

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1675, Wasco 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

Eugene Underhill
82541 Dufur Valley Road
Dufur, Oregon 97021

Lessee

The Freshwater Trust (TFT)
700 SW Taylor, Suite 200
Portland, Oregon 97205
rob@thefreshwatertrust.org
meg@thefreshwatertrust.org

Findings of Fact

1. On April 13, 2018, Eugene Underhill and TFT filed an application to lease the entirety of Certificate 35601 and a portion of Certificate 52909 for instream use. The Department assigned the application number IL-1675.
2. The first right to be leased is as follows:

Certificate: 35601 in the name of William L. Hulse (perfected under permit S-29637)
Use: IRRIGATION of 22.3 acres
Priority Date: April 21, 1964
Quantity: **Rate:** 0.26 Cubic Foot per Second (CFS)
Volume: 66.9 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	SW SW	POD No. 1 - 870 FEET NORTH AND 1060 FEET EAST FROM THE SW CORNER OF SECTION 32
1 S	13 E	WM	32	SE SW	POD No. 2 - 980 FEET NORTH AND 1410 FEET EAST FROM THE SW CORNER OF SECTION 32

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:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	SE SE	3.8
1 S	13 E	WM	32	NE SW	0.7
1 S	13 E	WM	32	SW SW	15.4
1 S	13 E	WM	32	SE SW	2.4
Total					22.3

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

Certificate: 52909 in the name of Gene Underhill (perfected under permit S-41261)
Use: IRRIGATION of 5.9 acres
Priority Date: November 26, 1976
Quantity: **Rate:** 0.07 Cubic Foot per Second (CFS)
Volume: 17.7 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year
Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	SW SW	POD No. 1 - 900 FEET NORTH AND 1010 FEET EAST FROM THE SW CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	NE SE	1.2
1 S	13 E	WM	31	SE SE	2.0
1 S	13 E	WM	32	NW SW	1.4
1 S	13 E	WM	32	SW SW	1.3
Total					5.9

- Certificates 35601 and 52909 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
- There are supplemental irrigation water rights, appurtenant to all or a portion of the lands described in Findings of Fact No. 2 and 3. The Lessor and Lessee have requested that this water rights not be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended.
- 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.
- The Lessor and Lessee have requested that the instream use begin at the POD 1, as described in findings of Fact Nos. 2 and No. 3. The POD's are located within a known losing reach on Fifteenmile Creek, which begins at approximately River Mile 30.5. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to more

than 50 percent. Therefore, the quantities of water that may be protected instream beginning at each POD will be reduced immediately below each POD by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.

8. The instream use may also be conditioned to allow more or less water to be protected instream below each POD based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at each POD.

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

Fifteenmile Creek, tributary to the Columbia River

Resulting from Certificate 35601

Instream Reach No. 1: From POD No.1 for Certificate 35601 (as described in Finding of Fact No. 2) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35601	4/21/1964	0.26	66.9	June 2 through September 30

Instream Reach No. 2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35601	4/21/1964	0.13	33.45	June 2 through September 30

Resulting from Certificate 52909

Instream Reach No. 1: From POD No. 1 for Certificate 52909 (as described in Finding of Fact No. 3) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
52909	11/26/1974	0.073	17.7	June 2 through September 30

Instream Reach No. 2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
52909	11/26/1974	0.037	8.85	June 2 through September 30

10. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, stream channel losses and gains calculated based on available data and use by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach from the POD to the mouth of Fifteenmile Creek and whether the described instream flows below the POD may be adjusted. If adjusted, instream flows from immediately below the POD to the mouth of Fifteenmile Creek may not exceed the quantities specified at the POD.

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

12. 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 known areas of natural loss of streamflow to the river bed downstream from the points of diversion and have been accounted for immediately below each 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.
13. 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.
 14. 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.
 15. The instream right established by this instream lease shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470.
 16. 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.
 17. 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.
 18. 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.
 19. The Lessor has requested that the lease terminate on October 1, 2022; however, the last day of the irrigation season is September 30. The lease will terminate on September 30, 2022. The lease may commence on the date this final order is signed.
 20. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

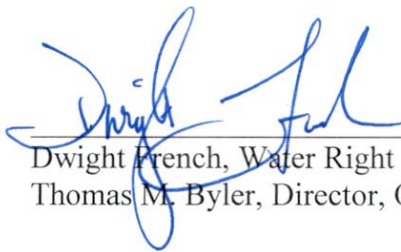
Conclusions of Law

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 upon approval of the instream lease and terminate on September 30, 2022. For multiyear leases, the lessor and lessee *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 2 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 **MAY 23 2018** .



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

Mailing date: **MAY 23 2018**

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*