

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

In the Matter of Instream Lease Application)	MODIFICATION OF
SL-42, Wallowa County)	DETERMINATION ON PROPOSED
)	INSTREAM LEASE and
		SUPERSEDING FINAL ORDER

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

Co-Lessor for Certificate 93516

Clearwater Ditch Company
81703 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 16, 2018, Woody and Megan Wolfe and The Freshwater Trust (TFT) filed an application to lease portions of Certificates 3153, 7332, 91288, 93514, 93516, 93518, 93520, 93524, 93526, and 93528, as a split season instream use. The Department assigned the Split Season Lease Application number SL-42.
2. On May 4, 2018, the application was amended to include Clearwater Ditch Company as a Co-Lessor for Certificate 93516 and to reflect commencement of the lease on May 1, 2018.
3. On May 17, 2018, the Department issued an order approving SL-42, which is recorded at Special Order Volume 108, Pages 242-256.
4. On May 31, 2018, the Department issued a Determination and Corrected Final Order on Proposed Instream Lease with Modifications, which is recorded at Special Order Volume 108, Pages 408-422.
5. To prevent injury to other users or enlargement, on October 9, 2018, the District 7 Watermaster submitted a revised Watermaster review which more accurately conveyed the return flows for the proposed reaches.

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. This Modification of Determination on Proposed Instream Lease is issued to reflect the totality of return flows in the proposed reaches and supersedes the previous orders..
7. The first right to be leased is as follows:

Certificate: 93526 in the names of Woody and Megan Wolfe (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 307.0 acres, being 297.1 acres in Tract 1 and 9.9 acres in Tract 3

Priority Date: 1882 for Tract 1 and 1896 for Tract 3

Quantity: Rate: 7.65 CFS, being 7.41 CFS under 1882 priority (Tract 1) and 0.24 CFS under 1896 priority (Tract 3)

Limit: Annual volume limitation of 1228.0 AF, being 1188.4 AF under 1882 priority (Tract 1) and 39.6 AF under 1896 priority (Tract 3), and shall not exceed 1.0 acre-foot per acre during any period of 30 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: Lostine River (aka South Fork Wallowa River), tributary to the Wallowa River

Authorized Point of Diversion (POD):

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	32	SE SE	1	35.0
1 N	43 E	WM	33	SW SW	1	9.0
1 S	43 E	WM	4	NW NW	1	21.3
1 S	43 E	WM	4	SW NW	1	32.8
1 S	43 E	WM	4	SE NW	1	0.7
1 S	43 E	WM	4	NE SW	1	10.7
1 S	43 E	WM	4	NW SW	1	37.1
1 S	43 E	WM	4	SW SW	1	6.6
1 S	43 E	WM	4	SE SW	1	20.0
1 S	43 E	WM	5	NE NE	1	37.7
1 S	43 E	WM	5	SE NE	1	29.3
1 S	43 E	WM	5	NE SE	1	38.4
1 S	43 E	WM	9	NW NE	1	3.5
1 S	43 E	WM	9	NE NW	1	15.0
1 S	43 E	WM	9	NE NW	3	9.9
Total Acres						307.0

8. Certificate 93526 contains a scrivener’s error in the latitude for the Miles Magill Ditch. The correct location is: Latitude: 45.4920258487.

9. For Certificate 93526, the application indicated an on-farm rate of 5.047 cubic feet per second (CFS) for irrigation use. However, the certificate allows the use of 7.41 CFS for irrigation of 307.0 acres, limited to a total of 1228.0 acre-feet (AF). Therefore, the lease has been modified to reflect an on-farm rate of 7.65 CFS, limited to a volume of 921.0 AF during the irrigation season of May 1 through July 31.

