

## STATE OF OREGON

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1989, Umatilla 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.

**Lessor**

Daryl Sams  
45731 Best Road  
Pendleton, OR 97801

**Co-Lessor**

Sams Legacy Trust  
Duane J. Sams, Trustee  
1501 W. 46<sup>th</sup> Avenue  
Kennewick, WA 99337

**Lessee**

Trout Unlimited (TU)  
Attn: Aaron Penvose  
621 Main Street Suite C  
Lewiston, ID 83501

## Findings of Fact

1. On June 16, 2023, Daryl Sams, Duane J. Sams and TU filed an application involving the entirety of Certificates 12830, 12831 and 12829 for instream use. The Department assigned the application number IL-1989.

2. 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 20.2 acres

**Priority Date:** 1891

**Quantity:** **Limit:** One and one-half miner's inch per acre measured at the point of diversion

**Source:** Springs, tributary to North Fork Walla Walla River;  
North Fork Walla Walla River, tributary to 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:**

Twtp	Rng	Mer	Sec	Q-Q	Acres
5 N	37 E	WM	28	SW NW	3.9
5 N	37 E	WM	28	SE NW	1.2
5 N	37 E	WM	29	SW NE	3.9
5 N	37 E	WM	29	SE NE	3.3
5 N	37 E	WM	29	NW NW	2.6
5 N	37 E	WM	29	SE NW	5.3
Total Acres					20.2

3. Certificate 12829 does not provide a description of the location of the points of diversion. Based upon additional information provided by the Lessors and Lessee, for purposes of this instream lease, the point of diversion is described as follows:

Twtp	Rng	Mer	Sec	Q-Q	Taxlot	Measured Distances
5 N	37 E	WM	28	SW NW	5102	45.8846851 N - 118.2065745 W
5 N	37 E	WM	28	SE NW	5102	45.8851333 N - 118.1993764 W

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:** **Limit:** One and one-half miner's inch per acre measured at the point of diversion  
**Source:** Springs, tributary to North Fork Walla Walla River  
North Fork Walla Walla River, tributary to Walla Walla River

**Authorized Place of Use:**

Twtp	Rng	Mer	Sec	Q-Q	Acres
5 N	37 E	WM	30	NW NE	4.0

5. 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:** **Limit:** One and one-half miner's inch per acre measured at the point of diversion  
**Source:** Springs, tributary to North Fork Walla Walla River  
North Fork Walla Walla River, tributary to Walla Walla River

**Authorized Place of Use:**

Twtp	Rng	Mer	Sec	Q-Q	Acres
5 N	37 E	WM	30	NE NE	5.1
5 N	37 E	WM	30	NW NE	1.8
Total Acres					6.9

6. Certificates 12830 and 12831 do not provide a description of the location of the points of diversion. Based upon additional information provided by the Lessors and Lessee, for purposes of this instream lease, the points of diversion are described as follows:

Twp	Rng	Mer	Sec	Q-Q	Taxlot	Measured Distances
5 N	37 E	WM	30	NW NE	5401	45.8881838 N – 118.2351556 W
5 N	37 E	WM	30	NE NE	5401	45.8871457 N – 118.229951 W

7. Certificates 12829, 12830 and 12831 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
8. 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.
9. The Watermaster has determined the instream rate at the POD's should be protected at the full rate described. To avoid injury and enlargement, immediately below the POD's, only the consumptive use portions of the rights can be protected instream. The quantity of water protected below the POD's must also be reduced to account for evapotranspiration and channel losses.
10. The instream use is as follows:

Springs, tributary to 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	0.758 CFS	121.2	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	0.108 CFS	52.57 AF	March 1 through October 31

**Instream Point #2:** At the POD, as described in Finding of Fact #6.

Certificate	Priority Date	Instream Rate	Max Instream Volume	Period Protected Instream
12830	1893	0.15 CFS	24.0 AF	March 1 through October 31

**Instream Reach #2:** From the POD, as described in Finding of Fact #6, to the mouth of the North Fork, Walla Walla River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
12830	1893	0.022 CFS	10.73 AF	March 1 through October 31

**Instream Point #3:** At the POD, as described in Finding of Fact #6.

Certificate	Priority Date	Instream Rate	Max Instream Volume	Period Protected Instream
12831	1891	0.259 CFS	41.4 AF	March 1 through October 31

**Instream Reach #3:** From the POD, as described in Finding of Fact #6 to the mouth of the North Fork, Walla Walla River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
12831	1891	0.038 CFS	18.33 AF	March 1 through October 31

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
12. 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 are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water rights below the POD's. The quantity of water to be protected instream in Reach Nos. 1, 2 and 3 has been reduced to account for return flows.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.

18. The Lessor and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.

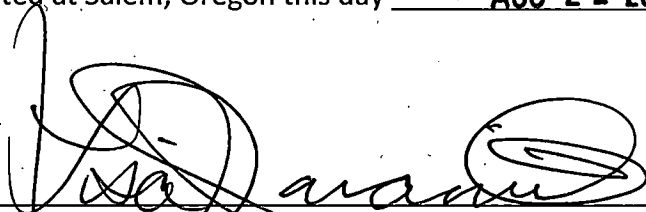
### Conclusions of Law

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, 2023.

Dated at Salem, Oregon this day AUG 22 2023.

  
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Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Douglas E. Woodecock, Acting Director  
Oregon Water Resources Department

Mailing date: AUG 23 2023

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