

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1905, Wallowa County) 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.

Lessors

Long Oak, LLC
Brantwood, LLC
PO Box 459
Enterprise, OR 97828
rfrosher@msn.com

Co-Lessors

Alder Slope Ditch Company
PO Box 264
Enterprise, OR 97828

Wallowa Lake Irrigation District
65196 Dobbin Road
Joseph, OR 97846

Findings of Fact

1. On February 25, 2022, Long Oak, LLC, Brantwood, LLC, Alder Slope Ditch Company, and Wallowa Lake Irrigation District filed an application to lease a portion of Certificates 48313, 95525, 91137, 47326, 51483, 54760, 86543, and 3064 for instream use. The Department assigned the application number IL-1905.

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

Certificate: 48313, in the name of Silver Lake Water Ditch Co. (confirmed by the Wallowa River Decree)
Use: Irrigation of 20.5 acres
Priority Date: 1893
Quantity: **Rate:** 0.52 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: Wallowa River, tributary to Grande Ronde 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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
3 S	45 E	WM	5	NE NW	4	SILVER LAKE DITCH: 900 FEET SOUTH AND 1700 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	23	NE SE	7300	2.3
2 S	45 E	WM	23	SE SE	7300	2.7
2 S	45 E	WM	26	SE NE	7900	6.0
2 S	45 E	WM	26	SW NE	7900	1.7
2 S	45 E	WM	26	NW SE	7900	2.7
2 S	45 E	WM	26	SW SE	8300	1.3
2 S	45 E	WM	26	NW SW	8000	2.3
2 S	45 E	WM	27	NE SE	8000	1.5
Total Acres						20.5

3. Certificate 48313 specifies the measured distances for the location of the point of diversion. However, the application has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH: Latitude: 45.335296° Longitude: -117.222913°

4. The portion of the second right is as follows:

Certificate: 95525, in the name of Alder Slope Ditch Company (confirmed by the Wallowa River Decree)

Use: Irrigation of 28.8 acres

Priority Date: November 30, 1901

Quantity: **Rate:** 0.73 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Hurricane Creek, tributary of the Wallowa River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 S	44 E	WM	3	NE NE	ALDER SLOPE DITCH: SOUTH 76 DEGREES 02 MINUTES WEST 49 FEET FROM THE NE CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	44 E	WM	31	NE SE	5203	1.6
1 S	44 E	WM	31	SW SE	5301	15.8
1 S	44 E	WM	31	SE SW	5300	4.4

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	44 E	WM	6	NW NE	200	7.0
Total Acres						28.8

5. Certificate 95525 specifies the survey coordinates for the location of the point of diversion. However, the application has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Lot	Coordinates
3 S	44 E	WM	3	NE NE	1	ALDER SLOPE DITCH: Latitude: 45.337823° Longitude: -117.292004°

6. The portion of the third right is as follows:

Certificate: 91137, in the name of Farmers Water Ditch Company (confirmed by the Wallowa River Decree)

Use: Irrigation of 21.7 acres

Priority Date: 1900

Quantity: Rate: 0.55 Cubic Foot per Second (CFS)

Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD): FARMERS DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	23	NW SE	7300	3.5
2 S	45 E	WM	23	SW SE	7300	0.8
2 S	45 E	WM	26	NW NE	7300	6.4
2 S	45 E	WM	26	SW NE	7900	1.6
2 S	45 E	WM	26	NE NW	7300	3.2
2 S	45 E	WM	26	SW NW	8000	5.0
2 S	45 E	WM	27	SE NE	8000	1.2
Total Acres						21.7

7. Certificate 91137 provides a general description of the point of diversion. However, the application has provided a more detailed description of the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	32	SW SW	FARMERS DITCH: Latitude: 45.337650° Longitude: -117.227488°