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

Certificate: 93520 in the names of Woody and Megan 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 78.6 Acres
Priority Date: 1883 for 1.7 Acres and 1889 for 76.9 Acres
Quantity: Rate: 1.96 CFS, being 0.04 under 1883 priority and 1.92 CFS under 1889 priority
Limit: Annual volume limitation of 314.4 AF, being 6.8 AF for 1883, and 307.6 AF for 1889, and shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 30 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 Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	31	NE NE	1883	1.7
1 N	43 E	WM	31	NE NE	1889	14.6
1 N	43 E	WM	31	NW NE	1889	22.3
1 N	43 E	WM	31	SE NE	1889	40.0
Total Acres						78.6

11. For Certificate 93520, the application indicated an on-farm rate of 1.292 cubic feet per second (CFS) for irrigation use. However, the certificate allows the use of 1.96 CFS for irrigation of 78.6 acres, limited to a total of 314.4 acre-feet (AF). Therefore, the lease has been modified to reflect an on-farm rate of 1.96 CFS, limited to a volume of 235.8 AF during the irrigation season of May 1 through July 31.

12. The third right to be leased is as follows:

Certificate: 93528 in the names of Woody and Megan Wolfe (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 0.9 acre

Priority Date: 1889

Quantity: Rate: 0.02 CFS

Limit: Annual volume limitation of 3.6 AF, and shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 30 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 Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	5	NW NE	0.9

13. For Certificate 93528, the application indicated an on-farm rate of 0.0147 cubic foot per second (CFS) for irrigation use. However, the certificate allows the use of 0.02 CFS for irrigation of 0.9 acre, limited to a total of 3.6 acre-feet (AF). Therefore, the lease has been modified to reflect an on-farm rate of 0.02 CFS, limited to a volume of 2.7 AF during the irrigation season of May 1 through July 31.

14. The portion of the fourth 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 30 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	Acres
1 N	43 E	WM	29	SW SW	7.6

15. For Certificate 3153, the application indicated an on-farm rate of 0.1874 cubic foot per second (CFS), and a volume of 34.2 acre-feet (AF) for irrigation use. However, the certificate allows the use of 0.19 CFS for irrigation of 7.6 acres, limited to a total of 34.96 AF. Therefore, the lease has been modified to reflect an on-farm rate of 0.19 CFS, limited to a volume of 27.36 AF during the irrigation season of May 1 through July 31.

16. 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 7.8 acres
Priority Date: April 12, 1924
Quantity: Rate: 0.10 CFS
Limit: Shall be limited to one-eightieth CFS per acre, or its equivalent in case of rotation
Source: Lostine River (aka South Fork Wallowa 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	7.8

17. 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 1/80 CFS per acre. The rate requested by the Lessor and Lessee of 0.1923 CFS for on-farm use is the equivalent of 1/40 CFS per acre and higher than 1/80 CFS per acre allowed under the certificate. 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.

18. 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 5.5 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 42.9 AF to 30.35 AF, equivalent to approximately 3.89 acre-feet per acre.

19. Certificates 3153 and 7332 do not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, Lessee, a review of the Department's 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 N	43 E	WM	33	SW SW	CLEARWATER DITCH - Latitude: 45.518688; Longitude: -117.469878

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

Certificate: 93514 in the names of Woody and Megan 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 162)
Use: Irrigation of 143.3 acres
Priority Date: 1883
Quantity: Rate: 3.57 CFS
Limit: Annual volume limitation of 573.2 AF, and shall not exceed 1.0 acre-foot per acre during any period of 30 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; 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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	30	NE SE	36.5
1 N	43 E	WM	30	NW SE	37.7
1 N	43 E	WM	30	SW SE	37.5
1 N	43 E	WM	30	SE SE	31.6
Total Acres					143.3

21. The seventh right to be leased is as follows:

Certificate: 93516 in the name of Clearwater Ditch Company (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 Pages 115-156)

Use: Irrigation of 26.8 acres

Priority Date: May 1897

Quantity: **Rate:** 0.67 CFS

Limit: Annual volume limitation of 107.2 AF, and shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 30 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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	31	NE NE	13.6
1 N	43 E	WM	31	NW NE	13.2
Total Acres					26.8

22. The eighth right to be leased is as follows:

Certificate: 93518 in the names of Woody and Megan 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 202)

Use: Irrigation of 68.6 acres

Priority Date: 1883

Quantity: Rate: 1.71 CFS

Limit: Annual volume limitation of 274.4 AF, and shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 30 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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: 1283 FEET NORTH AND 313 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	43 E	WM	30	NW NE	27.7
1 N	43 E	WM	30	SW NE	25.8
1 N	43 E	WM	30	SE NE	15.1
Total Acres					68.6

