

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

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificates 5678, 40409, and 55638,)
Wasco County

DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

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 short-term instream lease applications.

Lessor

Paul Schanno
82163 Dufur Valley Road
Dufur, Oregon 97201

Findings of Fact

1. Paul Schanno filed an application to lease all of Certificates 5678, 40409, and 55638 to instream use. The Department assigned the application number L-594.
2. Certificate 55638 is a groundwater right for primary irrigation of 66.9 acres and supplemental irrigation of 24.4 acres. This right may not be leased instream. Groundwater rights are not one of the rights subject to being leased instream. OAR 690-077-0077(1).
3. The rights to be leased are as follows:

Certificate 5678:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	3	SW SW	2.55
1 S	14 E	WM	9	NE NE	14.10
1 S	14 E	WM	9	SE NE	14.35
1 S	14 E	WM	10	NW NW	10.32

Certificate 40409:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	3	SW NE	0.80
1 S	14 E	WM	3	SE NE	6.50
1 S	14 E	WM	3	NE SW	2.90
1 S	14 E	WM	3	SE SW	2.30
1 S	14 E	WM	3	NE SE	2.50
1 S	14 E	WM	3	NW SE	15.30

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.

4. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
5. The instream use has been clarified from the lease application and is as follows:
 Fifteenmile Creek
 Tributary to Columbia River in the Hood Basin
Instream Reach: Respective PODs (Approximately RM 24.5 for Certificate 5678 and RM 23.5 for Certificate 40409) to the mouth of Fifteenmile Creek.

For purposes of this instream lease, the POD for Certificate 5678 is specified as:
 5030 Feet North and 250 Feet East of the SW Corner of Section 10, T 1 S, R 14 E, W.M.,
 within the Rudio DLC 38

For purposes of this instream lease, the POD for Certificate 40409 is specified as: 3980
 Feet South and 1540 Feet East of the NW Corner of Section 3, T 1 S, R 14 E, W.M.,
 within the Rudio DLC 38

Certificate	Priority Date	Instream Rate (cfs)			Period Protected Instream
		POD	Below POD	End of Reach	
5678	1869	0.52	0.30	0.23	July 3 through October 31
40409	1872	0.35	0.20	0.15	July 3 through October 31

6. Other conditions to prevent injury and enlargement are: The rate at the POD associated with Certificate 40409 has been reduced by 0.03 cfs to allow for continued domestic and stock use. Below the POD the rates have been reduced by 42% to account for return flows, and an additional 1% per mile reduction has been added to account for stream loss.

The portion of Certificate 55638 that allows supplemental irrigation may not be exercised, since the primary right associated with those lands is being leased instream, under Certificate 40409. OAR 690-077-0077(13).

The following lands may not receive irrigation under Certificate 55638 during the term of the lease:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	14 E	WM	3	SW NE		38	0.30
1 S	14 E	WM	3	SE NE	1		4.50
1 S	14 E	WM	3	NE SW		38	2.90
1 S	14 E	WM	3	SE SW		38	1.00
1 S	14 E	WM	3	NE SE		38	0.80
1 S	14 E	WM	3	NE SE	4		1.70
1 S	14 E	WM	3	NW SE		38	13.20

7. The rights being leased shall replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The total rate protected instream

shall not exceed the monthly rates established by the existing instream water rights established pursuant to ORS 537.341 or 537.346.

8. 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.
9. 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.
10. The applicant requested that the lease terminate on December 31, 2018. The maximum time period that a right can be leased instream, without renewing it, is five years. OAR 690-077-0077(1). The lease will terminate on December 31, 2009.
11. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

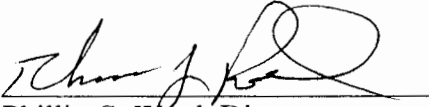
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights, including the supplemental portion of ground water certificate 55638, as described in Finding of Fact # 6, during the term of the lease.
3. The lease shall terminate on December 31, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by June 3 of each year and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 22nd day of February 2005.


For Phillip C. Ward, Director

Mailing date: MAR 04 2005