

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1437, 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

Delbert B. and Evelyn T. Blanchard
6640 South Myrtle Rd.
Myrtle Creek, OR. 97457

Findings of Fact

1. On October 20, 2014, Delbert B. and Evelyn T. Blanchard filed an application to lease a portion of Certificate 50481 for instream use. The Department assigned the application number IL-1437.
2. On November 3, 2014, the Department received signatures from both applicants completing the application.
3. The portion of the right to be leased has been clarified from the lease application and is as follows:

Certificate: 50481 in the name of Howard L. Brownson (perfected under S-19302)
Use: Irrigation of 38.9 acres
Priority Date: March 14, 1950
Quantity: **Rate:** 0.47 Cubic Foot per Second (CFS), if available at the original point of diversion located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	4 W	WM	21	NE NW	39	1400 FEET NORTH AND 3200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 21

Volume: 97.25 Acre-Feet (AF)

Limit: The amount of water for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre or it’s equivalent for

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.

each acre irrigated and shall be further limited to a diversion of not to exceed 2 1/2 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Myrtle Creek, tributary to Myrtle Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
29 S	4 W	WM	21	NE NW	39	POD No. 1: 1400 FEET NORTH AND 3200 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 21
29 S	4 W	WM	21	SW NE	39	POD No. 3: 1300 FEET NORTH AND 2040 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
29 S	4 W	WM	21	NW NE	39	9.0
29 S	4 W	WM	21	SW NE	39	2.0
29 S	4 W	WM	21	NE NW	39	27.9
Total Acres						38.9

4. Certificate 50481 does 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.
5. 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.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
SOUTH MYRTLE CREEK, tributary to MYRTLE CREEK

Instream Reach: From POD No. 1 (as described in Finding of Fact No. 3) to the mouth of South Myrtle Creek.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
50481	March 14, 1950	0.47	97.25	July 20 through October 31

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. 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. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
9. 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.
10. 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.
11. If approved, this instream lease is not reasonably expected to affect land use significantly 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 later is proposed to be leased again, transferred, and/or reviewed for 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 Lessor has requested that the lease terminate on October 31, 2019. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on March 1, 2015, being the first day of the irrigation season.
15. The Lessor has 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 March 1, 2015, and terminate on October 31, 2019. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received

less than 30-days prior to the instream use period (July 20 through 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 26 day of January, 2015.



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

Mailing date: JAN 27 2015

This document was prepared by Joan Smith and if you have any questions, please call 503-986-0892.