

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1182, Benton 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.

Lessor

City of Philomath
Attn: Wyatt E. Rolfe
PO Box 400
Philomath, OR 97370

Findings of Fact

1. On December 9, 2016, the City of Philomath filed an application to renew instream lease IL-1182, involving the entirety of Certificate 37067.
2. The right to be leased is as follows:

Certificate: 37067 in the name of Hobin Lumber Company (perfected under S-29680)
Use: Operation and maintenance of Hobin Log Pond
Priority Date: June 16, 1964
Quantity: **Rate:** 0.50 Cubic Foot per Second (CFS)
Volume: 361.98 Acre-Feet (AF)
Source: Mary's River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	6 W	WM	13	SW NE	Within Hartless DLC 51

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
12 S	6 W	WM	12	SE SW	45
12 S	6 W	WM	12	SW SE	45
12 S	6 W	WM	13	NW NE	45
12 S	6 W	WM	13	NE NW	45

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.

3. Certificate 37067 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by water right map, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
12 S	6 W	WM	13	SW NE	51	560 DEGREES, 35 MINUTES, WEST 2026.79 FROM THE NE CORNER OF ELDRIDGE HARTLESS DLC NO. 51

4. Certificate 37067 does not specified the period of allowed use. However, use of water for operation and maintenance of a pond is assumed to be year round use unless otherwise specified in the certificate.
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 is as follows:
Mary's River, tributary to Willamette River

Instream Reach: From the POD (as described in Finding of Fact No. 3) to the mouth of Mary's River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
37067	June 16, 1964	0.50	361.98	January 1 through December 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:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - 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. Instream water rights with a senior priority date created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights. There are three existing instream water rights within the same proposed reach. Certificates 59713 and 59714 with a June 22, 1964 priority date established under the minimum streamflow conversion process (ORS 537.346), and Certificate 72588 with an October 11, 1990 priority date, established under the state agency instream water right application process (ORS 537.341).

10. The proposed instream lease includes a priority date of June 16, 1964, which is senior to the existing instream water rights and may replace portions of the instream rights created under ORS 537.341 and 537.346.
11. 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.
12. The instream use created by this instream lease will replace other instream rights within the proposed reach. By adding these existing instream water rights within the same reach, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow in the month of October. The estimated average natural flow may not be exceeded unless criteria for exceeding are met.
13. The Department has determined that the estimated average natural flows may be exceeded due to the following:
 - a) There is an existing state agency established instream water right certificate (Certificate 72588) that covers the same reach or portion of the reach to be established by the proposed instream lease. The quantities to be protected instream will not exceed the amounts requested in the original instream water right application (IS-70748) filed by the Oregon Department of Fish and Wildlife (ODFW) and;
 - b) The water right proposed to be leased is in an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.
14. 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.
15. 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.
16. 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.
17. The Lessor has requested that the lease terminate on December 31, 2021. The lease may commence on the date this final order is signed.
18. Based on the original application the Lessor has requested the option of terminating the lease early with written notice to the Department.

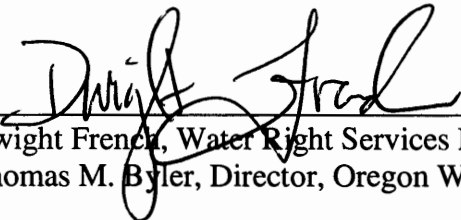
Conclusions of Law

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 this right.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2021. For multiyear leases, the lessor 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 (January 1 through December 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 14 day of March, 2017.


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

Mailing date: MAR 16 2017

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*