

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

In the Matter of Instream Lease Application)
SL-37, Wallowa County) DETERMINATION and
) 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

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 April 12, 2016, Woody and Megan Wolfe and The Freshwater Trust (TFT) filed an application to lease a portion of Certificates 3012, 3153, 3182, 3192, 7332, 49087, 53047, 62054, 82198, and 91288, and the entirety of Certificates 11899, 91010, 91011, and 91012 as a split season instream use. The Department assigned the Split Season Lease Application number SL-37.
2. On April 26, 2016, the Lessee requested to remove Certificates 11899, 91010, 91011, and 91012 from the lease application.
3. The portion of the first right to be leased is as follows:

Certificate: 3012 in the name of H.E. Driver (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the State Water Board of the State of Oregon in Volume 5, at Page 162)

Use: Irrigation of 160.9 acres

Priority Date: 1883

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; and said right shall be subject to all other conditions and limitations contained in said decree

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	Acres
1 N	43 E	WM	29	NW SW	0.3
1 N	43 E	WM	29	SW SW	3.9
1 N	43 E	WM	30	NE SE	38.3
1 N	43 E	WM	30	NW SE	39.3
1 N	43 E	WM	29	SW SE	40.0
1 N	43 E	WM	29	SE SE	39.1
Total Acres					160.9

4. Certificate 3012 does not include a rate limitation. The on-farm rate 3.968 Cubic Feet per Second (CFS) 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: 3153 in the name of William Sherod (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the State Water Board of the State of Oregon in Volume 5, at Page 193)

Use: Irrigation of 7.6 acres

Priority Date: 1883

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; and said right shall be subject to all other conditions and limitations contained in said decree

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	29	SW SW	7.6

6. Certificate 3153 does not include a rate limitation. The on-farm rate 0.199 CFS identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.

7. The portion of the third right to be leased is as follows:

Certificate: 3182 in the name of J.T. Willett, by C.N. Willett (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the State Water Board of the State of Oregon in Volume 5, at Page 202)

Use: Irrigation of 76.1 acres

Priority Date: 1883

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; and said right shall be subject to all other conditions and limitations contained in said decree

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	30	NW NE	29.3
1 N	43 E	WM	30	SW NE	26.8
1 N	43 E	WM	30	SE NE	20.0
Total Acres					76.1

8. Certificate 3182 does not include a rate limitation. The on-farm rate 1.88 CFS identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.
9. The portion of the fourth right to be leased is as follows:

Certificate: 3192 in the name of Gideon Wolfe (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the State Water Board of the State of Oregon in Volume 5, at Page 205)

Use: Irrigation of 87.4 acres, being 84.4 acres from Tract 1 and 3.0 acres from Tract 2

Priority Date: 1889 for Tract 1 and 1883 for Tract 2

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; and said right shall be subject to all other conditions and limitations contained in said decree

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	31	NE NE	2	3.0
1 N	43 E	WM	31	NE NE	1	17.8
1 N	43 E	WM	31	NW NE	1	26.6
1 N	43 E	WM	31	SE NE	1	40.0
Total Acres						87.4

10. Certificate 3192 does not include a rate limitation. The on-farm rate 2.15 CFS, being 2.08 CFS for Tract 1 and 0.07 CFS for Tract 2, identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.

11. Certificate 3192 (Tract 1) does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor and Lessee, review of Department records, and the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 S	43 E	WM	4	NE SW	FOSTER/MID VALLEY DITCH - Latitude: 45.50716; Longitude: -117.45096

12. The portion of the fifth right to be leased is as follows:

Certificate: 7332 in the name of Mary Wolfe (perfected under permit S-6268)
Use: Irrigation of 7.7 acres
Priority Date: April 12, 1924
Quantity: **Rate:** 0.1 CFS
Limit: shall be limited to one-eightieth CFS per acre, or its equivalent in case of rotation
Source: South Fork Wallowa River (aka the Lostine River), tributary to the Wallowa River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	30	NE NW	7.7

13. Certificate 7332 also does not include a per acre rate limitation. The full rate allowed by the certificate (0.69 CFS) is approximately equivalent to 1/80th cfs per acre. The rate requested by the Lessor and Lessee of 0.12 cfs for on-farm use is slightly higher than 1/80th cfs per acre. To prevent injury to the remaining right (not being leased); the rate must be proportioned evenly between all acres authorized under Certificate 7332. The on-farm portion that may be diverted by the Lessor shall be limited to 0.10 CFS.

