

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificates 11898 and 27435, Polk 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

Jerry Smith
1115 Madison Street, NE
Salem, Oregon 97301

Findings of Fact

1. On August 16, 2007, Jerry Smith filed an application to renew instream lease L-106, involving a portion of Certificate 11898. On August 17, 2007, Mr. Smith clarified that he also wanted to lease a portion of Certificate 27435 to instream use.
2. On June 11, 2003, Instream Lease L-106 was approved for the 2003 – 2007 irrigation seasons (Special Order Volume 57, Page 931). Special Order Volume 57, Page 931 also clarified that the following acres were leased instream:

Certificate 11898

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	6 W	WM	22	SE SW	0.52
8 S	6 W	WM	22	SW SE	0.77

Certificate 27435

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	22	SE SW	47	2.11

3. On November 29, 2007, the Department requested new maps clarifying the lands proposed to be leased instream.

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. On January 3, 2008, the Polk County Office of the Farm Service Administration provided the Department with new maps clarifying the lands proposed to be leased instream.
5. In the Department's review of the new lease application submitted on September 4, 2007, the Department determined that there are fewer acres that may be leased instream than previously approved. Consequently, the Department has assigned a new lease application number, IL-893.
6. The first right to be leased is as follows:

Certificate: 11898 in the name of E. H. BREEDEN (perfected under Permit S-10969)
Use: IRRIGATION of 2.2 ACRES
Priority Date: AUGUST 3, 1933
Rate: 0.027 CUBIC FEET PER SECOND
Limit: ONE-EIGHTIETH cfs per acre
Source: LITTLE LUCKIAMUTE RIVER, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
8 S	6 W	WM	22	SE SW
8 S	6 W	WM	27	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	6 W	WM	22	SE SW	1.4
8 S	6 W	WM	22	SW SE	0.8

7. The second right to be leased is as follows:

Certificate: 27435 in the name of JOHN C. COLLINS (perfected under Permit S-19485)
Use: IRRIGATION of 1.1 ACRES
Priority Date: MAY 5, 1950
Rate: 0.014 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: LITTLE LUCKIAMUTE RIVER, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	6 W	WM	22	SE SW	47
8 S	6 W	WM	22	SW SE	47

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	27	NW NE	47	1.1

8. 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). The application was noticed as IL-106. No comments were received.

9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

LITTLE LUCKIAMUTE RIVER tributary to LUCKIAMUTE RIVER

Instream Reach: From POD located in

Twp	Rng	Mer	Sec	Q-Q
8 S	6 W	WM	22	SE SW

(as described in Findings of Fact #7 and 8) to Bridgeport Bridge (RM 10)

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
11898	AUGUST 3, 1933	0.027	June 23 through September 30
27435	MAY 5, 1950	0.014	June 23 through September 30

10. 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.
11. 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.
12. 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.
13. The lease will commence on April 1, 2008 and terminate on September 30, 2012.
14. The Lessor has indicated that they will not have the option of terminating the lease early without consent by all parties to the lease.

CONCLUSIONS OF LAW

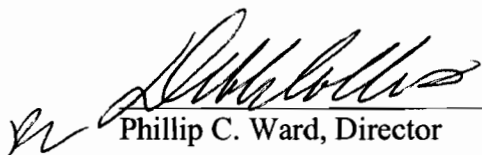
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 April 1, 2008 and terminate on September 30, 2012. The Lessor may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 25^m day of March 2008.


Phillip C. Ward, Director

Mailing date: MAR 28 2008