

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

In the Matter of Instream Lease Renewal ) DETERMINATION and  
IL-232, Certificate 22520, ) FINAL ORDER ON PROPOSED  
Yamhill 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 #1**

Victor H. and Ruth Banke  
21500 S.W. Caleb Payne Road  
McMinnville, OR 97128-8806

**Findings of Fact**

1. On August 26, 2009 Victor and Ruth Banke filed an application to renew instream lease L-232, involving all of Certificate 22520. The Department assigned the application number IL-232.

2. The right to be leased is as follows:

**Certificate:** 22520 in the name of MORRIS and MARIE MAJORS  
**Use:** Irrigation of 30.0 acres  
**Season of Use:** April 1 to September 30  
**Priority Date:** December 12, 1951  
**Quantity:** **Rate:** 0.38 Cubic Foot per Second (CFS)  
**Duty:** 75.0 Acre-Feet (AF)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year  
**Source:** Deer Creek, tributary to the South Yamhill River

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

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	29	NW SW	Payne DLC #53	Not Specified

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
5 S	5 W	WM	29	NW SW	21.7
5 S	5 W	WM	29	SW SW	5.8
5 S	5 W	WM	29	SE SE	1.1
5 S	5 W	WM	29	NE SE	1.4
<b>TOTAL:</b>					<b>30.0</b>

3. Certificate 22520 does not specify the irrigation season. The irrigation season established by decree is April 1 to September 30. However, the Applicant's have requested that the full rate allowed by Certificate 22520 be protected instream beginning June 22 of each year. The full rate may be protected instream for 100 days without exceeding the duty allowed by Certificate 22520. Therefore, the right will be protected instream from June 22 through September 29 of each season.
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:

Deer Creek, tributary to the South Yamhill River

**Instream Reach:** From the POD, described in Finding of Fact #2 to the mouth of Deer Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
22520	December 12, 1951	0.38 CFS	75.0 AF	June 22 through September 29

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 commence on June 22, 2010 and terminate at the end of the 2014 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 June 22, 2010 and terminate on September 29, 2014. For multiyear leases, 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 Department receives the termination request 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 17<sup>th</sup> day of February 2010.

  
By Phillip C. Ward, Director

Mailing date: FEB 22 2010