

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1696, 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

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Lessee

Tualatin Soil and Water Conservation District
Lacey Townsend, Executive Director
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Findings of Fact

1. On June 18, 2018, Davis Sill with Tualatin Soil and Water Conservation District filed an application to lease portions of Certificates 11361 and 33036 for instream use. The Department assigned the application number IL-1696.

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

Certificate: 11361 in the name of Will R. Chalmers (perfected under S-9888)
Use: Irrigation of 2.49 acres
Priority Date: September 25, 1930
Quantity: **Rate:** 0.03 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre
Source: East Fork Dairy Creek, tributary to Tualatin River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 W	WM	16	NW NW	NOT DESCRIBED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	3 W	WM	16	NW NW	2.49

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.

3. Certificate 11361 does not describe a rate limitation; however, the Tualatin River Decree identifies a rate of 2.5 acre feet per acre as described at Volume 16, Page 215.
4. The portion of the second right to be leased is as follows:

Certificate: 33036 in the name of Anthony F. and Marcella G. Vandehey
(perfected under S-16725)

Use: Irrigation of 7.0 acres

Priority Date: December 17, 1945

Quantity: **Rate:** 0.087 Cubic Foot per Second (CFS)
Volume: 17.5 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source: East Fork Dairy Creek, tributary to Tualatin River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	3 W	WM	9	SW SW	AS PROJECTED IN CL 43, CL 55, CL 42, AND GOVERNMENT LOTS 4 AND 5; AT ANY CONVENIENT POINT ALONG EAST DAIRY CREEK ON PERMITTEE'S PROPERTY
1 N	3 W	WM	9	NW SW	

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov Lot	DLC	Acres
1 N	3 W	WM	9	NE SW	4		2.6
1 N	3 W	WM	9	NW SW		43	1.4
1 N	3 W	WM	9	SW SW		43	2.3
1 N	3 W	WM	9	SW SW	5		0.7
Total Acres							7.0

5. Certificates 11361 and 33036 do not specify the irrigation season; however the irrigation season is described in the Tualatin River Decree as May 1 through September 30, at Volume 16, Page 352, this time period shall be used to establish when water may be protected instream.
6. Certificates 11361 and 33036 do not describe the points of diversion; however Certificate 33036 described the point of diversion as "Any convenient point along the East Dairy Creek on the Permittees property." For the purpose of this lease both points of diversion are described as below:

Certificate	Twp	Rng	Mer	Sec	Q-Q	Lat./Long
11361	1 N	3 W	WM	16	NW NW	Latitude 45.5756467867, Longitude -123.0733348160
33036	1 N	3 W	WM	9	SW SW	Latitude 45.5784553937, Longitude -123.069009741

7. Certificates 11361 and 33036 both occur in the Tualatin Valley Irrigation District; however the Tualatin Valley Irrigation District is currently not providing water to the lands described in these two certificates.
8. 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.

9. The instream use has been modified from the lease application and is as follows:
East Fork Dairy Creek, tributary to Dairy Creek

Instream Reach No.1: From the POD for Certificate 33036 (as described in Finding of Fact No.7) to the POD for Certificate 11361

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
33036	Dec 17, 1945	0.087	17.5	June 22 through September 30

Instream Reach No.2: From the POD for Certificate 11361 (as described in Finding of Fact No.7) to the mouth of the East Fork of Dairy Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
11361	Sept 25, 1930	0.030	6.23	June 22 through September 30
33036	Dec 17, 1945	0.087	17.5	
Totals:		0.117	23.73	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - 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.
12. 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.
13. 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.
14. 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.
15. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease as modified 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.

16. 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.
17. The Lessor and Lessee have requested that the lease terminate on September 30, 2022. The lease may commence on the date this final order is signed.
18. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

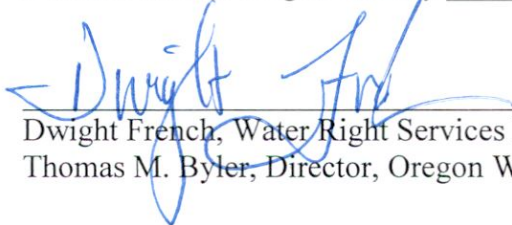
Conclusions of Law

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 upon approval of the instream lease and terminate on September 30, 2022. The Lessor and/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 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 day AUG 02 2018.


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

Mailing date: AUG 07 2018

This document was prepared by J. Smith; if you have any questions, please call 503-986-0892.