

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1689, 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.

Lessors

Long Oak, LLC
Brantwood, LLC
Prairie Creek Holdings, LLC
PO Box 459
Enterprise, OR 97828
rfrosher@msn.com

Co-Lessors

Alder Slope Ditch Company
65179 Alder Slope Road
Enterprise, OR 97828
farmsupply@eoni.com

Wallowa Lake Irrigation District
61901 Prairie Creek Road
Joseph, OR 97846
butterfieldfarms@live.com

Findings of Fact

1. On May 17, 2018, Long Oak, LLC, Brantwood, LLC, Prairie Creek Holdings, LLC, Alder Slope Ditch Company, and Wallowa Lake Irrigation District filed an application to lease a portion of Certificates 7716, 47326, 48313, 48403, 51483, 54760, 86543, and 91137 for instream use. The Department assigned the application number IL-1689.
2. The Lessors and Co-Lessors requested the water be protected for a two-day period during the irrigation season, June 1 through June 2.
3. On May 29, 2018, the Lessors submitted amended pages for the portion of the lease involving Certificate 7716. In addition, the Lessors submitted an amended Map 2 of 3.
4. On May 31, 2018, the Lessors requested Table 1 for Certificate 48313 be corrected to reflect 2.3 acres in the NWSW of Section 26.
5. On June 4, 2018, the Lessors requested a correction to the PLSS description of the Clearwater Ditch.

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.

6. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 7716, in the name of Big Bend Ditch Company (confirmed by the Wallowa River Decree)
Use: Irrigation of 20.6 acres
Priority Date: February 1884
Quantity: **Rate:** 0.51 Cubic Foot per Second (CFS)
Volume: 2.02 Acre-Feet (AF)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: Wallowa River, tributary to Grande Ronde River
Authorized Point of Diversion (POD): None listed on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	NW SE	3200	0.6
2 S	45 E	WM	10	NW SW	3200	0.8
2 S	45 E	WM	10	NE SW	3200	0.8
2 S	45 E	WM	10	SE SW	3200	1.8
2 S	45 E	WM	15	NE NW	3200	2.4
2 S	45 E	WM	15	NW NW	3200	6.8
2 S	45 E	WM	15	SW NW	3900	0.7
2 S	45 E	WM	15	SE NW	3900	2.3
2 S	45 E	WM	15	NE SW	3900	1.0
2 S	45 E	WM	15	NW SW	3900	1.7
2 S	45 E	WM	15	NW SE	3900	1.7
Total Acres						20.6

7. Certificate 7716 does not specify a point of diversion. However, information available from the Watermaster and Lessors indicates the point of diversion is located at:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

8. The portion of the second right to be leased has been modified from the lease application and is as follows:

Certificate: 48313, in the name of Silver Lake Water Ditch Co. (confirmed by the Wallowa River Decree)
Use: Irrigation of 18.3 acres
Priority Date: 1893
Quantity: **Rate:** 0.45 Cubic Foot per Second (CFS)
Volume: 1.79 Acre-Feet (AF)

Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
3 S	45 E	WM	5	NE NW	4	SILVER LAKE DITCH: 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	23	NE SE	7300	2.3
2 S	45 E	WM	23	SE SE	7300	2.7
2 S	45 E	WM	26	SE NE	7900	1.8
2 S	45 E	WM	26	SW NE	7900	1.7
2 S	45 E	WM	26	NE SE	7900	1.1
2 S	45 E	WM	26	NW SE	7900	2.7
2 S	45 E	WM	26	SW SE	8300	1.3
2 S	45 E	WM	26	SE SE	8300	0.9
2 S	45 E	WM	26	NW SW	8000	2.3
2 S	45 E	WM	27	NE SE	8000	1.5
Total Acres						18.3

9. Certificate 48313 specifies the measured distances for the location of the point of diversion. However, the Watermaster has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH: Latitude: 45.335296° Longitude: -117.222913°

10. The portion of the third right to be leased has been modified from the lease application and is as follows:

Certificate: 48403, in the name of Alder Slope Ditch Company (confirmed by the Wallowa River Decree)

Use: Irrigation of 28.8 acres

Priority Date: November 30, 1901

Quantity: **Rate:** 0.71 Cubic Foot per Second (CFS)

Volume: 2.82 Acre-Feet (AF)

Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Hurricane Creek, tributary of the Wallowa River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	44 E	WM	3	NE NE	ALDER SLOPE DITCH: South 76 DEGREES 02 MINUTES WEST 49 FEET FROM THE NE CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	44 E	WM	31	NE SE	5203	1.6
1 S	44 E	WM	31	SW SE	5301	15.8
1 S	44 E	WM	31	SE SW	5300	4.4
2 S	44 E	WM	6	NW NE	200	7.0
Total Acres						28.8

11. Certificate 48403 specifies the survey coordinates for the location of the point of diversion. However, the Watermaster has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Lot	Coordinates
3 S	44 E	WM	3	NE NE	1	ALDER SLOPE DITCH: Latitude: 45.337823° Longitude: -117.292004°

12. The portion of the fourth right to be leased has been modified from the lease application and is as follows:

Certificate: 91137, in the name of Farmers Water Ditch Company (confirmed by the Wallowa River Decree)

Use: Irrigation of 13.3 acres

Priority Date: 1900

Quantity: **Rate:** 0.33 Cubic Foot per Second (CFS)

Volume: 1.30 Acre-Feet (AF)

Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD): FARMERS DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	23	SW SE	7300	0.8
2 S	45 E	WM	26	NW NE	7300	1.5
2 S	45 E	WM	26	SW NE	7900	1.6
2 S	45 E	WM	26	NE NW	7300	3.2
2 S	45 E	WM	26	SW NW	8000	5.0
2 S	45 E	WM	27	SE NE	8000	1.2
Total Acres						13.3

13. Certificate 91137 provides a general description of the point of diversion. However, the Watermaster has provided a more detailed description of the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	32	SW SW	FARMERS DITCH: Latitude: 45.337650° Longitude: -117.227488°

14. The portion of the fifth right to be leased has been modified from the lease application and is as follows:

Certificate: 47326, in the name of Jim Petty (perfected under Permit S-38986)
Use: Irrigation of 19.2 acres
Priority Date: March 8, 1974
Quantity: **Rate:** 0.39 Cubic Foot per Second (CFS)
Volume: 0.88 Acre-Foot (AF)
Limit: One-Fortieth of one cubic foot per second per acre, and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	SE SW	3200	2.1
2 S	45 E	WM	10	SW SE	3200	1.7
2 S	45 E	WM	15	NW NE	3200	5.0
2 S	45 E	WM	15	NE NW	3200	3.5
2 S	45 E	WM	15	SE NW	3900	6.6
2 S	45 E	WM	15	SW NE	3900	0.3
Total Acres						19.2

15. Certificate 47326 specifies the measured distances for the location of the point of diversion. However, the Watermaster has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

16. The portion of the sixth right to be leased has been modified from the lease application and is as follows:

Certificate: 51483, in the name of James P. and Joan T. Petty (perfected under Permit S-28864)
Use: Irrigation of 15.5 acres
Priority Date: June 11, 1963

Quantity: **Rate:** 0.20 Cubic Foot per Second (CFS)
Volume: 0.71 Acre-Foot (AF)
Limit: One-Fortieth of one cubic foot per second per acre. 3.5 acre feet provided further that the right to use water is limited to the period when the flow of the Lower Grande Ronde River is more than 300 cfs at USGS Gage 3325 and more than 420 cfs at the Oregon-Washington border.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	NW SE	3200	1.8
2 S	45 E	WM	10	SE SW	3200	3.1
2 S	45 E	WM	15	NE NW	3200	3.7
2 S	45 E	WM	15	SE NW	3900	6.6
2 S	45 E	WM	15	SW NE	3900	0.3
Total Acres						15.5

17. Certificate 51483 specifies the survey coordinates for the location of the point of diversion. However, the Watermaster has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

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

Certificate: 54760, Jim Petty (perfected under Permit S-43879)
Use: Irrigation of 0.7 acres
Priority Date: January 29, 1979
Quantity: **Rate:** 0.17 Cubic Foot per Second (CFS)
Volume: 0.03 Acre-Foot (AF)
Limit: One-Fortieth of one cubic foot per second per acre, and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	NW SE	3200	0.7

19. Certificate 54760 specifies the measured distances for the location of the point of diversion. However, the Watermaster has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