23. The portion of the ninth 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: Rate: 0.32

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 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 FROM THE SW CORNER OF SECTION 33

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

24. The point of diversion for Certificate 91288 is also known as Clearwater Ditch.
25. 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 1/80 CFS per acre. The rate requested by the Lessor and Lessee of 0.628 CFS for on-farm use is higher than 1/80 CFS per acre and exceeds the total quantity allowed by the certificate. 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.
26. 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 4.5 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 for this portion of the water right is also subsequently reduced from 114.75 AF to 97.11 AF, equivalent to approximately 3.80 acre-feet per acre.
27. The tenth right to be leased is as follows:

Certificate: 93524 in the names of the Woody and Megan Wolfe (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 46.6 acres in Tract 3

Priority Date: 1900 for Tract 3

Quantity: Rate: 1.16 CFS

Limit: Annual volume limitation of 186.4 AF, and shall not exceed 1.0 acre-foot per acre during any period of 30 days prior to July 30 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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	43 E	WM	29	SE SW	TULLEY-HILL DITCH: 1080 FEET NORTH AND 2259 FEET EAST FROM THE SW CORNER OF SECTION 29 (Latitude: 45.533175; Longitude: -117.469878)

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 N	43 E	WM	19	SE NE	3	2.0
1 N	43 E	WM	19	NE SE	3	30.0
1 N	43 E	WM	19	NW SE	3	4.7
1 N	43 E	WM	19	SE SE	3	9.9
Total Acres						46.6

28. Certificates 3153, 7332, 93514, 93516, 93518, 91288, 93526, 93520, 93528, and 93524 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.
29. 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. 7 through 27. The Lessor, Co-Lessor 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 under these rights will also be suspended during the instream use period.
30. 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.
31. 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. 7 through 27.

Miles and Miles-Magill Ditch on the Lostine River:

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
93526 – Tract 1	7.41 CFS	891.30 AF	May 1 through July 31
93526 – Tract 3	0.24 CFS	29.70 AF	
Diversion	7.65 CFS	921.00 AF	

Foster Ditch (aka Middle Valley Ditch) on Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
93520 – Tract 1	1.92 CFS	230.70 AF	May 1 through July 31
93520 – Tract 2	0.04 CFS	5.10 AF	
93528	0.02 CFS	2.70 AF	
Diversion	1.98 CFS	238.50 AF	

Clearwater Ditch on the Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
3153	0.19 CFS	34.96 AF	May 1 through July 31
7332	0.10 CFS	22.55 AF	
93514	3.57 CFS	429.90 AF	
93516	0.67 CFS	80.40 AF	
93518	1.71 CFS	205.80 AF	
91288	0.32 CFS	71.61 AF	
Diversion	6.56 CFS	845.22 AF	

Tulley Hill Ditch on the Lostine River

Certificate	On-Farm Rate	On-Farm Volume	On-Farm Use Period
93524	1.16 CFS	139.80 AF	May 1 through July 31

32. The Lessor and Lessee have requested to protect water instream from the POD's for Certificates 3153, 7332, 93514, 93516, 93518, 91288, 93526, 93520, 93528, and 93524 on the Lostine River and into the Wallowa River to its mouth at the confluence with the Grande Ronde River.
33. A portion of the water diverted at the points of diversion returns to the Lostine and Wallowa Rivers 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 water rights from the original quantities identified in Finding of Fact No. 31 is as follows:

Reach	Percent
From immediately below each of the 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	10%
In the Wallowa River from the confluence with the Lostine River (approx. RM 25.9) at Latitude: 45.552227, Longitude: -117.490133 to the Wallowa River (approx. RM 25.6) at Latitude: 45.55639, Longitude: -117.49803	40%
From the Wallowa River at Latitude: 45.55639, Longitude: -117.49803 to Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa (approx. RM 23.8)	60%
From the Wallowa River at Latitude: 45.57406, Longitude: -117.52571 near the town of Wallowa to the mouth of the Wallowa River at the confluence with the Grande Ronde River	70%

OAR 690-077-0015(8).

