

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1235, Certificates 12829, 12830, 12831) FINAL ORDER ON PROPOSED
Umatilla County) INSTREAM LEASE

Authority

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 instream lease applications.

Lessor

Leland and Glenna Sams
61921 West Rd.
La Grande, Oregon 97850

Lessee

The Freshwater Trust
65 SW Yamhill St., Suite 300
Portland, Oregon 97204

Findings of Fact

1. On April 24, 2012 Leland and Glenna Sams, in conjunction with The Freshwater Trust (TFT) filed an application to lease a portion of Water Right Certificate 12829 and all of Water Right Certificates 12830 and 12831 for instream use. The Department assigned the application number IL-1235.

2. The portion of the first right to be leased is as follows:

Certificate: 12829 in the name of J.N. KELLEY (confirmed by Walla Walla River Decree)
Use: Irrigation of 7.9 acres
Priority Date: 1891
Quantity: **Rate:** 0.296 Cubic Foot per Second (CFS)
Limit: One and one-half miners inch per acre irrigated, measured at the POD
Source: SPRINGS, tributary to the NORTH FORK WALLA WALLA 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
5 N	37 E	WM	29	NW NW	2.6
5 N	37 E	WM	29	NW NW	5.3
TOTAL:					7.9

3. Water Right Certificate 12829 does not specify the Point of Diversion. However the Department has evidence which describes the Point of Diversion as follows:

Authorized Points of Diversion (PODs):

Twp	Rng	Mer	Sec	Location
5 N	37 E	WM	28	BOWLUS AND KELLY DITCHES

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

Certificate: 12830 in the name of J.N. KELLEY (confirmed by Walla Walla River Decree)
Use: Irrigation of 4.0 acres
Priority Date: 1893
Quantity: **Rate:** 0.150 Cubic Foot per Second (CFS)
Limit: One and one-half miners inch per acre irrigated, measured at the POD
Source: SPRINGS, tributary to the NORTH FORK WALLA WALLA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	37 E	WM	29	NW NE	4.0

5. Water Right Certificate 12830 does not specify the Point of Diversion. However the Department has evidence which describes the Point of Diversion as follows:

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Location
5 N	37 E	WM	30	NW NE	WALLACE DITCHES

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

Certificate: 12831 in the name of J.N. KELLEY (confirmed by Walla Walla River Decree)
Use: Irrigation of 6.9 acres
Priority Date: 1905
Quantity: **Rate:** 0.259 Cubic Foot per Second (CFS)
Limit: One and one-half miners inch per acre irrigated, measured at the POD
Source: SPRINGS, tributary to the NORTH FORK WALLA WALLA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	37 E	WM	29	NW NW	2.6
5 N	37 E	WM	29	NW NW	5.3
TOTAL:					7.9

7. Water Right Certificate 12831 does not specify the Point of Diversion. However the Department has evidence which describes the Point of Diversion as follows:

Authorized Points of Diversion (PODs):

Twp	Rng	Mer	Sec	Q-Q	Location
5 N	37 E	WM	30	NW NE	WALLACE AND KELLY DITCHES

8. Water Right Certificates 12829, 12830 and 12831 do not specify the irrigation season. However, OAR 690-250-0070 establishes a default season of March 1 through October. The default season will serve as the base season for the purposes of this lease.
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 in response to that notice.
10. On May 16, 2012 the Department’s District 5 Watermaster reviewed Instream Lease Application IL-1235 and determined the full rates as described in Water Right Certificates 12829, 12830 and 12831 should be protected at the Points of Diversion (PODs). To avoid injury and enlargement, below the PODs, only the consumptive use portions of the rights can be protected instream. The quantity of water protected below the PODs, must also be reduced to account for evapotranspiration and channel losses.
11. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

SPRINGS, tributary to the NORTH FORK WALLA WALLA RIVER

Instream Point #1: At the POD, as described in Finding of Fact #3.

Certificate	Priority Date	Instream Rate	Max Instream Volume	Period Protected Instream
12829	1891	0.296 CFS	144.43 AF	March 1 through October 31

Instream Reach #1: From the POD, as described in Finding of Fact #3 to the mouth of the North Fork, Walla Walla River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
12829	1891	0.051 CFS	24.81 AF	March 1 through October 31

Instream Point #2: At the POD, as described in Finding of Fact #5.

Certificate	Priority Date	Instream Rate	Max Instream Volume	Period Protected Instream
12830	1893	0.15 CFS	73.19 AF	March 1 through October 31

Instream Reach #2: From the POD, as described in Finding of Fact #5, to the mouth of the North Fork, Walla Walla River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
12830	1893	0.026 CFS	12.56 AF	March 1 through October 31

Instream Point #3: At the POD, as described in Finding of Fact #7.

Certificate	Priority Date	Instream Rate	Max Instream Volume	Period Protected Instream
12831	1891	0.259 CFS	126.37 AF	March 1 through October 31

Instream Reach #3: From the POD, as described in Finding of Fact #7 to the mouth of the North Fork, Walla Walla River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
12831	1891	0.044 CFS	21.67 AF	March 1 through October 31

12. Other conditions to prevent injury and enlargement are:

To further prevent injury and enlargement and to account for evapotranspiration and channel losses the quantity of water protected instream must be reduced by 2% per mile, below the PODs.

13. This instream lease is not 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.

14. 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.

15. 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.

16. The Applicants requested that the lease terminate on November 2, 2016.

17. The Applicants requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

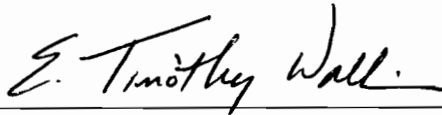
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on November 2, 2016. The lessor *shall* have the option of terminating the lease upon submission of written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (February 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. The Instream Lease shall expire on November 2, 2016.

Dated at Salem, Oregon this 16th day of July, 2012.



Tim Wallin, Water Right Services Manager, for
PHILLIP C. WARD, DIRECTOR

Mailing date: **JUL 19 2012**

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@wr.d.state.or.us.