

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

In the Matter of Instream Lease Application) CORRECTING
IL-1101, Certificates 8201, 7168, and) ORDER ON INSTREAM LEASE
42756, Klamath County) IL-1101

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 #1

Glen & Sharline Crouch
180 Commercial Street, SE, Suite 9
Salem, Oregon 97301

Lessor #2

Henry and Deborah Caldwell, Trustees
Caldwell Family Trust
7990 Hill Road
Klamath Falls, Oregon 97603

Findings of Fact

1. On October 8, 2010, Glen and Sharline Crouch and Henry and Deborah Caldwell, Caldwell Family Trust, filed an application to renew instream lease IL-363, involving a portion of Certificates 8201, 7168, and 42756 for instream use.
2. Based on continued evaluation of the lease application, the Department has identified that the instream rate and volumes originally approved under IL-363 requires modification. The instream rate originally approved under Certificate 8201 is higher than the rate allowed under that right. In addition, the instream volumes approved for Certificates 8201 and 7168 are also higher than general volume limits (duty) for irrigation in the area. Based on these needed modifications to prevent injury and enlargement, the instream periods also require modification to take into account the change in rate and volume. Therefore, the Department is assigning this lease a new number to distinguish it from IL-363. The lease is now assigned application number IL-1101.
3. On December 8, 2010, the Department issued an order approving Instream Lease IL-1101, recorded at Special Order Volume 83, Pages 175-178. Shortly following issuance of the order, the Department recognized a scrivener's error in the volume to be protected instream.
4. This order is issued to supersede the previous order recorded at Special Order Volume 83, Pages 175-178, and to correct the scrivener's error.

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

Certificate: 8201 in the name of IVAN PANKEY (perfected under Permit S-6765)

Use: IRRIGATION of 29.6 ACRES

Priority Date: MAY 28, 1925

Rate: 0.36 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	10 E	WM	3	NW SW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	10 E	WM	32	NE SE	12.6
35 S	10 E	WM	32	NW SE	7.2
35 S	10 E	WM	33	NW SW	3.5
35 S	10 E	WM	33	SW SW	1.0
35 S	10 E	WM	33	SE SW	5.3

6. The portion of the second right to be leased is as follows:

Certificate: 7168 in the name of L. PANKY (perfected under Permit S-4829)

Use: IRRIGATION of 12.6 ACRES

Priority Date: JULY 21, 1920

Rate: 0.16 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: SPRAGUE RIVER (WILLIAMSON RIVER), tributary to KLAMATH RIVER

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	10 E	WM	4		4	1.0
36 S	10 E	WM	4	SW NW		8.0
36 S	10 E	WM	4	NW SW		3.6

7. Certificate 7068 does not specify the location of the point of diversion. The point of diversion appears to be located as follows:

Twp	Rng	Mer	Sec
36 S	10 E	WM	4

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

Certificate: 42756 in the name of JOSEPH AND FRANCES A. CABRAL AND RICHARD CABRAL (perfected under Permit S-37147)

Use: IRRIGATION of 18.0 ACRES

Priority Date: NOVEMBER 23, 1973

Rate: 0.45 CUBIC FEET PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	10 E	WM	4	SW NW	1990 FEET SOUTH AND 600 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	10 E	WM	32	SE SW		3.1
36 S	10 E	WM	4	NW NE	2	1.3
36 S	10 E	WM	4	NE NW	3	5.3
36 S	10 E	WM	4	SE NW		1.4
36 S	10 E	WM	5	NE NW	3	0.3
36 S	10 E	WM	5	SE NW		6.6

9. Certificates 8201, 7168, and 42756 do not specify the irrigation season. However, the irrigation season pursuant to the Sprague River Decree is March 1 to October 1.
10. Certificates 8201 and 7168 do not specify a duty limit per acre. However, the duty limit for the area is 3.0 acre-feet per acre based on the limit described in Certificate 42756 (3.0 acre-feet per acre) and in the Sprague River Decree (3.0 acre-feet per acre during the irrigation season).
11. 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.
12. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:
Sprague River, tributary to the Williamson River

Certificate 8201 - Instream Reach: From POD (as described in Finding of Fact #3) to River Mile 41

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
May 28, 1925	0.36	88.8	April 1 through August 4

Certificate 7168 - Instream Reach: From POD (as described in Finding of Fact #6) to River Mile 41

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
July 21, 1920	0.16	37.8	July 3 through October 31

Certificate 42756 - Instream Reach: From POD (as described in Finding of Fact #6) to River Mile 41

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
November 23, 1973	0.45	54.0	April 1 through May 30

13. 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.

14. 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.
15. 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.
16. The Lessor has requested that the lease terminate on October 31, 2015. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2011 and on April 1 of each succeeding calendar year that the lease is in place.
17. 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.

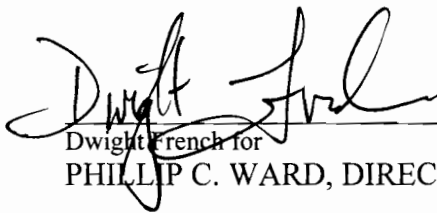
ORDER

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. This correcting order supersedes Special Order Volume 83, Page 175.

4. The lease will terminate on October 31, 2015. For multiyear leases, the lease shall commence on April 1, 2011, and on April 1 of each succeeding calendar year of the instream lease. 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 (April 1 through October 31) 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 20 day of December, 2010.


Dwight French for
PHILLIP C. WARD, DIRECTOR

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

Mailing date: DEC 21 2010