

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

In the Matter of the Proposed Short-Term) Lease of Existing Water Rights for Instream) Use, Certificates 13130, 13311, and 12775,) Umatilla County)	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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 short-term instream lease applications.

Lessor #1
 Norma Anspach
 POA Donna Roloff
 Route 4, Box 192
 Milton-Freewater, Oregon 97862

Lessor #2
 Walla Walla River Irrigation District (WWRID)
 Attn: Teresa Yeager
 605 N. Lamb
 Milton-Freewater, Oregon 97862

Lessee
 Oregon Water Trust
 522 SW Fifth Avenue, Suite 825
 Portland, Oregon 97204

Findings of Fact

1. Norma Anspach, WWRID, and the Oregon Water Trust filed an application to lease a portion of Certificates 13130, 13311, and 12775 to instream use. The Department assigned the application number L-720.
2. The rights to be leased are as follows:

Certificate: 13130 in the name of LYMAN E PRESTON
Use: IRRIGATION of 8.9 ACRES
Priority Date: 1881
Rate: 0.33 CUBIC FEET PER SECOND
Source: FORD BRANCH WALLA WALLA RIVER
Authorized Point of Diversion: Not described on certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NW SE	8.9

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.

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 FEET PER SECOND (0.17 cfs at 1887 priority and 0.04 cfs at 1894 priority)

Source: EAST FORK FORD BRANCH WALLA WALLA RIVER

Authorized Point of Diversion: Not described on certificate

Authorized Place of Use:

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

Certificate: 12775 in the name of H A HERR

Use: IRRIGATION of 1.8 ACRES

Priority Date: 1908

Rate: 0.07 CUBIC FEET PER SECOND

Source: EAST FORD BRANCH OF LITTLE WALLA WALLA RIVER

Authorized Point of Diversion: Not described on certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	SW NE	1.8

- The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
- The sources described in Finding of Fact #2 being Ford Branch Walla Walla River, East Fork Ford Branch Walla Walla River, and East Ford Branch Of Little Walla Walla River all refer to the Little Walla Walla River.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Little Walla Walla River tributary to 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
13130	1881	0.22	July 10 to October 31
13311	1887	0.11	July 10 to October 31
13311	1894	0.03	July 10 to October 31
12775	1908	0.05	July 10 to October 31

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 describes the full amount (3/80 cfs/ac) described on the certificate.

6. 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.

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 11 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.

7. Other conditions to prevent injury and enlargement are: The instream rate shall be reduced by 10% per mile to account for stream losses.
8. 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.
9. 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.
10. The lease will terminate on December 31, 2009.
11. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

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

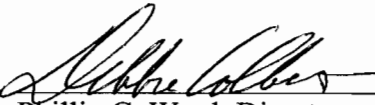
ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.

3. The lease shall terminate on December 31, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by June 10 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 21ST day of June 2006.

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Phillip C. Ward, Director

Mailing date: JUL 19 2006