

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

In the Matter of Instream Lease Application) CORRECTING ORDER ON
IL-869, Washington County) 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

U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 9232

Findings of Fact

1. On April 13, 2018, U.S. Fish and Wildlife Service filed an application to renew instream lease IL-869, involving the entirety of Certificate 29185 for instream use.
2. On May 23, 2018, the Department issued an order approving Instream Lease IL-659, as evidenced by Special Order Volume 108, Page 258. Following issuance of the order, it was identified that the order incorrectly describes the rate in which the Tualatin River Decree specifies for Certificate 29185. The correct rate specified by decree is one-eightieth cubic foot per second per acre.

3. The right to be leased is as follows:

Certificate: 29185 in the name of David and Gerda Cereghino (confirmed by the Tualatin River Decree, of record in Salem, in the Order of Record of the Water Resources Director, in Volume 16, at Page 419)

Use: Irrigation of 8.0 acres

Priority Date: 1890

Quantity: **Rate:** 0.10 Cubic Foot per Second (CFS)

Source: Cummings Ditch, tributary to Rock Creek

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
2 S	1 W	WM	21	NW SW	1.5
2 S	1 W	WM	21	SW SW	6.5
Total Acres					8.0

4. Certificate 29185 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
2 S	2 W	WM	21	SW SW	Latitude 45.37781143 Longitude -122.82263184

5. Certificate 29185 does not specify a rate and duty limit per acre. However, the Tualatin River Decree specifies the rate limit as one-eightieth cubic foot per second per acre and the duty limit as 2.5 acre feet per acre during any one irrigation season.
6. Certificate 29185 does not specify the irrigation season. However, the irrigation season has been defined by the Tualatin River Decree as May 1 through September 30.
7. 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.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Cummings Ditch, tributary to Rock Creek

Instream Point: At the POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
29185	1890	0.10	20.0	June 23 through September 30

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. The protection of flows at the authorized point of diversion 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 point of the instream water right.
11. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.

12. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
13. 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.
14. 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.
15. 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.
16. 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.
17. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

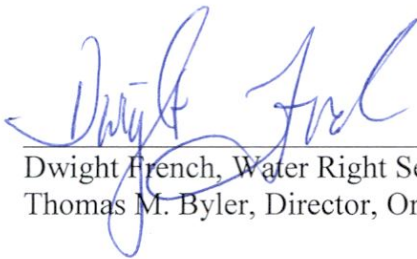
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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. For multiyear leases, the lessor *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 23 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 25 2018** .



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

Mailing date: **MAY 25 2018**

*This document was prepared by
Jessica Joye and if you have any
questions, please call 503-986-0814.*