

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1011, Certificates 22025, 40630, 46112,) FINAL ORDER ON PROPOSED
57110 and 76306, 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

Grauer Bros.
Attn: Jerry Grauer
21400 SW Gopher Valley Road
Sheridan, OR 97378

Findings of Fact

1. On May 15, 2009, Grauer Bros. filed an application to renew instream lease IL-361, involving the entirety of Certificates 22025, 40630, 46112 and 57110 and a portion of Certificate 62084.
2. Certificate 62084 was cancelled on October 4, 1999, as a result of a final order approving Transfer T-7724 (Sp. Or. Vol. 53, Pg. 1316) to change the place of use of 1.0 acre of irrigation under Certificate 62084. Also on October 4, 1999, remaining right Certificate 76306 was issued to describe that portion of Certificate 62084 not modified by the final order approving Transfer T-7724.
3. On January 15, 2004, Certificate 80542 was issued to confirm the change in place of use of the 1.0 acre of irrigation under Transfer T-7724. The Department later discovered a typographical error in contained in Certificate 80542. Consequently, on February 19, 2004, Certificate 80542 was cancelled and superseded by Certificate 80584.
4. The 1.0 acre of irrigation affected by Transfer T-7724 (confirmed by Certificate 80584) was originally included in instream lease IL-361. On June 18, 2009, the Lessor modified the renewal request for instream lease IL-361 to remove the 1.0 acre of irrigation under Certificate 80584 and to clarify that 46.8 acres of irrigation under Certificate 76306 are to be leased instream.

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.

5. Due to the changes described in Findings of Fact #2, #3 and #4, the application to renew instream lease IL-361 has been reassigned to lease application number IL-1011.

6. The first right to be leased is as follows:

Certificate: 22025 in the name of Jacob Grauer
Use: Irrigation of 10.0 acres
Priority Date: November 24, 1950
Quantity: Rate: 0.13 Cubic Foot per Second (CFS)
Duty: 25.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Deer Creek, tributary to South Fork Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	NONE SPECIFIED

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	NE SE	64	2.5
5 S	6 W	WM	24	NW SE	64	7.5

7. The second right to be leased is as follows:

Certificate: 40630 in the name of Jacob Grauer
Use: Irrigation of 28.0 acres
Priority Date: December 6, 1967 for 0.13 Cubic Foot per Second (CFS) and January 22, 1968 for 0.22 CFS
Quantity: Rate: 0.35 CFS
Duty: 70.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	2420 FEET SOUTH AND 1860 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	NE SE	64	2.5
5 S	6 W	WM	24	NW SE	64	7.5

8. The third right to be leased is as follows:

Certificate: 46112 in the name of Jacob Grauer
Use: Irrigation of 14.7 acres
Priority Date: August 10, 1949
Quantity: Rate: 0.18 Cubic Foot per Second (CFS)
Duty: 36.75 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source: Deer Creek, tributary to South Fork Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	280 FEET NORTH AND 2160 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	SW NE	64	9.2
5 S	6 W	WM	24	SE NE	64	5.5

9. The fourth right to be leased is as follows:

Certificate: 57110 in the name of Eugene Grauer

Use: Irrigation of 29.1 acres

Priority Date: April 10, 1973

Quantity: **Rate:** 0.36 Cubic Foot per Second (CFS)

Duty: 72.75 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	350 FEET NORTH AND 1850 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	SE NE	64	13.3
5 S	6 W	WM	24	NE SE	64	13.1
5 S	6 W	WM	24	NW SE	64	2.7

10. The portion of the fifth right to be leased is as follows:

Certificate: 76306 in the name of Jan P. and Linda K. Wepster

Use: Irrigation of 46.8 acres

Priority Date: May 1, 1981

Quantity: **Rate:** 0.587 Cubic Foot per Second (CFS)

Duty: 117.0 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	30	NE SE	53	1500 FEET NORTH AND 550 FEET WEST FROM THE SE CORNER OF SECTION 30

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	30	NE NE	53	4.8
5 S	5 W	WM	30	SE NE	53	24.7
5 S	5 W	WM	30	NE SE	53	17.3

11. Certificates 40630, 57110 and 76306 incorrectly identify that Deer Creek is a tributary to the Yamhill River. Deer Creek is actually a tributary to the South Yamhill River.
12. Certificates 22025, 40630, 46112, 57110 and 76306 do not specify the irrigation season. However, based upon the Yamhill River Decree, the irrigation season for the Yamhill River and its tributaries is fixed as commencing on April 1 and ending on September 30 of each year.
13. 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.
14. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deer Creek, tributary to South Yamhill River

Instream Reach #1: From the POD (as described in Finding of Fact #6) to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
22025	November 24, 1950	0.13 CFS	25.0 AF	June 22 through September 30

Instream Reach #2: From the POD (as described in Finding of Fact #7) to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
40630	December 6, 1967	0.13 CFS	25.9 AF	June 22 through September 30
	January 22, 1968	0.22 CFS	44.1 AF	June 22 through September 30
	TOTALS:	0.35 CFS	70.0 AF	

Instream Reach #3: From the POD (as described in Finding of Fact #8) to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
46112	August 10, 1949	0.18 CFS	36.75 AF	June 22 through September 30

Instream Reach #4: From the POD (as described in Finding of Fact #9) to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
57110	April 10, 1973	0.36 CFS	72.75 AF	June 22 through September 30

Instream Reach #5: From the POD (as described in Finding of Fact #10) to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
76306	May 1, 1981	0.584 CFS	117.0 AF	June 22 through September 30

15. 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.
16. 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.
17. 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.
18. The Lessor has requested that the lease terminate on September 30, 2013.
19. 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.


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, 2013. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (June 22) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 25th day of June, 2009.



Phillip C. Ward, Director

Mailing date: JUN 29 2009