34. The Lessor and Lessee request to protect water instream under Certificates 3153, 7332, 93514, 93516, 93518, 91288, 93526, 93520, 93528, and 93524 from the Lostine River into the Wallowa 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) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Lostine River is measurable into the Wallowa River, except for the quantity of water under Certificate 93528. In addition, the 1883 quantity of water under Certificate 93520 is not measurable below Latitude: 45.547.06, Longitude: -117.52571 near the town of Wallowa.

35. 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 Point No. 1: At the Miles Magill Ditch POD (as described in Finding of Fact No. 8)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.90	August 1 through September 30

Instream Reach No. 1: From immediately below the Miles Magill Ditch POD to the Miles Ditch POD (as described in Finding of Fact No. 7)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08*	9.70	August 1 through September 30

* - due to rounding, actual number may be slightly different

Instream Point No. 2: At the Miles Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.70	August 1 through September 30
93526	1882 – Tract 1	2.46	297.10	
Total Instream		2.54	306.80	

Instream Reach No. 2: From immediately below the Miles Ditch POD to the Foster Ditch POD (as described in Findings of Fact Nos. 10 and 11)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.70	August 1 through September 30
93526	1882 – Tract 1	2.41	291.16	
Total Instream		2.49	300.86	

Instream Point No. 3: At the Foster Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.70	August 1 through September 30
93526	1882 – Tract 1	2.41	291.16	
93520	1883	0.01	1.70	
93520	1889	0.64	76.90	
93528	1889	0.01	0.90	
Total Instream		3.15	380.36	

Instream Reach No. 3: From immediately below the Foster Ditch POD to the Clearwater Ditch POD (as described in Findings of Fact Nos. 19, 20, 21, 22, and 23)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.70	August 1 through September 30
93526	1882 – Tract 1	2.41	291.16	
93520	1883	0.01*	1.67	
93520	1889	0.62	75.36	
93528	1889	0.01*	0.88	
Total Instream		3.62	378.77	

* - due to rounding, actual number is slightly lower

Instream Point No. 4: At the Clearwater Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.08	9.70	August 1 through September 30
93526	1882 – Tract 1	2.41	291.16	
93520	1883	0.01*	1.67	
93520	1889	0.62	75.36	
93528	1889	0.01*	0.88	
3153	1883	0.06	7.60	
7332	4/12/1924	0.06	7.80	
93514	1883	1.18	143.30	
93516	May 1897	0.22	26.80	
93518	1883	0.57	68.60	
91288	8/11/1922	0.21	25.50	
Total Instream		5.43	658.37	

Instream Reach No. 4: From immediately below the Clearwater Ditch POD to the Tulley Hill Ditch POD (as described in Finding of Fact No. 27)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.07	8.91	August 1 through September 30
93526	1882 – Tract 1	2.21	267.39	
93520	1883	0.01*	1.53	
93520	1889	0.57	69.21	
93528	1889	0.01*	0.81	
3153	1883	0.06*	6.84	
7332	4/12/1924	0.06*	7.02	
93514	1883	1.07	128.97	
93516	May 1897	0.20	24.12	
93518	1883	0.51	61.74	
91288	8/11/1922	0.19	22.95	
Total Instream		4.96	599.49	

* - due to rounding, actual number is slightly lower

Instream Point No. 5: At the Tulley Hill Ditch POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.07	8.91	August 1 through September 30
93526	1882 – Tract 1	2.21	267.39	
93520	1883	0.01*	1.53	
93520	1889	0.57	69.21	
93528	1889	0.01*	0.81	
3153	1883	0.06*	6.84	
7332	4/12/1924	0.06*	7.02	
93514	1883	1.07	128.97	
93516	May 1897	0.20	24.12	
93518	1883	0.51	61.74	
91288	8/11/1922	0.19	22.95	
93524	1900	0.39	46.60	
Total Instream		5.35	646.09	

