

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-232, Yamhill 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**

Victor and Ruth Banke  
21500 SW Caleb Payne Rd.  
McMinnville, OR 97128

**Findings of Fact**

1. On November 10, 2014, Victor and Ruth Banke filed an application to renew instream lease IL-232, involving the entirety of Certificate 22520.
2. Based upon evaluation of the lease application, the Department has identified that clarification is necessary to accurately describe the instream reach and instream period. When the existing lease was previously renewed, as evidenced by Special Order Volume 80, page 304, the Department incorrectly described the instream reach and instream period. Clarifications are shown in bold and italic in Finding of Fact No. 7.
3. The right to be leased is as follows:
  - Certificate:** 22520 in the name of Morris and Marie Majors (perfected under Permit S-20907)
  - Use:** Irrigation of 30.0 acres
  - Priority Date:** December 12, 1951
  - Quantity:** **Rate:** 0.38 Cubic Foot per Second (CFS)  
**Volume:** 75.0 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
  - Source:** Deer Creek, tributary to the South Yamhill 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 Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	29	NW SW	53	Not Provided

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	5 W	WM	29	NW SW	21.7
5 S	5 W	WM	29	SW SW	5.8
5 S	5 W	WM	30	NE SE	1.4
5 S	5 W	WM	30	SE SE	1.1
<b>Total Acres</b>					<b>30.0</b>

4. Certificate 22520 does not specify the irrigation season. However, the Yamhill River Decree specifies the irrigation season as April 1 through September 30.
5. Certificate 22520 does not provided measured distances for the location of the point of diversion. Based upon additional information provided from the Department's web page, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Latitude / Longitude
5 S	5 W	WM	29	NW SW	53	Approximately: Lat: 45.1063390003, Long: -123.3411451055)

6. 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.
7. The instream use is clarified as follows:  
Deer Creek, tributary to the South Yamhill River

**Instream Reach:** From the POD (as described in Finding of Fact No. 5) *to where Deer Creek crosses under Bellevue Highway in Township 5 South, Range 5 West, Section 28, W.M. (located approximately at Latitude: 45.1111606551, Longitude: -123.3047000833)*

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
22520	12/12/1951	0.38	75.0	<i>June 22 through September 30</i>

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
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 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.
15. The Lessor has requested that the lease terminate in 2019. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2015, being the first day of the irrigation season, and terminate on September 30, 2019.
16. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

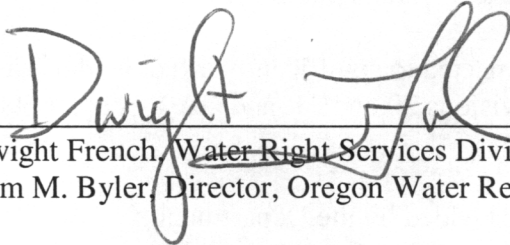
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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 on April 1, 2015, and terminate on September 30, 2019. 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 (June 22 through 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 12 day of March, 2015.



Dwight French, Water Right Services Division Administrator, for  
Tom M. Byler, 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: \_\_\_\_\_