20. The portion of the eighth right to be leased has been modified from the lease application and is as follows:

Certificate: 86543, in the name of the Associated Ditch Companies, Corp. (perfected under Permit S-52035)
Use: Irrigation of 3.9 acres
Priority Date: March 20, 1992
Quantity: **Rate:** 0.098 Cubic Foot per Second (CFS), being 0.072 CFS from live flow, and not more than 0.026 CFS from storage
Volume: 0.18 Acre-Foot (AF)
Limit: One-Fortieth of one cubic foot per second per acre, and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: May 1 through June 30 from live flow and May 1 to October 1 for water legally stored
Source: Wallowa River and Wallowa Lake Reservoir, constructed under Permit Numbers R-347 and R-5018, tributaries of the Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	LOT	Measured Distances
2 S	45 E	WM	26	SE NE		DITCH DIVERSION: 2300 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 26
3 S	45 E	WM	5	NE NW	4	WALLOWA LAKE DIVERSION: 880 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	26	SE NE	7900	3.9

21. Certificate 86543 specifies the measured distances for the re-diversion from the Silver Lake Ditch. However, the Watermaster has provided latitude and longitude for the location of the point of diversion of the Silver Lake Ditch as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH: Latitude: 45.335296° Longitude: -117.222913°

22. Certificate 7716, 48313, 48403, 91137, 47326, 51483, 54760, and 86543 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.
23. There may be other primary or supplemental irrigation water rights appurtenant to all or a portion of the lands described in Finding of Fact Nos. 6, 8, 10, 12, 14, 16, 18, and 20. The Lessor and Co-Lessor have requested that those water rights not be included as part of this lease application. During the term of the lease, water use under those rights will also be suspended.
24. 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.
25. The instream use has been modified from the lease application to accurately reflect the volume of water protected and is as follows:

Instream Point 1: At the Point of Diversion for Certificates 48313 and 86543, in the NENW of Section 5, Township 3 South, Range 45 East, W.M. (as described in Findings of Fact Nos. 9 and 21, commonly referred to as Silver Lake Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
48313	1893	0.450	1.79	June 1 through June 2
86543	3/20/1992	0.098	0.18	June 1 through June 2

Instream Point 2: At the Point of Diversion for Certificate 91137 in the SWSW of Section 32, Township 2 South, Range 45 East, W.M. (as described in Finding of Fact No. 13, commonly referred to as Farmers Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
91137	1900	0.33	1.30	June 1 through June 2

Instream Point 3: At the Point of Diversion for Certificates 7716, 47326, 51483, and 54760 in the NENE of Section 31, Township 2 South, Range 45 East, W.M. (as described in Findings of Fact Nos. 7, 15, 17, and 19, commonly referred to as the Consolidated Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
7716	2/1884	0.51	2.02	June 1 through June 2
47326	3/8/1974	0.39	0.88	June 1 through June 2
51483	6/11/1963	0.20	0.71	June 1 through June 2
54760	1/29/1979	0.17	0.03	June 1 through June 2

Instream Point 4: At the Point of Diversion for Certificate 48403 in NENE of Section 3, Township 3 South, Range 44 East, W.M. (as described in Finding of Fact No. 11, commonly referred to as Alder Slope Ditch)

Source: Hurricane Creek, tributary to Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
48403	11/30/190191	0.71	2.82	June 1 through June 2

26. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
27. The protection of flows at the authorized points of diversion 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 point of the instream water right
28. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.
29. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
30. 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.
31. 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.
32. 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.
33. The Lessors and Co-Lessors have requested that the lease terminate on September 30, 2018. The lease may commence on the date this final order is signed.

34. The Lessors and Co-Lessors have requested that there not be an option to terminate the lease.

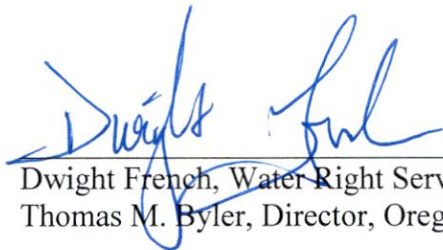
Conclusions of Law

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 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, 2018.

Dated at Salem, Oregon this day JUN 13 2018.



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

JUN 13 2018

Mailing date: _____

*This document was prepared by Teri Hranac.
If you have any questions, please call
503-986-0881.*