

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1755, 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.

**Lessors**

Pooled Instream Lease for several water right holders (described in Findings of Fact Nos. 2, 3, 5, and 6)

**Co-Lessor**

Walla Walla River Irrigation District (WWRID)  
PO Box 248  
Milton-Freewater, OR 97862  
teresa@wwriver.com

**Lessee**

The Freshwater Trust (TFT)  
700 SW Taylor, Suite 200  
Portland, OR 97206  
rob@thefreshwatertrust.org

**Findings of Fact**

1. On June 4, 2019, WWRID and TFT, on behalf of several water right holders, filed an application to lease Certificates 92474, 92732, 86271, and a portion of Certificate 90643. The Department assigned the application number IL-1755.
2. The first right to be leased is as follows:

**Certificate:** 92474 in the name of JOELLE KATON (confirmed by Walla Walla River Decree, with changes confirmed by Special Order Volume 104, Page 547; and correction confirmed by Special Order Volume 104, Page 890)

**Use:** IRRIGATION of 8.8 ACRES

**Priority Date:** 1887 for 6.0 acres and 1894 for 2.8 acres

**Rate:** 0.33 CUBIC FOOT PER SECOND (CFS), being 0.225 CFS under 1887 priority, and 0.105 CFS under 1894 priority

**Limit:** The use is limited to 1.5 miner's inches per acre or 0.33 cubic foot per second, or its equivalent in case or rotation, measured at the point of diversion from the source.

**Source:** Little Walla Walla River, tributary of the 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 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

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority
6 N	35 E	WM	35	NE NW	2100	6.0	1887
6 N	35 E	WM	35	NE NW	2100	2.8	1894
Total						8.8	

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

**Certificate:** 92732 in the name of JOELLE KATON (confirmed by Walla Walla River Decree)

**Use:** IRRIGATION of 0.7 ACRES

**Priority Date:** 1894

**Rate:** 0.026 CUBIC FOOT PER SECOND

**Limit:** The use is limited to 1.5 miner's inches per acre, or 0.026 cubic foot per second, or its equivalent in case or rotation, measured at the point of diversion from the source.

**Source:** East Fork Ford Branch, tributary of the Walla Walla River

**Authorized Point of Diversion:** Not listed

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	35	NE NW	2100	0.7

4. For Certificates 92474 and 92732, water is diverted into the Little Walla Walla River at the headgate diversion from the Walla Walla River at approximately River Mile 45.4, as described in the certificates 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

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

**Certificate:** 86271 in the name of PATRICIA BIER (confirmed by Walla Walla River Decree, with changes confirmed by Special Order Volume 80, Page 1154)

**Use:** IRRIGATION of 8.28 ACRES

**Priority Dates:** 1891

**Rate:** 0.31 CUBIC FOOT PER SECOND

**Limit/Duty:** The use is limited to 1.5 miner's inches per acre, or 0.31 cubic foot per second, or its equivalent in case or rotation, 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 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 1

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	36	NW SE	300	8.28

6. The portion of the fourth right to be leased is as follows:

**Certificate:** 90643 in the name of JERRY AND LOUISE LARSON (confirmed by Walla Walla River Decree, as modified by Special Order Volume 98, Page 470)

**Use:** IRRIGATION of 4.5 ACRES

**Priority Dates:** 1887

**Rate:** 0.11 CUBIC FOOT PER SECOND

**Limit/Duty:** The use is limited to one miner's inch per acre, or its equivalent in case of rotation, 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 FEET WEST FROM THE NORTH ¼ CORNER OF SECTION 1

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
6 N	35 E	WM	25	NW SE	800	2.75
6 N	35 E	WM	25	SW SE	800	1.75

7. For purposes of this instream lease under Certificates 92474 and 92732, water will be protected from the headgate diversion on the Walla Walla River at the Little Walla Walla River, at approximately River Mile 45.4 as described in Findings of Fact No. 2 and No. 4.
8. 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.
9. The Lessors and Lessee have requested that the instream use begin at the POD's as described in finding of Facts No. 2, 4, 5, and 6 and continue as far downstream as measureable in the Walla Walla River. The POD's are located within a known losing reach and to prevent injury to downstream water users and enlargement of the water rights, the quantities of water that may be protected instream will be reduced immediately below each POD. The Department has determined the loss below each POD will be a 3% loss per mile for this instream lease.

10. Currently the Department is evaluating the loss factor associated within this losing reach and current instream protections and losses may change. Approval of this lease, at this loss, does not establish a precedent for future instream transactions and approvals.
11. The instream use is 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.
12. 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.
13. The instream use has been modified and clarified from the lease application to prevent injury and enlargement and is as follows:

**Certificates 92474 and 92732**

Walla Walla River, tributary to the Columbia River

**Instream Reach:** From the POD (as described in Finding of Fact No. 4) to the Oregon-Washington state line at approximately RM 40.0 as follows:

Cert.	Priority	Rate (CFS) RM 45.4	Rate (CFS) RM 44.0	Rate (CFS) RM 43.0	Rate (CFS) RM 42.0	Rate (CFS) RM 41.0	Rate (CFS) RM 40.0	Total Volume (AF)	Period Protected Instream
92474	1887	0.225	0.218	0.212	0.205	0.199	0.193	47.67	6/1 through 9/15
92474	1894	0.105	0.102	0.099	0.096	0.093	0.090	22.26	
92732	1894	0.026	0.025	0.024	0.024	0.023	0.022	5.57	
<b>Totals</b>		<b>0.356</b>	<b>0.345</b>	<b>0.335</b>	<b>0.325</b>	<b>0.315</b>	<b>0.305</b>	<b>75.5</b>	

**Certificates 86271 and 90643**

Walla Walla River, tributary to the Columbia River

**Instream Reach:** From the POD (as described in Finding of Fact No. 6) to the Oregon-Washington state line at approximately RM 40.0 as follows:

Cert.	Priority	Rate (CFS) RM 44.1	Rate (CFS) RM 43.0	Rate (CFS) RM 42.0	Rate (CFS) RM 41.0	Rate (CFS) RM 40.0	Total Volume (AF)	Period Protected Instream
86271	1891	0.310	0.301	0.292	0.283	0.274	65.83	6/1 through 9/15
90643	1887	0.070	0.068	0.066	0.064	0.062	21.21	6/1 through 10/31
90643	1887	0.040	0.039	0.038	0.037	0.035	12.12	
<b>Totals</b>		<b>0.420</b>	<b>0.408</b>	<b>0.396</b>	<b>0.384</b>	<b>0.371</b>	<b>99.16</b>	

14. Other conditions to prevent injury and enlargement are:

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.

15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
16. The protection of flows within the proposed reaches are 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 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.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.

22. The Lessors and Lessee have requested that the lease terminate on October 31, 2019. The lease may commence on the date this final order is signed.

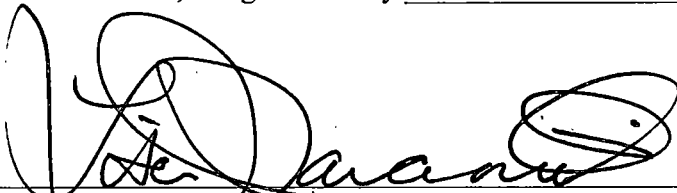
**Conclusions of Law**

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 upon approval of the instream lease and terminate on October 31, 2019, 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 day     AUG 12 2019    .



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

Mailing date:     AUG 13 2019    

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.*