

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1562, Umatilla 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

Pooled Instream Lease for several water right holders (described in Findings of Fact Nos. 2, 5, 7 – 10, and 11, 12, 13)

Co-Lessor

Walla Walla River Irrigation District (WWRID)
PO Box 248
Milton-Freewater, OR 97862
E-mail: WWRID@qwestoffice.net

Lessee

The Fresh Water Trust (FWT)
700 SW Taylor
Portland, OR 97206
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Findings of Fact

1. On June 30, 2016, WWRID and FWT, on behalf of several water right holders, filed an application to lease a portion of Certificates 13271, 12528, 13144, 39602, 83358, 83359, 13311, 86271, 86282 (superseded by 90657), and 86907 for instream use. The Department assigned the application number IL-1562.
2. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 13271 in the name of CHAS. WALDEN (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 4.0 ACRES
Priority Date: 1886
Rate: 0.15 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one and one-half miner's inches per acre measured at the point of diversion.

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.

Source: WEST FORK OF WEST BRANCH OF CROCKETT, tributary to the
LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	26	NE SW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	26	NE SW	4.00

3. On April 1, 2013, the Department issued a Determination of Satisfactory Proof recorded at Special Order Volume 89, Page 748, confirming changes made under Final Order Approving Allocation of Conserved Water and Changes in Point of Diversion, Special Order Volume 71, Page 636, for Allocation of Conserved Water application CW-45. The Determination of Satisfactory Proof confirmed the change in the point of diversion for Certificates 12528, 13144, and 39602 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

4. The second right to be leased, as modified by Special Order Volume 71, Page 636, is as follows:

Former

Certificate: 12528 in the name of M.L. BALTEZORE (confirmed by Walla Walla River Decree, with changes confirmed by Special Order Volume 89, Page 748)

Use: IRRIGATION of 6.0 ACRES

Priority Dates: 1885 and 1894

Rate: 0.096 CUBIC FOOT PER SECOND, being 0.048 CFS under the 1885 priority date, and 0.048 CFS under the 1894 priority date

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one miner's inch per acre measured at the point of diversion.

Source: WEST BRANCH OF WEST CROCKETT BRANCH, tributary of the
LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
6 N	35 E	WM	35	NE NW	3.0	1885
6 N	35 E	WM	35	NE NW	3.0	1894

5. The third right to be leased (as modified by Special Order Volume 71, Page 636) is as follows:

Former

Certificate: 13144 in the name of FRED RAUSCHKOLB (confirmed by Walla Walla River Decree, with changes confirmed by Special Order Volume 89, Page 748)

Use: IRRIGATION of 9.0 ACRES

Priority Date: 1887

Rate: 0.144 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one miner's inch per acre measured at the point of diversion.

Source: WEST BRANCH OF WEST CROCKETT BRANCH, tributary of the LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	9.0

6. The source for Certificate 13144 is identified as the West Branch of Crockett Branch of Little Walla Walla River. However, the POD described in Finding of Fact #5 is actually located and previously verified by the District #5 Watermaster to be on the West Ford Branch of the Little Walla Walla River.

7. The fourth right to be leased (as modified by Special Order Volume 71, Page 636) is as follows:

Former

Certificate: 39602 in the name of C.J. KARKER (confirmed by Walla Walla River Decree, with changes confirmed by Special Order Volume 89, Page 748)

Use: IRRIGATION of 2.76 ACRES

Priority Date: 1885

Rate: 0.044 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one miner's inch per acre measured at the point of diversion.

Source: WEST BRANCH of WEST CROCKETT BRANCH, tributary of the LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	2.76

8. The fifth right to be leased is as follows:

Former

Certificate: 83358 in the name of C.J. KARKER (confirmed by Walla Walla River Decree)

Use: IRRIGATION of 1.16 ACRES

Priority Date: 1885

Rate: 0.029 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40 of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WEST BRANCH of WEST CROCKETT BRANCH, tributary of the LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	1.16

9. The sixth right to be leased is as follows:

Former

Certificate: 83359 in the name of BILL AND EILEEN LEIBRAND (confirmed by Walla Walla River Decree)

Use: IRRIGATION of 6.0 ACRES

Priority Date: 1879

Rate: 0.15 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40 of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WEST BRANCH of WEST CROCKETT BRANCH, tributary of the LITTLE WALLA WALLA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	35	NWNE	1960 FEET NORTH AND 210 FEET EAST FROM THE CENTER ¼ CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	35	NE NW	1.16

