

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-1173, Certificates 47983 and 51060) FINAL ORDER ON PROPOSED
 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

GARY CRUICKSHANK
 11400 SE STOCKHOFF RD
 DAYTON, OR 97114

Findings of Fact

1. On May 27, 2011 Gary Cruickshank filed an application lease all of Certificates 47983 and 51060 for instream use. The Department assigned the application number IL-1173.
2. The first right to be leased is as follows:

Certificate: 47983 in the name of ALEX CRUICKSHANK C/O GARY CRUICKSHANK
 (perfected under Permit S-11833)
Use: Irrigation of 68.6 acres
Priority Date: AUGUST 10, 1935
Quantity: **Rate:** 0.86 Cubic Foot per Second (CFS)
Duty: 171.5 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	35	SE NW	3	Hawley DLC 67	550 FEET NORTH AND 1940 FEET EAST FROM THE SW CORNER OF SWNW, OF SECTION 35

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:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	35	SW NE	67	0.8
4 S	4 W	WM	35	SW NW	57	0.6
4 S	4 W	WM	35	SW NW	67	1.3
4 S	4 W	WM	35	SE NW	57	0.9
4 S	4 W	WM	35	SE NW	67	8.5
4 S	4 W	WM	35	NE SW	67	33.6
4 S	4 W	WM	35	NW SW	67	0.4
4 S	4 W	WM	35	SE SW	67	10.8
4 S	4 W	WM	35	NW SE	67	11.7
TOTAL:						68.6

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

Certificate: 51060 in the name of ALEX CRUICKSHANK (perfected under Permit S-40709)
Use: Irrigation of 153.6 acres
Priority Date: FEBRUARY 27, 1976
Quantity: **Rate:** 1.92 Cubic Foot per Second (CFS)
Duty: 384.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
4 S	4 W	WM	35	SW NE	3	Hawley DLC 67	510 FEET NORTH AND 2,780 FEET EAST FROM SW CORNER OF THE SWNW OF SECTION 35

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	35	NE SW	67	0.9
4 S	4 W	WM	35	SE SW	67	7.8
4 S	4 W	WM	35	NE SE	67	23.2
4 S	4 W	WM	35	NW SE	67	12.2
4 S	4 W	WM	35	SW SE	67	38.8
4 S	4 W	WM	35	SE SE	67	31.6
4 S	4 W	WM	36	NW SW	67	0.7
5 S	4 W	WM	2	NE NE	59	14.2
5 S	4 W	WM	2	NW NE	59	19.9
5 S	4 W	WM	2	SW NE	59	4.3
TOTAL:						153.6

- Neither Certificate 47983 nor 51060 specify the irrigation season. However, to avoid injury or enlargement and to provide the best benefit to the resource, the local Watermaster requested that,, be protected instream from April 1 through September 30.
- 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 in response to that notice.

- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Instream Reach #1: From the POD described in Finding of Fact #2, to the confluence with the Yamhill River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
47983	8/10/1935	0.47 CFS	171.5 AF	April 1 through September 30

Instream Reach #2: From the POD described in Finding of Fact #3, to the confluence with the Yamhill River

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
51060	2/27/1976	1.06 CFS	384.0 AF	April 1 through September 30

- 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.
- 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.
- 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.
- The Lessor has requested that the lease terminate on September 30, 2015.

CONCLUSIONS OF LAW

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


ORDER

Therefore, it is ORDERED:

- 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 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 (March 1) 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.
4. The lease will terminate on September 30, 2015.

Dated at Salem, Oregon this 23 day of August 2011.



Dwight French, Water Rights Services Administrator for
Phillip C. Ward, Director

Mailing date: AUG 23 2011

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@ wrd.state.or.us