return flows.
7. In addition, the full quantity requested to be protected instream from the point of diversion to the mouth of Catherine Creek may not be made without enlargement. There are seepage and evaporative losses downstream from the point of diversion. The Watermaster has identified that below the point of diversion at approximately river mile 12.0 on Catherine Creek, the expected loss is 1% per mile. The quantities that may be protected instream below river mile 12.0 will be adjusted to prevent injury to downstream users and enlargement of the right.
8. Under the Grande Ronde Decree water may be used at a rate up to the equivalent of 1/40th cfs per acre but only on a rotation basis. The use of water at 1/80th cfs per acre is allowed at a continuous rate. The Watermaster identified that the instream rate is equivalent to 1/40th cfs per acre and cannot be maintained as a continuous flow without injury to other water rights. Water may be protected instream at rates equivalent to 1/80th cfs per acre.
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Catherine Creek, tributary to the Grande Ronde River

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94012	1866	0.834	129.00	July 15 through September 30

Instream Reach 2: From the confluence of Little Creek to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94012	1866	0.667	103.2	July 15 through September 30

10. 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 points 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.

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

12. 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 losses due to seepage and evaporation downstream from the points of diversion and the quantities protected instream have been reduced to account for loss; 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 the POD. The quantity of water to be protected instream has been reduced to account for return flows.

13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reaches will provide for a beneficial purpose.

14. 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 during the instream season.

15. 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.
16. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease, as conditioned, 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.
17. 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.
18. The Lessor has requested that the lease terminate in September 2022; however the last day of the irrigation season is October 31, 2022. The lease will terminate on October 31, 2022. 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, 2022. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day MAY 09 2022.



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

Mailing date: MAY 10 2022

This document was prepared by Corey Courchane. If you have any questions, please call 503-979-3917.