14. Certificate 7332 does not include a duty limitation. The total volume requested by the Lessor and Lessee as part of the split season lease is equivalent to approximately 3.75 acre-feet per acre. However, since the on-farm rate must be reduced, the maximum volume that may be used for both instream and on-farm use is also subsequently reduced from 28.88 AF to 25.33 AF, equivalent to approximately 3.29 acre-feet per acre.

15. Certificates 3012, 3153, 3182, 3192 (Tract 2), and 7332 do not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, Lessee, and the Department's Watermaster, and a review of Department records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH - Latitude: 45.518688; Longitude: -117.469878

16. The portion of the sixth right to be leased is as follows:

Certificate: 49087 in the name of the Estate of Addison L. Tulley, Jesse Tuelley, Adm. (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 5, at Page 197)
Use: Irrigation of 61.7 acres in Tract 3
Priority Date: 1900 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, and the Wallowa River, tributary to the Grande Ronde River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	19	NE SE	3	34.0
1 N	43 E	WM	19	NW SE	3	15.0
1 N	43 E	WM	19	SE NE	3	2.0
1 N	43 E	WM	31	SE SE	3	10.7
Total Acres						61.7

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH

17. Certificate 49087 does not provide measured distances of the location of the point of diversion. Based upon additional information provided by the Lessor, Lessee, and the Department's Watermaster, and a review of Department records, for purposes of this instream lease, the point of diversion is on the Lostine River, tributary to the Wallowa River, and is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH – Latitude: 45.533175; Longitude: -117.469878

18. Certificate 49087 does not include a rate limitation. The on-farm rate of 1.52 CFS identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.

19. The portion of the seventh right to be leased has been clarified from the lease application and is as follows:

Certificate: 53407 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 351.6 acres, being 326.0 acres in Tract 1 and 25.6 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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	32	SE SE	1	39.1
1 N	43 E	WM	31	SW SW	1	9.0
1 S	43 E	WM	4	NW NW	1	24.3
1 S	43 E	WM	4	SW NW	1	34.3
1 S	43 E	WM	4	SE NW	1	0.7
1 S	43 E	WM	4	NE SW	1	12.3
1 S	43 E	WM	4	NW SW	1	36.7
1 S	43 E	WM	4	SW SW	1	7.1

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 S	43 E	WM	4	SE SW	1	21.4
1 S	43 E	WM	5	NE NE	1	40.1
1 S	43 E	WM	5	SE NE	1	35.4
1 S	43 E	WM	5	NE SE	1	40.0
1 S	43 E	WM	9	NW NE	1	12.0
1 S	43 E	WM	9	NW NE	3	6.0
1 S	43 E	WM	9	NE NW	1	13.6
1 S	43 E	WM	9	NE NW	3	19.6
Total Acres						351.6

Authorized Point 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

20. Certificate 53407 does not provide measured distances of the location of the points of diversion. Based upon additional information provided by the Lessor, Lessee, and the Department's Watermaster, and a review of Department records, 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

21. Certificate 53407 does not include a rate limitation. The on-farm rate of 8.67 CFS identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.
22. The portion of the eighth right to be leased is as follows:

Certificate: 62054 in the name of Thomas J. Willett (perfected under permit S-44750)
Use: Irrigation of 82.7 acres
Priority Date: October 30, 1979
Quantity: **Rate:** 2.06 CFS
Volume: 289.45 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	19	SE NE	3.6
1 N	43 E	WM	19	NE SE	3.0
1 N	43 E	WM	20	NE SW	32.5
1 N	43 E	WM	20	NW SW	37.7
1 N	43 E	WM	20	NW SE	5.9
Total Acres					82.7

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

23. The portion of the ninth right to be leased is as follows:

Certificate: 82198 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 1.1 acre from Tract 4

Priority Date: 1889 for Tract 4

Quantity: **Limit:** limited to an amount actually beneficially used for said purposes and 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; and said right shall be subject to all other conditions and limitations contained in said decree

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 S	43 E	WM	5	NW NE	4	1.1

24. Certificate 82198 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, Lessee, and the Department's Watermaster, and a review of Department records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 S	43 E	WM	4	NE SW	FOSTER DITCH (AKA MIDDLE VALLEY DITCH) - Latitude: 45.50716; Longitude: -117.45096

25. Certificate 82198 does not include a rate limitation. The on-farm rate of 0.027 CFS identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40th CFS per acre.

