

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

In the Matter of the Proposed Lease of                    )     DETERMINATION and  
Existing Water Rights for Instream Use,                )     FINAL ORDER ON PROPOSED  
Certificate 15760, Yamhill County                        )     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**

Timothy Kreder  
1301 NE HWY 99 W #163  
McMinnville OR 97128  
hajji@onlinemac.com

**Findings of Fact**

1. On March 17, 2009 Timothy Kreder filed an application for a Time Limited Instream Transfer involving of Certificate 15760. The Department assigned the application number T-10824.
2. On September 16, 2009 the Applicant requested that Time Limited Instream Transfer Application T-10804 be withdrawn and that the information contained in the Application be used to lease the rights under Certificate 15760.
3. On September 17, 2009 the Department issued Special Order Volume 78, at page 926, withdrawing Transfer Application T-10824.
4. Also on September 17, 2009, Timothy Kreder filed an application for an application to lease all of Certificate 15760 for instream use. The Department assigned the application number IL-1023.
5. The right to be leased is as follows:

**Certificate:**            15760 in the name of Alvin C. Rutschman  
**Use:**                    Irrigation of 11.0 acres  
**Priority Date:**        July 23, 1943  
**Quantity: Rate:**    0.14 Cubic Foot per Second (CFS)  
**Duty:**                 27.5 Acre-Feet (AF)

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.

**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year  
**Source:** Unnamed Spring Creek, a tributary to Palmer Creek in the Yamhill Basin

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5S	4W	WM	13	NE NE	None Specified

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
5S	4W	WM	13	NE NE	11.0

6. Certificate 15760 does not specify the irrigation season. However, the Yamhill Basin Decree established an irrigation season of April 1 through September 30.
7. 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.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Unnamed Spring Creek, a tributary to Palmer Creek in the Yamhill Basin

**Instream Point:** At the POD as described in Finding of Fact #5:

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
15760	7/23/1943	0.076	27.5	April 1 through September 30

9. 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.
10. The record contains evidence that the right may not have been fully exercised during the five years prior to the filing of Instream Lease Application IL-1023. However, the record also contains sufficient evidence to establish that water was not needed during that period due to climatic conditions. *See ORS 540.610(2)(L)*. Moreover, the also contains that the right was enrolled in the Federal Conservation Reserve Enhancement Program (C.R.E.P) from 1998 through 2008. *See ORS 540.610(2)(e)*.
11. 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.
12. 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.

13. The Lessor has requested that the lease terminate on September 30, 2010. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2010, the first day of the irrigation season.

### 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 lease will terminate on September 30, 2010.

Dated at Salem, Oregon this 29<sup>th</sup> day of December 2009.

*for* William S. Farber  
Phillip C. Ward, Director

Mailing date: JAN 04 2010