

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

In the Matter of Instream Lease Application ) DETERMINATION and  
SL-36, 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.

**Lessor**

Woody and Megan Wolfe  
81544 Hwy 82  
Wallowa, OR 97885

**Co-Lessor**

Clearwater Ditch Co.  
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 12, 2016, Woody and Megan Wolfe, Clearwater Ditch Co., and The Freshwater Trust (TFT) filed an application to lease a portion of Certificate 79891 as a split season instream use. The Department assigned the Split-Season Lease Application number SL-36.
2. On May 19, 2016, the Watermaster provided a revised application map.
3. The portion of the right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 79891 in the name of Clearwater Ditch Co. (confirmed under the Wallowa River Decree, of record at Salem, in the Order Record of the Water Resources Director in Volume 5, at Pages 115 - 156)

**Use:** Irrigation of 28.2 acres

**Priority Date:** May, 1897

**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 Wallowa 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	31	NE NE	15.0
1 N	43 E	WM	31	NW NE	13.2
<b>Total Acres</b>					<b>28.2</b>

4. Certificate 79891 does not include a rate limitation. The on farm rate 0.7 cubic feet per second (cfs) identified by the Lessor and Lessee as part of the split season lease is equivalent to approximately 1/40<sup>th</sup> cfs per acre.
5. Certificate 79891 does not specify the irrigation season. However, the Wallow River Decree establishes the irrigation season for the area as May 1 to October 1.
6. Certificate 79891 does not provided a description of the location of the point of diversion. Based upon review of the decree record and additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Latitude/Longitude
1 N	43 E	WM	33	SW SW	CLEARWATER DITCH: LATITUDE 45.5184, LONGITUDE -117.4576

7. Certificate 79891 identifies the source of water as the South Fork of the Wallowa River, which is also known as the Lostine River.
8. There are supplemental irrigation water rights, Certificates 81507 and 11642, appurtenant to all or a portion of the lands described in Finding of Fact No. 3. The 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.
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.

Under Certificate 79891, water may be used for its existing use up to a rate of 0.7 CFS and no more than 126.9 AF, consistent with the water right limits identified in Finding of Fact No. 3. The existing use period (out of stream) will be May 1 through July 31, a period of 92 days.

11. The Lessor and Lessee have requested to protect water instream from the POD described in Finding of Fact No. 6 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 the POD.

12. The lease application requests to protect water instream from the Lostine River into the Wallowa 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 from the Lostine River and into the Wallowa River.

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

Lostine River (South Fork Wallowa River), tributary to the Wallowa River

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
79891	May 1897	0.233	28.2	August 1 through September 30

**Instream Reach No. 2:** From immediately below the POD to the mouth of the Lostine River and then into the Wallowa River to its mouth

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
79891	May 1897	0.228	27.64	August 1 through September 30

14. Other conditions to prevent injury and enlargement are:

The Lessor in coordination with The Freshwater Trust (Lessee) shall report monthly measurements of use. 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 Lessee and Lessor shall report the readings using the Split Season Measurement Reporting Form. The measurement device is a flume located at the POD (Clearwater Ditch).

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

16. 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 the POD. The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows.
17. 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.
  18. 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.
  19. 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.
  20. 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.
  21. 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.
  22. 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**

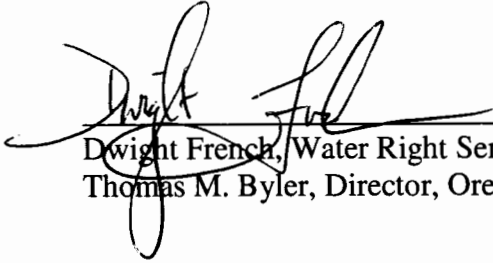
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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 (up to 129.9 AF under Certificate 79891 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 31 day of May, 2016.



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

Mailing date: JUN 02 2016

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