

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1421, Polk 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

Barbara Lewis, Trustee
FDH Living Trust, SEH Living Trust, Hoekstre
Living Trust, and Franklin Hoekstre Living Trust
1458 Cresthill Ave. NW
Salem, OR 97304

Findings of Fact

1. On June 23, 2014, Barbara Lewis filed an application to lease the entirety of Certificates 37032 and 37034 for instream use. The Department assigned the application number IL-1421.
2. On July 25, 2014, the Department (via e-mail) requested additional information to identify the quantity of water that is available to be leased from livestock use. The Lessor was unable to provide the additional information. Therefore, this portion of the lease application is incomplete and the livestock use under Certificate 37034 is not included as part of the instream use created by this lease application.
3. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate:	37034 in the name of Frank Hoekstre (perfected under Permit S-30436)
Use:	Irrigation of 46.3 acres
Priority Date:	July 8, 1965
Quantity:	Rate: 0.57 Cubic Foot per Second (CFS)
	Volume: 115.75 Acre-Feet (AF)
	Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year

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.

Source: Mud Creek, tributary to Salt Creek

Authorized Points of Diversion (PODs):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	5 W	WM	5	NW NW	58	POD No. 1: 2050 FEET NORTH AND 720 FEET EAST FROM THE SW CORNER OF DLC 58
7 S	5 W	WM	5	NW NW	58	POD No. 2: 1450 FEET NORTH AND 720 FEET EAST FROM THE SW CORNER OF DLC 58

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	5 W	WM	5	NE NW	58	6.0
7 S	5 W	WM	5	NW NW	58	11.6
7 S	5 W	WM	5	SW NW	58	5.9
7 S	5 W	WM	5	SE NW	58	14.8
7 S	5 W	WM	5	NE SW	58	7.0
7 S	5 W	WM	5	NW SW	58	1.0
Total Acres						46.3

4. Certificate 37034 does not specify the irrigation season. However, the Yamhill River Decree establishes the irrigation season for the area as April 1 through September 30.
5. The second right to be leased is as follows:

Certificate: 37032 in the name of Frank Hoekstre (perfected under Permit R-4714)

Use: Storage of Water for Irrigation and Stock

Priority Date: May 31, 1966

Quantity: **Volume:** 6.0 AF, being 5.75 AF for Irrigation and 0.25 AF for Stock

Source: Mud Creek, tributary to Salt Creek

Authorized Dam Location: Not specified by Certificate

Authorized Place of Use (Reservoir Location):

Twp	Rng	Mer	Sec	Q-Q	DLC
7 S	5 W	WM	5	NW NW	58
7 S	5 W	WM	5	SW NW	58
7 S	5 W	WM	5	NW SW	58
7 S	5 W	WM	5	NW SW	39
7 S	5 W	WM	5	SW SW	39
7 S	5 W	WM	5	SE SW	39

6. Certificate 37032 does not specify the period during which the reservoir is filled. However, the Willamette Basin Program identifies the storage season as November 1 through June 30. For purposes of instream leasing, a storage season of November 1 through June 30 shall be used to establish when water may be protected instream under Certificate 37032.

7. Certificate 37032 does not provided a description of the location of the dam. Based upon additional information provided by the applicant, for purposes of this instream lease, the dam location is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	5 W	WM	5	NW NW	58	2050 FEET NORTH AND 720 FEET EAST FROM THE SW CORNER OF DLC 58

This is the same as POD No. 1 identified in Finding of Fact No. 3 for Certificate 37032.

8. There is a supplemental irrigation water right, Certificate 37033, appurtenant to all or a portion of the lands described in Finding of Fact No. 3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
9. 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.
10. The Lessor requested that the Department identify the appropriate instream rate, volume and time period for the instream use established by this lease application.
11. The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:

Mud Creek, tributary to Salt Creek

Instream Reach: At the POD (as described in Findings of Fact No. 3 and 7)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
37034	7/8/1965	0.38	115.75	April 1 through August 31
37032	5/31/1966	0.03	6.00	April 1 through June 30

12. Other conditions to prevent injury and enlargement are:

No water may be stored in the reservoir authorized under Certificate 37032. Any water presently in the reservoir must be evacuated. The reservoir shall not be filled during the term of this lease. No water may be stored until 2019, unless the lease is terminated early and the Department makes a determination that any storage in the reservoir would not result in injury or enlargement.

Live flow must be bypassed through the reservoir authorized under Certificate 37032 during the term of this lease.

13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
14. The protection of flows at the authorized point of diversion 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 point of the instream water right.
15. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
16. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
17. 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.
18. 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.
19. If a right which has been leased is later 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.
20. The Lessor has requested that the lease terminate on September 30, 2018. The lease may commence on the date this final order is signed.
21. 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 upon approval of the instream lease and terminate on September 30, 2018. 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 (April 1 through August 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 August, 2014.


Dwight French
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*

Mailing date: AUG 26 2014