

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

In the Matter Instream Lease IL1025,                    )     DETERMINATION and  
Certificate 62271,                                            )     FINAL ORDER ON PROPOSED  
Polk 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**

Shenks Dairy  
Wesley Shenk  
9075 Fort Hill Road  
Willamina, OR 97396  
wesnsharon@embarqmail.com

**Findings of Fact**

1. On November 9, 2009 Wesley Shenk of Shenks Dairy submitted an application to lease all of Certificate 62271 for instream use. The Department assigned the application number IL-1025.

2. The right to be leased is as follows:

**Certificate:** 62271 in the name of Shenks Dairy  
**Use:** Irrigation of 100 acres  
**Season of Use:** April 1 to September 30  
**Priority Date:** March 3, 1978  
**Quantity:** **Rate:** 0.8 Cubic Foot per Second (CFS)  
**Duty:** 250.0 Acre-Feet (AF)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year  
**Source:** South Yamhill River, a tributary of the Yamhill River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	7 W	WM	16	SE NE	46	120 FEET NORTH AND 700 FEET WEST FROM THE E ¼ CORNER OF SECTION 16

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:**

Twsp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	7 W	WM	16	SW NE	46	14.4
6 S	7 W	WM	16	SE NE	46	6.1
6 S	7 W	WM	16	NE SW	46	1.6
6 S	7 W	WM	16	NE SE	46	27.4
6 S	7 W	WM	16	NW SE	46	37.1
6 S	7 W	WM	16	SW SE	46	7.6
6 S	7 W	WM	16	SE SE	46	5.8
<b>TOTAL:</b>						<b>100.0</b>

3. Certificate 62271 does not specify the irrigation season. However, the irrigation established by decree is April 1 to September 30.
4. 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.
5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

South Yamhill River, a tributary of the Yamhill River

**Instream Reach:** From the POD, as described in Finding of Fact #2, to the mouth of the South Yamhill River.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
62271	March 3, 1978	0.69 CFS	250.0 AF	April 1 through September 30

6. 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.
7. 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.
8. 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.
9. The Lessor requested that the lease terminate on September 30, 2014. The lease has been submitted prior to the first day of the irrigation season. The lease will commence on April 1, 2010, the first day of the irrigation season.

10. 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.

### ORDER

Therefore, it is ORDERED:

1. 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 lease will commence on April 1, 2010 and terminate on September 30, 2014. 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 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.

Dated at Salem, Oregon this 11<sup>th</sup> day of February 2010.

*Phillip C. Ward*  
Phillip C. Ward, Director

Mailing date: FEB 17 2010