8. The portion of the fourth right is as follows:

Certificate: 47326, in the name of Jim Petty (perfected under Permit S-38986)
Use: Irrigation of 34.9 acres
Priority Date: March 8, 1974
Quantity: **Rate:** 0.88 Cubic Foot per Second (CFS)
Limit: One-Fortieth of one cubic foot per second per acre, and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	SE SW	3200	3.1
2 S	45 E	WM	10	SW SE	3200	2.2
2 S	45 E	WM	15	NW NE	3200	11.6
2 S	45 E	WM	15	NE NW	3200	10.0
2 S	45 E	WM	15	SE NW	3900	7.5
2 S	45 E	WM	15	SW NE	3900	0.5
Total Acres						34.9

9. Certificate 47326 specifies the measured distances for the location of the point of diversion. However, the application has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

10. The portion of the fifth right is as follows:

Certificate: 51483, in the name of James P. and Joan T. Petty (perfected under Permit S-28864)
Use: Irrigation of 19.8 acres
Priority Date: June 11, 1963
Quantity: **Rate:** 0.50 Cubic Foot per Second (CFS)
Limit: One-Fortieth of one cubic foot per second per acre 3.5 acre feet provided further that the right to use water is limited to the period when the flow of the Lower Grande Ronde River is more than 300 cfs at USGS Gage 3325 and more than 420 cfs at the Oregon-Washington border.
Source: Wallowa River, tributary to Grande Ronde River.

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	NW SE	3200	2.2
2 S	45 E	WM	10	NE SW	3200	0.1
2 S	45 E	WM	10	SE SW	3200	3.1
2 S	45 E	WM	15	NE NW	3200	6.4
2 S	45 E	WM	15	SW NE	3900	0.4
2 S	45 E	WM	15	SE NW	3900	6.6
2 S	45 E	WM	15	NW SE	3900	1.0
Total Acres						19.8

11. Certificate 51483 specifies the survey coordinates for the location of the point of diversion. However, the application has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

12. The portion of the sixth right is as follows:

Certificate: 54760, Jim Petty (perfected under Permit S-43879)
Use: Irrigation of 1.9 acres
Priority Date: January 29, 1979
Quantity: **Rate:** 0.05 Cubic Foot per Second (CFS)
Limit: One-Fortieth of one cubic foot per second per acre and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	31	NE NE	550 FEET SOUTH AND 800 FEET WEST FROM THE NE CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	10	NW SE	3200	1.9

13. Certificate 54760 specifies the measured distances for the location of the point of diversion. However, the application has provided latitude and longitude for the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	45 E	WM	31	NE NE	Consolidated Ditch: Latitude: 45.350726° Longitude: -117.232953°

14. The portion of the seventh right is as follows:

Certificate: 86543, in the name of the Associated Ditch Companies, Corp. (perfected under Permit S-52035)
Use: Irrigation of 8.8 acres
Priority Date: March 20, 1992
Quantity: **Rate:** 0.22 Cubic Foot per Second (CFS) from live flow
Limit: One-Fortieth of one cubic foot per second per acre and shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Period of Use: May 1 through June 30 from live flow and May 1 to October 1 for water legally stored
Source: Wallowa River and Wallowa Lake Reservoir, constructed under Permit Numbers R-347 and R-5018, tributaries of the Grande Ronde River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	LOT	Measured Distances
2 S	45 E	WM	26	SE NE		DITCH DIVERSION: 2300 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 26
3 S	45 E	WM	5	NE NW	4	WALLOWA LAKE DIVERSION: 880 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	45 E	WM	26	SE NE	7900	8.8

15. Certificate 86543 specifies the measured distances for the re-diversion from the Silver Lake Ditch. However, the application has provided latitude and longitude for the location of the point of diversion of the Silver Lake Ditch as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
3 S	45 E	WM	5	NE NW	SILVER LAKE DITCH: Latitude: 45.335296° Longitude: -117.222913°

16. The portion of the eighth right is as follows:

Certificate: 3064, in the name of Island Irrigating Water Ditch Co. (confirmed by the Wallowa River Decree)
Use: Irrigation of 4.2 acres
Priority Date: 1900

Quantity: **Rate:** 0.11 Cubic Foot per Second (CFS)
Limit: Shall not exceed 1.5 acre feet per acre during any period of thirty days prior to July 31 of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.

