

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1193, Certificates 3506, 5136 and 5645)	FINAL ORDER ON PROPOSED
Wasco 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

Richard E. Neal
4820 Davis Cutoff Road
The Dalles, OR. 97058

Findings of Fact

1. On December 5, 2011 Richard Neal filed an application to lease all of Certificate 5136 and portions of Certificates 5645 and 3506 for instream use. The Department assigned the application number IL-1193.
2. On January 27, 2003 the Department issued a final order approving Transfer Application T-8736, recorded at Special Order Volume 57, Page 64. The order approving Transfer T-8736 cancelled Water Right Certificate 5645. The final order approving Transfer T-8736 required the water right holder to submit satisfactory proof that the changes had been completed on or before October 1, 2004. Department records do not indicate the required proof has been submitted. Therefore, the water rights formerly described by Certificate 5645 are inchoate and not currently subject to lease or transfer.
3. The water rights described by Certificate 3506 are supplemental to the water rights formerly described by Certificate 5645, which is inchoate. Because the primary water rights are inchoate and not subject to lease, the supplemental rights are not currently subject to lease.

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 right to be leased is as follows:

Certificate: 5136 in the name of HOWARD PEARCY
Use: Irrigation of 5.65 Acres
Priority Date: 1921
Quantity: **Rate:** 0.08 Cubic Foot per Second (CFS)
Volume: 16.95 Acre-Feet (AF)
Limit: One-eightieth CFS per acre
Source: EIGHT MILE CREEK, tributary to the FIFTEEN MILE CREEK
Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	14 E	WM	28	SW SW	1.30
1 N	14 E	WM	29	SE SE	3.00
1 N	14 E	WM	32	NE NE	0.85
1 N	14 E	WM	32	NW NE	0.50
TOTAL:					5.65

5. Water Right Certificate 5136 does not specify the Point of Diversion (POD). However, the Department has additional information which indicates the POD is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	14 E	WM	32	SW NE	1500 FEET SE OF THE NW CORNER OF THE NW NE OF SECTION 32

Certificate 5136 does not specify the irrigation season. However, to provide the greatest benefit to the environment and to avoid enlargement, the Applicant requested water be protected instream from June 15 through September 28.

6. 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.

7. The instream use is as follows:

EIGHT MILE CREEK, tributary to the FIFTEEN MILE CREEK

Instream Reach: From the POD, as described in Finding of Fact #5, to the mouth of Eight Mile Creek

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
5136	1921	0.08 CFS	16.95 AF	June 15 through September 28

8. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

9. If approved, this instream lease is not 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.
10. 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.
11. 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.
12. The Lessor requested that the lease terminate on September 28, 2016.
13. The Lessor requested the option of terminating the lease early with written request 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 terminate on September 28, 2016.
4. The Lessor *shall* have the option of terminating the lease by submitting a written request 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 (May 15) 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 13 day of August, 2012.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: _____

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@wrds.state.or.us.