

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1700, 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. 3, 4, 6, 7, and 8)

Co-Lessor

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

Lessee

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

Findings of Fact

1. On June 27, 2018, WWRID and TFT, on behalf of several water right holders, filed an application to lease Certificates 92474, 92732, 86271, 90657, and a portion of Certificate 90643. The Department assigned the application number IL-1700.
2. On July 22, 2018, the Lessee amended the application to reflect the period water is to be protected instream under Certificates 96057 and 96043.
3. 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 and 1894

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 its equivalent in case or rotation, measured at the point of diversion from the source.

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: LITTLE WALLA WALLA RIVER, tributary of the Walla Walla 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

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	

4. 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 (CFS)

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

Source: LITTLE WALLA WALLA RIVER, 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

5. Certificate 92732 does not list a point of diversion. For purposes of this lease, the point of diversion will be the same as Certificate 92474, the companion certificate which together with Certificate 92732 superseded Certificate 13311.

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

6. 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 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	36	NW SE	300	8.28

7. The fourth right to be leased is as follows:

Certificate: 90657 in the name of SUSAN DAVIS (confirmed by Walla Walla River Decree, as modified by Special Order Volume 98, Page 470)

Use: IRRIGATION of 9.0 ACRES

Priority Dates: 1892

Rate: 0.225 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	36	NE NE	1000	9.00

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

Certificate: 90643 in the name of SUSAN DAVIS (confirmed by Walla Walla River Decree, as modified by Special Order Volume 98, Page 470)

Use: IRRIGATION of 5.75 ACRES

Priority Dates: 1887

Rate: 0.144 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	4.00
6 N	35 E	WM	25	SW SE	800	1.75

9. 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

10. For purposes of this instream lease under Certificates 92474 and 92732, water will be protected from the headgate diversion from the Walla Walla River into the Little Walla Walla River, at approximately River Mile 45.4 as described in Findings of Fact #3 and #5.
11. 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.
12. 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.
13. 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.
14. Injury to other water rights can be mitigated by limiting the period when water is being protected instream to June 25 to October 14.
15. 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.
16. 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 authorized Point of Diversion for Certificates 90657 and 90643 (as described in Findings of Fact #7 and #8) at approximately River Mile 44.1:

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

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
90643	1887	0.144	0.140	0.136	0.132	0.128	48.30	4/29 through 6/24
90657	1892	0.225	0.217	0.210	0.204	0.198	75.60	4/29 through 6/24
Totals		0.369	0.357	0.346	0.336	0.326	123.9	

Instream Reach 2: Walla Walla River, tributary to the Columbia River

From: The Little Walla Walla River headgate diversion (as described in Findings of Fact #3 and #5) at approximately RM 45.4:

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 Point of Diversion for Certificates 86271, 90657, and 90643 (as described in Findings of Fact #6, #7, and #8) at approximately River Mile 44.1:

Cert.	Priority Date	Rate (CFS) RM 45.4	Rate (CFS) RM 44.4	Rate (CFS) RM 44.1	Period Protected Instream
92474	1887	0.225	0.218	0.216	6/25 through 10/14
92474	1894	0.105	0.102	0.101	6/25 through 10/14
92732	1894	0.026	0.025	0.025	6/25 through 10/14
Totals		0.356	0.345	0.342	

Instream Reach 3: Walla Walla River, tributary to the Columbia River

From: The authorized point of diversion for Certificates 86271, 90657, and 90643 at approximately River Mile 44.1:

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

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
92474	1887	0.216	0.209	0.203	0.197	0.191	50.40	6/25 through 10/14
92474	1894	0.101	0.098	0.095	0.092	0.089	23.52	6/25 through 10/14
92732	1894	0.025	0.024	0.023	0.023	0.022	5.88	6/25 through 10/14
90643	1887	0.144	0.140	0.136	0.132	0.128	48.30	6/25 through 10/14
86271	1891	0.310	0.300	0.291	0.282	0.274	69.55	6/25 through 10/14
90657	1892	0.225	0.217	0.210	0.204	0.198	75.60	6/25 through 10/14
Totals		1.021	0.988	0.958	0.930	0.902	273.25	

17. 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.
18. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
19. 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 #11 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.
20. 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.
21. 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.
22. 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.
23. 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.
24. 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.
25. The Lessors and Lessee have requested that the lease terminate on October 14, 2018. The lease may commence on the date this final order is signed.

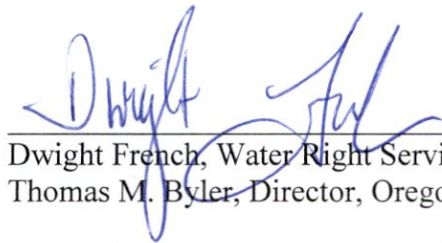
Conclusions of Law

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 14, 2018, 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 10th day of August, 2018.



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

Mailing date: **AUG 15 2018**

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