

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

In the Matter of Instream Lease IL-1092,) DETERMINATION and
Certificate 50481, Douglas County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor #1

Delbert and Evelyn Blanchard
6640 South Myrtle Road
Myrtle Creek, Oregon 97457

Findings of Fact

1. On August 23, 2010 Delbert and Evelyn Blanchard filed an application to lease a portion of water Right Certificate 50481 for instream use. The Department assigned the application number IL-1092.
2. The portion of the right to be leased is as follows:

Certificate: 50481 in the name of HOWARD L. BROWNSON (perfected under Permit S-19302)
Use: Irrigation of 58.2 acres
Season of Use: March 1 through October 31
Priority Date: March 14, 1950
Quantity: **Rate:** 0.70 Cubic Foot per Second (CFS)
 Duty: 145.5 Acre-Foot (AF)
 Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: SOUTH MYRTLE CREEK, tributary to the MYRTLE CREEK

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	4 W	WM	21	SW NE	39	1300 FEET NORTH AND 2040 FEET WEST FROM THE E¼ CORNER SECTION 21*

*Approximately River Mile (RM) 8.

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:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
29 S	4 W	WM	21	NW NE	39*	9.2
29 S	4 W	WM	21	SW NE	39*	2.3
29 S	4 W	WM	21	NE NW	39*	27.90
29 S	4 W	WM	21	SW NW	39*	16.60
29 S	4 W	WM	21	SE NW	39*	2.20
TOTAL:						58.2

*H. Weaver DLC 39.

3. Certificate 50481 does not specify the irrigation season. OAR 690-250 establishes a default irrigation of March 1 through October 31. However, for the purposes of this lease, the Applicant requested that water be protected instream from July 20 through October 31.
4. 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 in response to that notice.
5. The instream use is as follows:

South Myrtle Creek, tributary to Myrtle Creek

Instream Reach: From the POD as described in Finding of Fact #2, to the confluence with Myrtle Creek.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
50481	March 14, 1950	0.70	145.5	July 30 through October 31

6. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

7. 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.
8. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.
9. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.

10. The Lessor requested that the lease terminate on October 31, 2014.
11. The Lessor 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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is not received prior to June 19, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. The lease will terminate on October 31, 2014.

Dated at Salem, Oregon this 15 day of October 2010.


Phillip C. Ward, Director

Mailing date: OCT 19 2010

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or Kody.J.Thurgood@wrд.state.or.us