

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

In the Matter Instream Lease Application)
IL-1009, Certificate 13311)
Umatilla County)

DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor #1

Donna Roloff
Route 4, Box 192
Milton-Freewater, Oregon 97862

Lessor #2

Walla Walla River Irrigation District
Attn: Teresa Yeager
605 N. Lamb
Milton-Freewater, Oregon 97862

Lessee

Oregon Water Trust
65 SW Yamhill St., Suite 300
Portland, Oregon 97204

Findings of Fact

1. On June 15, 2009 Donna Roloff, Walla Walla River Irrigation District (WWRID) and the Oregon Water Trust filed an application to lease a portion of Certificate 13311 for instream use. The Department assigned the application number IL-1009.

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

Certificate: 13311 in the name of HOWARD C YATES

Use: IRRIGATION of 5.6 ACRES

Priority Date: 1887 (4.5 acres) and 1894 (1.1 acres)

Rate: 0.21 CUBIC FOOT PER SECOND (0.17 cfs under the 1887 priority and 0.04 cfs under the 1894 priority), further limited to 1.5 miner's inch per acre

Source: EAST FORK FORD BRANCH WALLA WALLA RIVER

Authorized Point of Diversion: Not described on certificate

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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q-Q	Acres
6 N	35 E	WM	35	SE NE NW	5.6

3. The source of water described in Finding of Fact #2, the East Fork Ford Branch Walla Walla River refers to the Little Walla Walla River.
4. Certificate 13311 does not specify the POD; however, the Applicants have provided addition information which describes the POD as being the headgate of the Little Walla Walla River.
5. Neither the Walla Walla Decree, nor Certificate 13311 specify the irrigation season. However, the Applicants and the Department have agreed, that to avoid injury and enlargement the rights under Certificate 13311 may be protected instream from July 10 through October 31.
6. 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.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

EAST FORK FORD BRANCH WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Instream Reach: From POD at the headgate of the Little Walla Walla River to the lower end of the Nursery Bridge Diversion Dam Fish Ladder

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
13311	1887	0.11	July 10 to October 31
13311	1894	0.03	July 10 to October 31
TOTAL:		0.14	

8. Other conditions to prevent injury and enlargement are:
 - A. For the time period water is to be protected instream, the rate diverted and delivered by the Walla Walla River Irrigation District is generally a 1/40 cfs/ac, not the 3/80 cfs/ac allowed by the water rights. The instream rate described above reflects this reduction, while the rate described in Finding of Fact #2 and #3 describes the full amount (3/80 cfs/ac) described on the certificate.
 - B. The portion of water protected under this lease shall be based on the same percentage diversion and delivery rate that Walla Walla River Irrigation District is diverting to rights of the same priority within the district. Once Walla Walla River Irrigation District begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.
 - C. If the rate delivered to the lands is modified from the 1/40 cfs/ac, then the District shall report to the District 5 Watermaster's office the percentage diverted under the different priority dates. Each Monday morning during the period of this lease, beginning the week of July 10th, the District shall report to the District 5 Watermaster's office the percentage

diverted under each priority date, if different than 1/40 cfs/ac. This information only needs to be reported to the Watermaster's office once the District is diverting water on a different percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted.

D. The instream rate shall be reduced by 10% per mile to account for stream losses.

9. 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.
10. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.
11. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
12. The Lessor has requested that the lease terminate on December 31, 2009.

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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on December 31, 2009.

Dated at Salem, Oregon this 22nd day of July 2009.


Phillip C. Ward, Director *FW*

Mailing date: JUL 28 2009