10. The seventh right to be leased is as follows:
Certificate: 13311 in the name of HOWARD C. YATES (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 8.8 ACRES
Priority Date: 1887 AND 1894
Rate: 0.33 CUBIC FOOT PER SECOND, being 0.23 CFS under the 1887 priority date, and 0.10 CFS under the 1894 priority date
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one and one-half miner's inches per acre measured at the point of diversion.
Source: EAST FORK FORD BRANCH, tributary of the LITTLE WALLA WALLA RIVER

Authorized Point of Diversion: Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Priority
6 N	35 E	WM	35	NE NW	6.0	1887
6 N	35 E	WM	35	NE NW	2.8	1894

11. The source of water described in Finding of Fact #10 for Certificate 13311 refers to the Little Walla Walla River. Based in the best information available, the location of the point of diversion is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

12. The eighth right to be leased is as follows:
Certificate: 86271 in the name of PATRICIA BIER (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 8.28 ACRES
Priority Date: 1891
Rate: 0.31 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed one and one-half miner's inches per acre measured at the point of diversion.
Source: WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	1080 FEET SOUTH AND 450 WEST FROM THE NORTH ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	36	NW SE	8.28

13. The ninth right to be leased is Certificate 86282. Certificate 86282 was superseded by Certificate 90657 as follows:

Certificate: 90657 in the name of SUSAN DAVIS (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 9.0 ACRES
Priority Date: 1892
Rate: 0.225 CUBIC FOOT PER SECOND
Limit/Duty: The use of this portion of the water right is limited to one miner's inch per acre, measured at the point of diversion from the source.
Source: WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	1080 FEET SOUTH AND 450 WEST FROM THE NORTH ¼ CORNER OF SECTION 1

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	36	NE NE	9.0

14. The tenth right to be leased is Certificate 86907 as follows:

Certificate: 86907 in the name of JOHN AND SHIELA PETERSON (confirmed by Walla Walla River Decree)
Use: IRRIGATION of 4.5 ACRES
Priority Date: 1900
Rate: 0.11 CUBIC FOOT PER SECOND
Limit/Duty: The use of this portion of the water right is limited to 1.5 miner's inch per acre, measured at the point of diversion from the source.
Source: WALLA WALLA RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12
5 N	35 E	WM	2	NE NE	REDIVERSION: PLEASANT VIEW DITCH - 650 FEET SOUTH AND 450 FEET WEST FROM THE NE CORNER OF SECTION 2

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	35 E	WM	3	NE NE	4.5

15. For Certificates 13271, 12528, 13144, 39602, 83358, 83359, and 13311 water is diverted into the Little Walla Walla River at the headgate diversion from the Walla Walla River at approximately River Mile 50, further described as:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

Water from the Little Walla Walla River may then be diverted to either the Ford Branch or the West Branch of the Crockett, tributaries of the Little Walla Walla River.

16. For purposes of this instream lease under Certificates 13271, 12528, 13144, 39602, 83358, 83359, 13311, and 86907, water will be protected from the headgate diversion from the Walla Walla River into the Little Walla Walla River at approximately River Mile 50 as described in Finding of Fact #15.
17. Based upon the Walla Walla River Decree, the existing water rights described above have a year-round season of use without a specified duty limitation. However, the existing rights are subject to beneficial use without waste in accordance with ORS 536.310. Use of the existing rights at the full amounts allowed year-round would exceed the amount necessary to accomplish the existing beneficial uses.
18. On August 22, 2016, the District #5 Watermaster performed a review of the proposed Instream Lease Application. The Department has determined the proposed lease could injure other water rights if it was not conditioned to limit the maximum amount of water necessary to accomplish the existing beneficial uses and to account for channel losses below the Little Walla Walla River headgate-diversion of approximately 3% per mile.
19. The instream use may also be conditioned to allow more or less water to be protected instream below the points of diversion based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at the points of diversion.
20. Injury to other water rights can be mitigated by limiting the period when water is being protected instream to June 25 to October 14.
21. 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.
22. The instream use has been modified and clarified from the lease application to prevent injury and enlargement and is as follows:

Instream Reach 1: Walla Walla River, tributary to the Columbia River
From: The Little Walla Walla River headgate diversion at approximately RM 50:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	12	SW NE	1030 FEET NORTH AND 900 FEET EAST FROM THE CENTER OF SECTION 12