* - due to rounding, actual number is slightly lower

Instream Reach No. 5: From immediately below the Tulley Hill Ditch POD to the mouth of the Lostine River at the confluence with the Wallowa River (NWSE of Sec. 19, T1N, R43E)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.07	8.91	August 1 through September 30
93526	1882 – Tract 1	2.21	267.39	
93520	1883	0.01*	1.53	
93520	1889	0.57	69.21	
93528	1889	0.01*	0.81	
3153	1883	0.06*	6.84	
7332	4/12/1924	0.06*	7.02	
93514	1883	1.07	128.97	
93516	May 1897	0.20	24.12	
93518	1883	0.51	61.74	
91288	8/11/1922	0.19	22.95	
93524	1900	0.35	41.94	
Total Instream		5.31	641.43	

* - due to rounding, actual number is slightly lower

Wallowa River, tributary to the Grande Ronde River

Instream Reach No. 6: Into the Wallowa River from the confluence with the Lostine River at Latitude: 45.552227, Longitude: -117.490133 (approx. RM 25.9) to a point on the Wallowa River at Latitude: 45.55639, Longitude: -117.490803 (approx. RM 25.6)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.05	5.94	August 1 through September 30
93526	1882 – Tract 1	1.47	178.26	
93520	1883	0.01*	1.02	

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93520	1889	0.38	46.14	August 1 through September 30
3153	1883	0.04*	4.56	
7332	4/12/1924	0.04*	4.68	
93514	1883	0.71	85.98	
93516	May 1897	0.13	16.08	
93518	1883	0.34	41.16	
91288	8/11/1922	0.13	15.30	
93524	1900	0.23	27.96	
Total Instream		3.53	427.08	

* - due to rounding, actual number may be slightly lower

Instream Reach No. 7: From Latitude: 45.55639, Longitude: -117.490803 (approx. RM 25.6) to a point near the town of Wallowa at Latitude: 45.57406, Longitude: -117.42571 (approx. RM 23.8)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.03	3.96	August 1 through September 30
93526	1882 – Tract 1	0.98	118.84	
93520	1889	0.25	30.76	
3153	1883	0.03*	3.04	
7332	4/12/1924	0.03*	3.12	
93514	1883	0.47	57.32	
93516	May 1897	0.09	10.72	
93518	1883	0.23	27.44	
91288	8/11/1922	0.08	10.20	
93524	1900	0.15	18.64	
Total Instream		2.34	284.04	

* - due to rounding, actual number may be slightly lower

Instream Reach No. 8: From a point near the town of Wallowa at Latitude: 45.57406, Longitude: -117.42571 (approx. RM 23.8) to RM 0.0 at the confluence with the Grande Ronde River at (SWNW of Sec. 23, T3N, R40E)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93526	1896 – Tract 3	0.02	2.97	August 1 through September 30
93526	1882 – Tract 1	0.74	89.13	
93520	1889	0.19	23.07	
3153	1883	0.02*	2.28	
7332	4/12/1924	0.02*	2.34	August 1 through September 30
93514	1883	0.36	42.99	
93516	May 1897	0.07	8.04	
93518	1883	0.17	20.58	
91288	8/11/1922	0.06	7.65	
93524	1900	0.12	13.98	
Total Instream		1.77	213.03	

36. 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 7332, 91288, and other certificates 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 may request more frequent reporting. The measurement device is a flume located within each diversion ditch in close proximity to each POD.

37. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.

43. 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.
44. The Lessor and Lessee have requested that the lease terminate on October 1, **2019**. The lease may commence on the date this final order is signed.

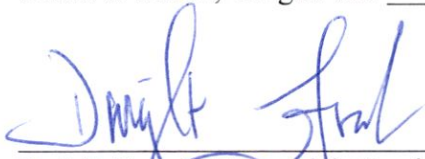
Conclusions of Law

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 and modified 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. 30 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 commenced on May 1, 2018 and will terminate on October 1, **2019**.
4. The Order issued on May 31, 2018, recorded at Special Order Volume 108, Pages 408-422, is of no further force or effect.

Dated at Salem, Oregon this **OCT 11 2018** .



Dwight French, Water Right Services Division Administrator, for
THOMAS M. BYLER, Director
Oregon Water Resources Department

Mailing date: **OCT 12 2018**

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