

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1478, Wallowa 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

The Freshwater Trust (TFT)
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Findings of Fact

1. On May 12, 2015, The Freshwater Trust filed an application to lease a portion of Certificate 3154 and the entirety of Certificate 12058 for instream use.
2. The portion of the first right to be leased is as follows:

Certificate: 3154 in the name of Sheep Ridge Ditch Co. (confirmed by Wallowa River Decree)
Use: Irrigation of 74.0 acres
Priority Date: 1897
Quantity: **Rate/Duty/Limit:** 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), tributary to Wallowa River
Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	14	NE SW	39.5
1 S	43 E	WM	14	NW SW	4.0
1 S	43 E	WM	14	NW SE	30.5
Total Acres					74.0

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.

3. Certificate 3154 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NE NW	LATITUDE: 45.452684 LONGITUDE: -117.425459

4. The second right to be leased is as follows:

Certificate: 12058 in the name of F. W. Hammack (perfected by Permit S-12955)
Use: Irrigation of 16.0 acres
Priority Date: February 18, 1938
Quantity: **Rate:** 0.4 Cubic Foot per Second (CFS)
Duty/Limit: not exceed 1.5 acre feet per acre for each acre irrigated during any 30 day period prior to May 1 to July 31, and thereafter shall be limited to a diversion of not to exceed 1.0 acre foot per acre for each acre irrigated during the remainder of the irrigation season ending October 1

Source: South Fork of Wallowa River (Lostine River), a tributary of Wallowa River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	14	E1/2 NW SW	16.0
Total Acres					16.0

5. Certificate 12058 does not provide the measured distances of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	43 E	WM	27	NE NW	LATITUDE: 45.452684 LONGITUDE: -117.425459

6. Certificates 3154 and 12058 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 through September 30.
7. There is a supplemental irrigation water right, Certificate 81507, appurtenant to all or a portion of the lands described in Finding of Fact No. 2 and 4. During the term of the lease, water use under this right 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 the Department to protect water instream from the point of diversion to the mouth of Wallowa River. An instream reach is generally from the point of diversion to the mouth of the source stream (South Fork Wallowa River (Lostine River)) but

may be protected further if measurable in the receiving stream (Wallowa River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the South Fork Wallowa River (Lostine River) is not measurable into the Wallowa River and cannot be protected instream in the Wallowa River.

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

South Fork Wallowa River (formerly Lostine River), tributary to Wallowa River

Instream Reach: From the POD (as described in Finding of Fact No. 5) to the confluence with Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3154	1897	1.83	405.9	May 1 through July 31
		0.60		August 1 through September 30
12058	February 18, 1938	0.40	89.0	May through July 31
		0.13		August 1 through September 30

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 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.
13. 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.
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.
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 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 on September 30, 2019. The lease may commence on the date this final order is signed.
19. The Lessor has requested the option of terminating the lease early with written notice to the Department.

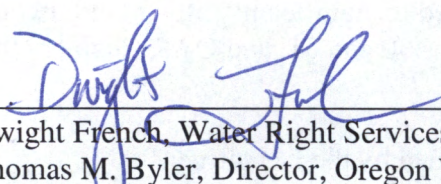
Conclusions of Law

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 September 30, 2019. For multiyear leases, the lessor shall have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (May 1 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 24 day of June, 2015.



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: JUN 26 2015

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