To the authorized Points of Diversion for Certificates 86271 and 90657 at approximately River Mile 48:

Cert.	Priority Date	Rate (CFS) RM 50	Rate (CFS) RM 49	Rate (CFS) RM 48	Instream Volume (AF)	Period Protected Instream
83359	1879	0.150	0.146	0.141	33.32	6/25 through 10/14
12528	1885	0.048	0.047	0.045	10.66	6/25 through 10/14
39602	1885	0.044	0.043	0.041	9.77	6/25 through 10/14
83358	1885	0.029	0.028	0.027	6.44	6/25 through 10/14
13271	1886	0.150	0.146	0.141	33.32	6/25 through 10/14
13144	1887	0.144	0.140	0.135	31.99	6/25 through 10/14
13311	1887	0.230	0.223	0.216	49.98	6/25 through 10/14
13311	1894	0.100	0.097	0.094	22.21	6/25 through 10/14
12528	1894	0.048	0.047	0.045	10.66	6/25 through 10/14
86907	1900	0.110	0.107	0.103	24.45	6/25 through 10/14
Totals		1.053	1.024	0.988	232.80	

Instream Reach 2: Walla Walla River, tributary to the Columbia River
From: The authorized points of diversion for Certificates 86271 and 90657 at approximately River Mile 48:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	35 E	WM	1	NE NW	1080 FEET SOUTH AND 450 WEST FROM THE NORTH ¼ CORNER OF SECTION 1

To the Oregon-Washington state line at approximately RM 44.5 as follows:

Cert.	Priority Date	Rate (CFS) RM 48	Rate (CFS) RM 47	Rate (CFS) RM 46	Rate (CFS) RM 45	Rate (CFS) RM 44.5	Instream Volume (AF)	Period Protected Instream
83359	1879	0.141	0.137	0.133	0.129	0.125	33.32	6/25 through 10/14
12528	1885	0.045	0.044	0.042	0.041	0.040	10.66	6/25 through 10/14
39602	1885	0.041	0.040	0.039	0.038	0.037	9.77	6/25 through 10/14
83358	1885	0.027	0.026	0.026	0.025	0.024	6.44	6/25 through 10/14
13271	1886	0.141	0.137	0.133	0.129	0.125	33.32	6/25 through 10/14
13144	1887	0.135	0.131	0.127	0.124	0.120	31.99	6/25 through 10/14
13311	1887	0.216	0.210	0.204	0.198	0.192	49.98	6/25 through 10/14
86271	1891	0.310	0.301	0.292	0.283	0.274	68.87	6/25 through 10/14
90657	1892	0.225	0.218	0.212	0.205	0.199	49.98	6/25 through 10/14
13311	1894	0.094	0.091	0.089	0.086	0.083	22.21	6/25 through 10/14
12528	1894	0.045	0.044	0.042	0.041	0.040	10.66	6/25 through 10/14
86907	1900	0.103	0.100	0.097	0.094	0.092	24.45	6/25 through 10/14
Totals		1.523	1.479	1.436	1.393	1.351	351.65	

23. Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from the points of diversion to the Oregon-Washington state line, and whether the described instream flows below the points of diversion may be adjusted. If adjusted, instream flows from immediately below the points of diversion to the Oregon-Washington state line may not exceed the quantities specified at the points of diversion.
24. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

25. 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 is an approximate 3% per mile stream channel loss from the Little Walla Walla River headgate diversion described in Finding of Fact #15 to the Oregon-Washington state line.
 - d. Any return flows resulting from the exercise of the existing water rights would not re-enter the river within the State of Oregon.
26. 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.
27. 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.
28. 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.
29. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease, as conditioned 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.
30. 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.
31. The Lessors and Lessee have requested that the lease terminate on December 31, 2016. The lease may commence on the date this final order is signed.
32. The Lessors and Lessee have requested there not be an option to terminate the lease.

Conclusions of Law

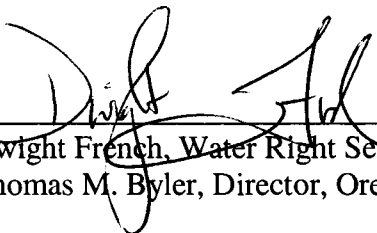
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.

The term of the lease will commence upon approval of the instream lease and terminate on October 14, 2016, the last date the water will be protected instream under this order. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this 26 day of August, 2016.



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

Mailing date: AUG 30 2016

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