

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

In the Matter of the Proposed Short-Term )  
Lease of Existing Water Rights for Instream )  
Use, Certificate 56490, Jackson County )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

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 short-term instream lease applications.

**Lessor**

J-Diamond L-5 Trust  
Lawrence and Sharon Martin Trustees  
P.O. Box 870  
Rogue River, Oregon 97537

**Lessee**

Oregon Water Trust  
522 SW Fifth Avenue, Suite 825  
Portland, Oregon 97204

**Findings of Fact**

1. J- Diamond L-5 Trust, and Oregon Water Trust filed an application to renew Split-Season Instream Use Lease S-3, involving all of Certificate 56490. Due to a change in the existing and instream use periods, and the instream rate, the Department assigned the application a new lease number, S-5.
2. The rights to be leased are as follows:

Certificate 56490

<b>DOMESTIC, IRRIGATION, &amp; LIVESTOCK</b>					
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Acres</b>
35 S	4 W	WM	15	NE NE	4.40
35 S	4 W	WM	15	NW NE	15.90
35 S	4 W	WM	15	SW NE	28.20
35 S	4 W	WM	15	SE NE	3.50
35 S	4 W	WM	15	NE NW	2.00

Point of Diversion:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Survey Coordinates</b>
35 S	4 W	WM	15	SE NW	1650 FEET SOUTH & 500 FEET WEST FROM N1/4 CORNER, SECTION 15

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.

3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
4. The existing use period is from May 12 through July 10. Water may be used up to a maximum rate of 0.90 cfs.
5. The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:  
Evans Creek  
Tributary to Rogue River in the Rogue Basin

**Instream Reach:** At the POD (as described in Finding of Fact #2)

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
56490	1902	0.90	July 11 through September 23

6. Other conditions to prevent injury and enlargement are:

The lessor shall make daily measurements of use during the existing use period. The measuring device shall be an inline flow totalizer that is place in the first length of mainline pipe near the pump, or another acceptable device to the Director. The daily measurements shall be submitted on a monthly basis to the Jackson County Watermaster.

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 lease will terminate on October 31, 2005.

### **CONCLUSIONS OF LAW**


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

## ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall not receive water as part of these rights during the term of the lease, except as allowed in Finding of Fact 4, as conditioned by Finding of Fact 6.

Dated at Salem, Oregon this 8<sup>th</sup> day of June 2005.

  
For Phillip C. Ward, Director

Mailing date: JUN 15 2005