Source: Wallowa River, tributary to Grande Ronde River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
2 S	44 E	WM	12	SW SE	1402	4.2

17. Certificate 3064 does not provide a description of the point of diversion. However, the watermaster and application has provided a detailed description of the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	44 E	WM	24	NE NE	ISLAND DITCH: Latitude: 45.3796° Longitude: -117.2511°

18. Certificate 48313, 95525, 91137, 47326, 51483, 54760, and 3064 do not specify the irrigation season. However, the Wallowa River Decree establishes the irrigation season for the area as May 1 to October 1.

19. There are supplemental irrigation water rights appurtenant to all or a portion of the lands described in Finding of Fact Nos. 2, 4, 6, 8, 10, 12, 14, and 16. The Lessors and Co-Lessors have requested that those water rights not be included as part of this lease application. During the term of the lease, water use under those rights will also be suspended.

20. 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.

21. The instream use has been modified from the lease application to accurately reflect the volume of water protected and is as follows:

Instream Point 1: At the Point of Diversion for Certificates 48313 and 86543, in the NENW of Section 5, Township 3 South, Range 45 East, W.M. (as described in Findings of Fact Nos. 3 and 15, commonly referred to as Silver Lake Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
48313	1893	0.52	30.75	June 1 through June 30
86543	3/20/1992	0.22	13.20	June 1 through June 30

Instream Point 2: At the Point of Diversion for Certificate 91137 in the SWSW of Section 32, Township 2 South, Range 45 East, W.M. (as described in Finding of Fact No. 7, commonly referred to as Farmers Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
91137	1900	0.55	32.55	June 1 through June 30

Instream Point 3: At the Point of Diversion for Certificates 47326, 51483, and 54760 in the NENE of Section 31, Township 2 South, Range 45 East, W.M. (as described in Findings of Fact Nos. 9, 11, and 13, commonly referred to as the Consolidated Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
47326	3/8/1974	0.88	52.35	June 1 through June 30
51483	6/11/1963	0.50	29.70	June 1 through June 30
54760	1/29/1979	0.05	2.85	June 1 through June 30

Instream Point 4: At the Point of Diversion for Certificate 95525 in NENE of Section 3, Township 3 South, Range 44 East, W.M. (as described in Finding of Fact No. 5, commonly referred to as Alder Slope Ditch)

Source: Hurricane Creek, tributary to Wallowa River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
95525	11/30/1901	0.73	43.20	June 1 through June 30

Instream Point 5: At the Point of Diversion for Certificate 3064 in NENE of Section 24, Township 2 South, Range 44 East, W.M. (as described in Finding of Fact No. 17, commonly referred to as Island Ditch)

Source: Wallowa River, tributary to Grande Ronde

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3064	11/30/1901	0.11	6.30	June 1 through June 30

22. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
23. The protection of flows at the authorized points of diversion 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. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right
24. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.
25. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
26. 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.
27. 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.
28. 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.
29. The Lessors and Co-Lessors have requested that the lease terminate in June of 2022, however the last day of the irrigation season is September 30. The lease will terminate on September 30, 2022 and commence on May 1, 2022.
30. The Lessors and Co-Lessors have requested that there not be an option to terminate the lease.

Conclusions of Law

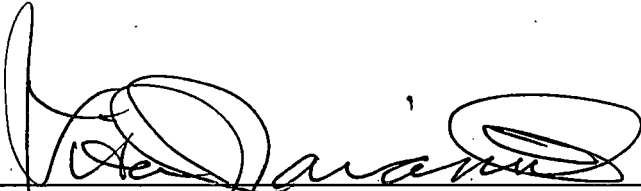
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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.

3. The term of the lease will commence May 1, 2022 and terminate on September 30, 2022.

Dated at Salem, Oregon this day APR 15 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: APR 18 2022

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.