26. The portion of the tenth right to be leased is as follows:

Certificate: 91288 in the name of Woody Wolfe (perfected under permit S-5571)
Use: Irrigation of 25.5 acres
Priority Date: August 11, 1922
Quantity: **Limit:** the amount of water used to which this right is entitled is limited to the amount used beneficially, and shall not exceed the amount specified, or its equivalent in the case of rotation, measured at the point of diversion from the source
Source: South Fork Wallowa River (aka Lostine River), tributary to the Wallowa River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	19	NE SW	3.5
1 N	43 E	WM	19	SE SW	20.4
1 N	43 E	WM	19	SW SE	1.6
Total Acres					25.5

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1 N	43 E	WM	33	NW SW	1916 FEET NORTH AND 223 FEET EAST FORM THE SW CORNER OF SECTION 33

27. The point of diversion for Certificate 91288 is also known as Clearwater Ditch.

28. Certificate 91288 also does not include a per acre rate limitation. The full rate allowed by the certificate (0.49 CFS) is approximately equivalent to 1/80th cfs per acre. The rate requested by the Lessor and Lessee of 0.38 cfs for on-farm use is higher than 1/80th cfs per acre. To prevent injury to the remaining right (not being leased); the rate must be proportioned evenly between all acres authorized under Certificate 91288. The on-farm portion that may be diverted by the Lessor shall be limited to 0.32 CFS.

29. Certificate 91288 does not include a duty limitation. The total volume requested by the Lessor and Lessee as part of the split season lease is equivalent to approximately 3.75 acre-feet per acre. However, since the on-farm rate must be reduced, the maximum volume that may be used for both instream and on-farm use is also subsequently reduced from 95.63 AF to 84.6 AF, equivalent to approximately 3.32 acre-feet per acre.

30. Certificates 3012, 3153, 3182, 3192, 7332, 49087, 53407, 62054, 82198, and 91288 do not specify the irrigation season. However, the Wallow River Decree establishes the irrigation season for the area as May 1 to October 1.

31. 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. 3 through 26. 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.

32. 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.
33. 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 30.

Miles and Miles Magill Ditch on the Lostine River:

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
53407 – Tract 1	8.04 CFS	1467.00 AF	May 1 through July 31
53407 – Tract 3	0.63 CFS	115.20 AF	
Diversion	8.67 CFS	441.20 AF	

Foster Ditch (aka Middle Valley Ditch) on Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
3192 – Tract 1	2.08 CFS	379.80 AF	May 1 through July 31
82198 – Tract 4	0.03 CFS	4.95 AF	
Diversion	2.11 CFS	384.75 AF	

Clearwater Ditch on the Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
3012	3.97 CFS	724.05 AF	May 1 through July 31
3153	0.20 CFS	36.30 AF	
3182	1.88 CFS	342.45 AF	
3192 – Tract 2	0.07 CFS	13.50 AF	
7332	0.10 CFS	17.63 AF	
91288	0.32 CFS	59.12 AF	
Diversion	6.54 CFS	1193.05 AF	

Tulley Hill Ditch on the Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
49087	1.52 CFS	277.65 AF	May 1 through July 31

Point of Diversion on the Wallowa River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
62054	1.13 CFS	206.75 AF	May 1 through July 31

34. The Lessor and Lessee have requested to protect water instream from the POD's for Certificates 3012, 3153, 3182, 3192, 7332, 49087, 53407, 82198, and 91288 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. No return flows were identified in association with the diversion of water under Certificate 62054 from the Wallowa River.

35. The Lessor and Lessee request to protect water instream under Certificates 3012, 3153, 3182, 3192, 7332, 49087, 53407, 82198, and 91288 from the Lostine River into the Wallow 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.

