

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-845, Washington 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

Alayn Waldorf
50409 SW Patton Valley Rd.
Gaston, Oregon 97119

Lessee

Tualatin Soil and Water Conservation District (TSWCD)
Aaron Shaw, Restoration Program Manager
1080 SW Baseline, B-2
Hillsboro, Oregon 97123

Findings of Fact

1. On January 19, 2016, Alayn Waldorf and TSWCD filed an application to renew instream lease IL-845, involving a portion of Certificate 14343 for instream use.
2. The portion of the right to be leased has been clarified and is as follows:
Certificate: 14343 in the name of M. and Hugh Callahan (perfected under Permit S-12113)
Use: Irrigation of 2.0 acres
Priority Date: March 18, 1936
Quantity: **Rate:** 0.025 Cubic Foot per Second (CFS)
 Volume: 5.0 Acre-Feet (AF)
Limit: One-Eighth of one 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.

Source: Tualatin River, tributary to the Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 S	4 W	WM	32	SE SE

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 (POU):

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 W	WM	32	NE SE	0.2
1 S	4 W	WM	32	SE SE	0.2
1 S	4 W	WM	33	NW SW	0.3
1 S	4 W	WM	33	SW SW	1.3
Total:					2.0

3. Certificate 14343 does not provide measured distance for the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	River Mile
1 S	4 W	WM	32	SE SE	66.4

4. Certificate 14343 does not specify the irrigation season. However, the Tualatin River Decree establishes the irrigation season for the area as May 1 through September 30.
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. Certificate 14343 is a deficient water right. If water were diverted simultaneously to all authorized lands described in the right at the maximum rate and duty allowed (described in Finding of Fact No. 2), the maximum rate and seasonal volume for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands described in the right at the maximum rate allowed, the portion of the right involved in this instream lease would be limited to 0.015 CFS. This is also the rate by which the diversion under Certificate 14343 shall be reduced, if this instream lease is approved.

7. The instream use is as follows:

Tualatin River, tributary to the Willamette River

Instream Reach: From the POD (as described in Finding of Fact No. 3) to the confluence with the Willamette River.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
14343	March 18, 1936	0.015	3.0	June 22 through September 30
Total:		0.015	3.0	

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Lessor and Lessee have requested that the lease terminate on September 30, 2020. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on May 1, 2016, being the first day of the irrigation season.
16. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

Conclusions of Law

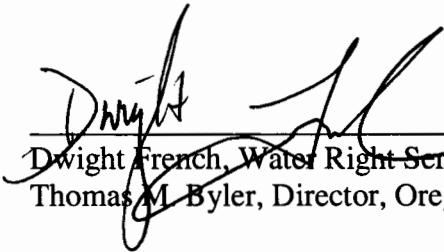
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 May 1, 2016 and terminate on September 30, 2020. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor or Lessee 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 (June 22 - September 30) 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 5 day of April, 2016.


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

Mailing date: APR 06 2016

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

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.