

**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 81660, Polk 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**

Oregon Parks and Recreation Department  
725 Summer Street NE, Suite C  
Salem, Oregon 97301

**Findings of Fact**

1. Oregon Parks and Recreation Department filed an application to lease a portion of Certificate 81660 to instream use. The Department assigned the application number IL-886.

2. The right to be leased is as follows:

**Certificate:** 81660 in the name of STATE OF OREGON, PARKS AND RECREATION DEPARTMENT (perfected under Permit S-25777)

**Use:** IRRIGATION of 22.5 ACRES (16.8 from LUCKIAMUTE RIVER and 5.7 from WILLAMETTE RIVER and SLOUGH)

**Priority Date:** AUGUST 4, 1958 and OCTOBER 24, 1958

**Rate:** 0.21 CUBIC FEET PER SECOND (cfs) and 0.07 cfs from WILLAMETTE RIVER and SLOUGH

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

**Source:** LUCKIAMUTE RIVER tributary to WILLAMETTE RIVER, and WILLAMETTE RIVER and SLOUGH, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

| Twp  | Rng | Mer | Sec | Q-Q   | GLot | DLC | Survey Coordinates |
|------|-----|-----|-----|-------|------|-----|--------------------|
| 10 S | 4 W | WM  | 2   | NW NE |      | 52  | SLOUGH             |
| 10 S | 4 W | WM  | 2   | NW NW | 10   |     | LUCKIAMUTE RIVER   |
| 10 S | 4 W | WM  | 2   | SE NW |      | 52  | WILLAMETTE RIVER   |

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   | GLot | DLC | Acres | Source                |
| 9 S        | 4 W | WM  | 35  | SW SW |      | 37  | 0.1   | Luckiamute            |
| 9 S        | 4 W | WM  | 35  | SE SW |      | 37  | 1.6   | Luckiamute            |
| 9 S        | 4 W | WM  | 35  | SE SW | 11   | 37  | 0.2   | Luckiamute            |
| 10 S       | 4 W | WM  | 2   | NW NE |      | 52  | 3.7   | Willamette and Slough |
| 10 S       | 4 W | WM  | 2   | SW NE |      | 52  | 0.1   | Willamette and Slough |
| 10 S       | 4 W | WM  | 2   | NE NW |      | 52  | 0.5   | Willamette and Slough |
| 10 S       | 4 W | WM  | 2   | NE NW |      | 52  | 6.8   | Luckiamute            |
| 10 S       | 4 W | WM  | 2   | NW NW | 10   | 52  | 2.4   | Luckiamute            |
| 10 S       | 4 W | WM  | 2   | NW NW |      | 52  | 5.6   | Luckiamute            |
| 10 S       | 4 W | WM  | 2   | NW NW |      | 52  | 0.4   | Willamette and Slough |
| 10 S       | 4 W | WM  | 2   | SW NW |      | 52  | 0.1   | Luckiamute            |
| 10 S       | 4 W | WM  | 2   | SE NW |      | 52  | 1.0   | Willamette and Slough |

- The certificate does not describe the priority dates associated with acres. For the purposes of this lease the priority dates are: 0.21 CUBIC FEET PER SECOND (cfs) from LUCKIAMUTE RIVER (0.11 cfs with a priority of August 4, 1958 and 0.10 cfs with a priority of October 24, 1958); and 0.07 cfs from WILLAMETTE RIVER and SLOUGH (0.035 cfs with a priority of August 4, 1958 and 0.035 cfs with a priority of October 24, 1958).
- 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.
- The instream use is as follows:  
LUCKIAMUTE RIVER tributary to WILLAMETTE RIVER

**Instream Reach:** From LUCKIAMUTE RIVER POD (as described in Finding of Fact #2) to mouth of LUCKIAMUTE RIVER

| Certificate  | Priority Date                       | Instream Rate (cfs) | Period Protected Instream           |
|--------------|-------------------------------------|---------------------|-------------------------------------|
| 81660        | AUGUST 4, 1958,<br>OCTOBER 24, 1958 | 0.11<br>0.10        | June 23 through September 30        |
| <i>Total</i> |                                     | <i>0.21</i>         | <i>June 23 through September 30</i> |

WILLAMETTE RIVER tributary to COLUMBIA RIVER

**Instream Reach:** From WILLAMETTE RIVER POD (as described in Finding of Fact #2) to WILLAMETTE FALLS

| Certificate  | Priority Date                       | Instream Rate (cfs) | Period Protected Instream           |
|--------------|-------------------------------------|---------------------|-------------------------------------|
| 81660        | AUGUST 4, 1958,<br>OCTOBER 24, 1958 | 0.035<br>0.035      | June 23 through September 30        |
| <i>Total</i> |                                     | <i>0.07</i>         | <i>June 23 through September 30</i> |

- 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.

7. 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.
8. 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.
9. The lease will commence on April 1, 2008 and terminate on September 30, 2012.
10. The Lessor has indicated that they will not have the option of terminating the lease early without consent by all parties to the lease.

#### **CONCLUSIONS OF LAW**

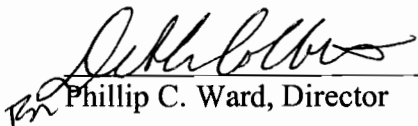
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

#### **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 may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 14<sup>th</sup> day of February, 2008.

  
Phillip C. Ward, Director

Mailing date: FEB 19 2008