36. 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.
37. The instream quantity requested by the Lessor and Lessee under Certificate 49087 requires modification. The requested instream volume of 66.6 AF exceeds the duty limitation of 1.0 acre-foot per acre for the remaining portion of the irrigation season after July 31. The instream volume will be limited to 61.7 AF.
38. 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. 20)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.21	25.6	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. 20)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	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
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.69	326.00	
Total Instream		2.897	351.09	

Instream Reach No. 4: From immediately below the Miles Ditch POD to the Foster Ditch POD (as described in Findings of Fact Nos. 11 and 24)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
Total Instream		2.847	344.57	

Instream Reach No. 5: At the Foster Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.70	84.40	
82198	1889 – Tract 4	0.009	1.10	
Total Instream		3.581	433.07	

Instream Reach No. 6: From immediately below the Foster Ditch POD to the Clearwater Ditch POD (as described in Findings of Fact Nos. 15, 26 and 27)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
82198	1889 – Tract 4	0.0089	1.08	
Total Instream		3.5599	431.30	

Instream Reach No. 7: At the Clearwater Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.025	3.00	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.33	160.90	
3153	1883	0.063	7.60	
3182	1883	0.63	76.10	
7332	4/12/1924	0.064	7.70	
91288	8/11/1922	0.21	25.5	
Total Instream		5.8579	709.16	

Instream Reach No. 8: From immediately below the Clearwater Ditch POD to the Tulley Hill Ditch POD (as described in Finding of Fact No. 17)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.024	2.94	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.303	157.68	
3153	1883	0.062	7.45	
3182	1883	0.62	74.58	
7332	4/12/1924	0.062	7.55	
91288	8/11/1922	0.207	24.99	
Total Instream		5.8139	703.55	

Instream Reach No. 9: At the Tulley Hill Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.024	2.94	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.303	157.68	
3153	1883	0.062	7.45	
3182	1883	0.62	74.58	
7332	4/12/1924	0.062	7.55	
91288	8/11/1922	0.207	24.99	
49087	1900 – Tract 3	0.51	61.70	
Total Instream		6.3239	765.25	

Instream Reach No. 10: From immediately below the Tulley Hill Ditch POD to the mouth of the Lostine River at the confluence with the Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.024	2.94	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.303	157.68	
3153	1883	0.062	7.45	
3182	1883	0.62	74.58	
7332	4/12/1924	0.062	7.55	
91288	8/11/1922	0.207	24.99	
49087	1900 – Tract 3	0.50	60.47	
Total Instream		6.3139	764.02	

Wallowa River, tributary to the Grande Ronde River

Instream Reach No. 11: Into the Wallowa River from the confluence with the Lostine River to the POD for Certificate 62054 (as described in Finding of Fact No. 22)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.024	2.94	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.303	157.68	
3153	1883	0.062	7.45	
3182	1883	0.62	74.58	
7332	4/12/1924	0.062	7.55	
91288	8/11/1922	0.207	24.99	
49087	1900 – Tract 3	0.50	60.47	
Total Instream		6.3139	764.02	

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
53407	1896 – Tract 3	0.207	25.09	August 1 through September 30
53407	1882 – Tract 1	2.64	319.48	
3192	1889 – Tract 1	0.68	82.71	
3192	1883 – Tract 2	0.024	2.94	
82198	1889 – Tract 4	0.0089	1.08	
3012	1883	1.303	157.68	
3153	1883	0.062	7.45	
3182	1883	0.62	74.58	
7332	4/12/1924	0.062	7.55	
91288	8/11/1922	0.207	24.99	
49087	1900 – Tract 3	0.50	60.47	
62054	10/30/1979	0.68	82.70	
Total Instream		6.9939	846.72	

39. 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 Certificates 3012, 3153, 3182, 3192, 7332, 49087, 53047, 82198, and 91288, 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.

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

41. 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.
42. 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.
43. 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.
44. 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.
45. 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.
46. 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.
47. The Lessor and Lessee have requested that the lease terminate on September 30, 2016. The lease may commence on the date this final order is signed.

Conclusions of Law

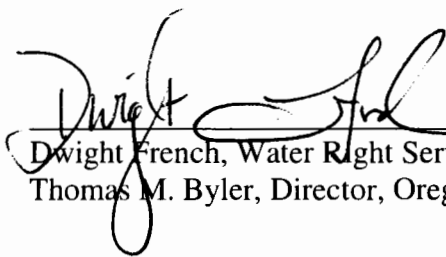
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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. 33 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 upon approval of the instream lease and terminate on September 30, 2016.

Dated at Salem, Oregon this 7 day of June, 2016.



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

Mailing date: JUN 09 2016

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*