

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1531, Union County) FINAL ORDER ON PROPOSED
) 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.

Lessors

C. Glen and Ronda G. Smith
563 NW 21st Street
Pendleton, OR 97801
glen.smith@pioneer.com

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 200
Portland, Oregon 97204
rob@thefreshwatertrust.org

The Freshwater Trust
1782 S Main St
Union, OR 97883
tony@thefreshwatertrust.org

Findings of Fact

1. On March 30, 2016, C. Glen and Ronda Smith and TFT filed an application to lease a portion of Certificate 6459 for instream use. The Department assigned the application number IL-1531.
2. The portion of the right to be leased is as follows:
Certificate: 6459 in the name of E. H. Miles (perfected under the Grande Ronde River Decree, of record at Salem, in the Order Record of the State Engineer, in Volume 8, at Page 1)
Use: Irrigation of 19.2 acres
Priority Date: 1872
Quantity: **Rate:** 0.48 Cubic Foot per Second (CFS)
Volume: 57.6 Acre-Feet (AF)
Limit: three acre-feet per acre in any irrigation season, diverted at a rate of not to exceed one-fortieth of a cubic foot per second per acre
Source: Catherine Creek, tributary to the Grande Ronde River

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 Point of Diversion (POD): Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	34	NE SW	7.0
4 S	40 E	WM	34	NW SW	12.2
Total:					19.2

3. Certificate 6459 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Lessors and the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
4 S	40 E	WM	34	SW SE	POD NO. 1 (SAMS DITCH): LATITUDE 45.167247, LONGITUDE -117.799479

4. Certificate 6459 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
5. 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.
6. A portion of the water diverted at the POD returns to Catherine Creek within the proposed reach and is available to downstream water right holders. Approximately 20% of return flows from the existing use return to the creek system below the POD. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream should be modified to account for return flows immediately below the POD.
7. Under the Grande Ronde Decree water may be used at a rate up to the equivalent of 1/40th cfs per acre but only on a rotation basis. The use of water at 1/80th cfs per acre is allowed at a continuous rate. The Watermaster identified that the instream rate is equivalent to 1/40th cfs per acre and cannot be maintained as a continuous flow without injury to other water rights. Water may be protected instream at rates equivalent to 1/80th cfs per acre.
8. The instream is as follows:

Catherine Creek, tributary to the Grande Ronde River

Instream Reach No. 1: At Sams Ditch POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
6459	1872	0.24	57.6	July 1 through October 29

Instream Reach No. 2: From immediately below Sams Ditch POD to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
6459	1872	0.19	46.08	July 1 through October 29

9. 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 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.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

11. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right. The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows.

12. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.

13. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

14. 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.

15. 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.

16. 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.
17. The Lessors and Lessee have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed.
18. The Lessors and Lessee have requested that there not be an option to terminate the lease.

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 October 31, 2018. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this 4 day of May, 2016.



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

Mailing date: MAY 06 2016

*This document was prepared by Tracy
Fox and if you have any questions,
please call 503-986-0274.*