

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificates 12058 and 3154, Wallowa) INSTREAM LEASE
County)

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

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

Findings of Fact

1. The Oregon Water Trust filed an application to renew instream lease L-617, involving all of Certificate 12958 and a portion of Certificate 3154 to instream use. The Department assigned the application number IL-617.
2. The water right holder for the portion of the water rights proposed to be leased instream has changed from the original lease described in Special Order Volume 64, Page 305. The new holder of the water right proposed to be leased instream is the Oregon Water Trust.
3. The first right to be leased is as follows:

Certificate: 12058 in the name of F.W. HAMMACK (perfected under Permit S-12955)
Use: IRRIGATION of 16.0 ACRES
Priority Date: FEBRUARY 18, 1938
Rate: 0.40 CUBIC FEET PER SECOND
Limit/Duty: not to exceed 1.5 acre-feet (AF) per acre for each acre irrigated during any thirty-day period from May 1 to July 31, and thereafter shall be limited to a diversion of not to exceed 1.0 AF per acre for each acre irrigated during the remainder of the irrigation season ending October 1 per year
Source: SOUTH FORK OF WALLOWA RIVER, tributary to WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	14	NW SW	16.0

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

Certificate: 3154 in the name of SHEEP RIDGE DITCH CO. (confirmed by Wallowa River decree)

Use: IRRIGATION of 74.0 ACRES

Priority Date: 1897

Rate: Not described on certificate.

Limit/Duty: not to exceed 1.5 acre-feet (AF) per acre for each acre irrigated during any thirty-day period prior to July 31, and thereafter shall be limited to a diversion of not to exceed 1.0 AF per acre for each acre irrigated during the remainder of the irrigation season

Source: SOUTH FORK OF WALLOWA RIVER, tributary to WALLOWA RIVER

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
1 S	43 E	WM	14	NE SW	39.5	8
1 S	43 E	WM	14	NW SW	4.0	8
1 S	43 E	WM	14	NW SE	30.5	1

5. For the purposes of this lease the point of diversion for Certificate 3154 is:

Twp	Rng	Mer	Sec	Q-Q
1 S	43 E	WM	27	NE NW

6. The South Fork of Wallowa River is also known as the Lostine River.
7. 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.
8. The instream use is as follows:
LOSTINE RIVER tributary to WALLOWA RIVER

Instream Reach: From POD (as described in Finding of Fact #3 and 5) to next downstream diversion, being Lostine Ditch, approximately 1.5 miles below the Sheep Ridge POD.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
12058	FEBRUARY 18, 1938	0.395	May 1 through July 31
		0.132	August 1 through September 30
3154	1897	1.825	May 1 through July 31
		0.602	August 1 through September 30

9. Other conditions to prevent injury and enlargement are: Certificate 81507 is a supplemental water right to some or all of the lands proposed to be leased instream. This right shall not be exercised on the lands in this lease, during the term of the lease.
10. 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.
11. 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.
12. 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.
13. The lease will terminate on October 1, 2012.
14. The Lessor has indicated that they will not have the option of terminating the lease early without consent by all parties to 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.

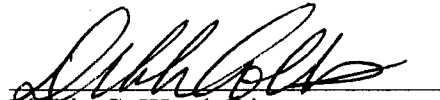
ORDER

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 October 1, 2012. The Lessor may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 9th day of May 2008.


Phillip C. Ward, Director

B

Mailing date: MAY 14 2008