

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
SL-50, Wallowa 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.

**Lessors**

Pacific Grasslands, LLC  
Aimee Danch, Owner  
PO Box 511  
Wallowa, Oregon 97885

**Lessee**

Trout Unlimited (TU)  
Attn: Jessica Humphreys  
401 NE 1<sup>st</sup> Street  
Enterprise, Oregon 97828

Pacific Grasslands, LLC  
Jeremiah Stent  
PO Box 511  
Wallowa, Oregon 97885

**Findings of Fact**

1. On February 16, 2022, Pacific Grasslands, LLC, and TU filed an application to renew Split Season Instream Lease SL-50 involving a portion of Certificates 94348 and 94156.
2. The portion of the first right to be leased is as follows:

**Certificate:** 94348 in the name of S.L. Magill (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 5, at Page 181)

**Use:** Irrigation of 188.3 Acres in Tract 3

**Priority Date:** 1889 for Tract 3

**Quantity:** **Limit:** shall not exceed 1.5 acre-feet per acre during any period of 30 days prior to July 31<sup>st</sup> 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), a tributary of the Wallowa River

**Authorized Points of Diversion (POD):** 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 – Track 3					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	32	SE NW	25.5
1 N	43 E	WM	32	SW NW	40.0
1 N	43 E	WM	32	NW SW	36.0
1 N	43 E	WM	32	NE SW	33.9
1 N	43 E	WM	32	SW SW	15.0
1 N	43 E	WM	32	SE SW	37.9
<b>Total Acres</b>					<b>188.3</b>

- Certificate 94348 does not include a rate limitation. The on-farm rate of 4.64 cubic feet per second (CFS) (rounded) identified by the Lessors and Lessee as part of the split season lease is equivalent to approximately 1/40<sup>th</sup> CFS per acre.
- The portion of the second right to be leased is as follows:

**Certificate:** 94156 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 72.5 Acres in Tract 4

**Priority Date:** 1889 for Track 4

**Quantity:** **Limit:** shall not exceed 1.5 acre-feet per acre during any period of 30 days prior to July 31<sup>st</sup> of each year, and thereafter not to exceed 1.0 acre-foot per acre during the entire remainder of the irrigation season

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

**Authorized Point of Diversion (POD):** Not described on certificate

**Authorized Place of Use:**

IRRIGATION – Track 4					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	5	SE NW	31.7
1 N	43 E	WM	5	NE NW	34.3
1 N	43 E	WM	5	NE SW	6.5
Total					72.5

- Certificate 94156 does not include a rate limitation. The on-farm rate of 1.79 CFS (rounded) identified by the Lessors and Lessee as part of the split season lease is equivalent to approximately 1/40<sup>th</sup> CFS per acre.
- Certificates 94348 and 94156 do not provide a description of the point of diversion. However, based upon additional information provided by the Lessee, a review of the Department’s records, and the Department’s Watermaster, the Lessors have been utilizing Foster Ditch as a point of diversion. For purposes of this instream lease, the point of diversion from the Lostine River, is described approximately as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 S	43 E	WM	4	NE SW	FOSTER DITCH: 320 FEET SOUTH AND 625 FEET WEST OF THE CENTER OF SECTION 4; LATITUDE: 45.50716, LONGITUDE: -117.45096

7. Certificates 94348 and 94156 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 through September 30.
8. There are supplemental irrigation water rights, Certificates 94160 and 94161, appurtenant to all or a portion of the lands described in Findings of Fact Nos. 2 and 4. The Lessors and Lessee have requested that these water rights not be included as part of this lease application. During the term of the lease, water use for the lands covered under this lease for the water rights as described will also be suspended during the instream use period.
9. 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.
10. 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. 2 through 7. The rates are identified as follows:

**Foster Ditch:**

Certificate	On-Farm Rate (CFS)	On-Farm Volume (AF)	On-Farm Use Period
94348	4.75	866.18	May 1 through July 31
94156	1.83	333.50	May 1 through July 31
Total	6.58	1199.68	

11. A portion of the water diverted at the points of diversion returns to the Lostine River within the proposed reaches 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 point of diversion. The reduction in the instream protections are as follows:

Reach	Percent
From immediately below the Foster Ditch points of diversion to the Clearwater Ditch Point of Diversion located in the SWSW Section 33, T1N, R43E, W.M.	2%
From the Clearwater Ditch Point of Diversion to the Mouth of the Lostine River at the confluence with the Wallowa River	20%

OAR 690-077-0015(8).

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

**Instream Point No. 1:** At the Foster Ditch POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94348	1889	1.56	188.30	August 1 through September 30
94156	1889	0.60	72.50	
<b>Total Instream</b>		<b>2.16</b>	<b>260.80</b>	

**Instream Reach No. 1:** From immediately below the Foster Ditch POD to the Clearwater Ditch POD (in the SWSW Section 33, T1N, R43E, W.M.)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94348	1889	1.53	184.53	August 1 through September 30.
94156	1889	0.59	71.05	
<b>Total Instream</b>		<b>2.12</b>	<b>255.58</b>	

**Instream Reach No. 2:** From the Clearwater Ditch POD to the mouth of the Lostine River (RM 0.0) at the confluence with the Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94348	1889	1.22	147.63	August 1 through September 30
94156	1889	0.47	56.84	
<b>Total Instream</b>		<b>1.69</b>	<b>204.47</b>	

13. Other conditions to prevent injury and enlargement are:

The Lessee and Lessor shall measure and report the use of the existing water right and the instream water right. Trout Unlimited will work with the Watermaster and the Watermaster may also request to read the Lessor's meter to verify meter readings supplied by the Lessor and/or Lessee and/or request more frequent reporting.

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

15. 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. The quantity of water to be protected instream has been reduced below each affected POD to account for return flows.

16. 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.

17. 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.
18. 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.
19. Based upon review of the application, information provided by the Department's Watermaster, and other available information, this 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 rights.
20. 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.
21. The Lessors and Lessee have requested that the lease terminate on October 1, 2023. The lease may commence on May 1, 2022.
22. The Lessors and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

### **Conclusions of Law**

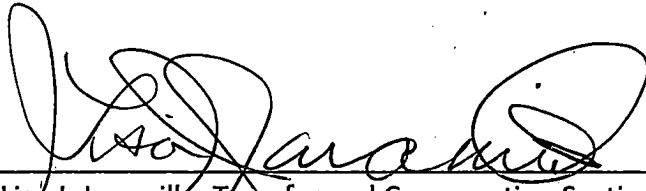
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. During the term of this lease, the place of use will continue to receive water as identified in Finding of Fact No. 10 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 94160 and 94161), or any other layered water rights for irrigation use, including groundwater registrations

3. The term of the lease will commence on May 1, 2022 and terminate on October 1, 2023. For multiyear leases, the lessors and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessors and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (August 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 day MAR 25 2022.



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

Mailing date: MAR 28 2022

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.*