

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-867, Washington 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.

Lessor

U. S. Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232
Tim_mayer@fws.gov

Findings of Fact

1. On April 13, 2018, U.S. Fish and Wildlife Service filed an application to renew instream lease IL-867, involving all of Certificate 8117 for instream use.
2. The right to be leased is as follows:

Certificate: 8117 in the name of Edw. F. Peterson (perfected under Permit S-8840)
Use: Irrigation of 30.0 Acres
Priority Date: December 5, 1928
Quantity: **Rate:** 0.38 Cubic Foot per Second (CFS)
Limit: One-Eightieth of one cubic foot per second per acre.
Source: ROCK CREEK, tributary to TUALATIN RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	1 W	WM	20	NE SE	NONE DESCRIBED
2 S	1 W	WM	20	SE SE	NONE DESCRIBED

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	20	NE SE	13.0
2 S	1 W	WM	20	SE SE	17.0
Total Acres					30.0

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. Certificate 8117 does not provide measured distances for the location of the point of diversion in the SESE of Section 20. Based upon additional information provided by 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
2 S	1 W	WM	20	SE SE	Latitude: 45.37694168 Longitude: -122.82676697

4. Certificate 8117 does not describe a duty; however, the Tualatin River Decree limits the duty to 2.5 acre-feet for each acre irrigated during the irrigation season.
5. Certificate 8117 does not specify the irrigation season. However, the Tualatin River Decree defines the irrigation season as May 1 through September 30.
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.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

ROCK CREEK tributary to TUALATIN RIVER

Instream Reach: At the POD (as described in Finding of Fact #3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
8117	December 5, 1928	0.38	75.0	June 23 through September 30

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. The protection of flows at the authorized point of diversion is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
10. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
11. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.

12. 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.
13. 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.
14. 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.
15. The Lessor has requested that the lease terminate on October 1, 2022, however the last day of the irrigation season is September 30. The lease will terminate on September 30, 2022. The lease may commence on the date this final order is signed.
16. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

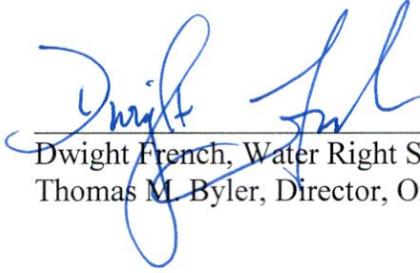
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 September 30, 2022. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (June 23 through September 30) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day MAY 24 2018.



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

Mailing date: MAY 24 2018

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*