

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1261, Josephine 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

Benjamin and Laura Davis
P.O. Box 324
Cave Junction, OR.97523

Findings of Fact

1. On October 2, 2017, Benjamin and Laura Davis filed an application to renew instream lease IL-1261, involving lease the entirety of Certificate 50158 for instream use.
2. The right to be leased is as follows:

Certificate: 50158 in the name of Ed McCann (confirmed by decree at Volume 1, Page 253)
Use: Irrigation of 47.0 acres
Season of Use: April 1 to October 31
Priority Date: 1875
Quantity: **Rate:** 0.96 Cubic Foot per Second (CFS)
Source: SUCKER CREEK, tributary to the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	21	SE SE	GATES MCCANN DITCH-530 FEET NORTH AND 610 FEET WEST FROM THE SE CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	7 W	WM	5	NW NW	27.0
40 S	7 W	WM	6	NE NE	20.0
Total					47.0

3. 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.

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.

4. The Lessor requested to protect up to 0.96 cubic foot per second (CFS) over the full irrigation season, a period of 214 days. The Department identified that the original use may use the equivalent of 3.5 acre-feet (AF) per acre, which would provide for the diversion of up to 164.5 acre feet over the irrigation season. At 0.96 CFS and 164.5 AF, water may be protected instream for a period of 86 day. The instream rate requires modification to protect water over the full instream period requested without injury or enlargement of the right.
5. The instream use is modified from the application to prevent injury and enlargement and is as follows:
Sucker Creek, tributary to the East Fork Illinois River

Instream Reach: At the POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
50158	1875	0.39	164.5	April 1 to October 31

6. Water right Certificate 14601 is appurtenant to a portion of the lands described in Finding of Fact #2. The Lessor requested that Certificate 14601 not be included as part of this lease application. During the term of the lease, water use under Certificate 14601, for the lands described in the findings will be suspended.
7. The amount and timing of the proposed instream flow is allowable as modified and within the limits and use of the original water right.
8. The protection of flows at the authorized point 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.
9. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
10. 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.
11. 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.
12. 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.

13. 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.
14. The Lessors have requested that the lease terminate on October 31, 2022. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2018, being the first day of the irrigation season.
15. The Lessors have requested the option of terminating the lease early with written notice to the Department.

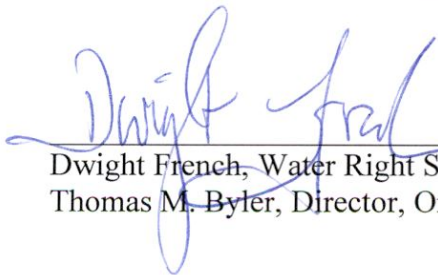
Conclusions of Law

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 each year of 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 on April 1, 2018, and terminate on October 31, 2022. For multiyear leases, the lessors *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 9th day of April, 2018.



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

This document was prepared by
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questions, call 503-986-0892.

Mailing date: APR 09 2018