



**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	14 E	WM	27	NE NW	3.0
2 N	14 E	WM	27	SE NW	5.0
2 N	14 E	WM	27	SW NE	1.6
<b>Total Acres</b>					<b>9.6</b>

3. Certificate 5603 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Department’s Watermaster and the applicants, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude/Longitude and River Mile
2 N	14 E	WM	27	SW NE	Lat. 45.629832, Long -121.052813; at approximately at River Mile 6.2

4. Certificate 5603 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. Certificate 5603 describes the annual duty of their respective rights as 3.0 acre-feet (AF) per acre; however the Fifteenmile Creek Decree further describes the duty in the following 30-day volumes: Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30-day period. From July 1<sup>st</sup>, the diversion is limited to ¾ AF per acre in any 30-day period.
6. Certificate 5603 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree indicates that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40<sup>th</sup> of CFS per acre after July 1<sup>st</sup>, except in case of rotation.

Certificate	Max Rate After July 1 <sup>st</sup>
5603	0.24 CFS

7. There appears to be two primary irrigation water rights, Certificates 49826 and 49825, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under these layered water rights will also be suspended.
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). No comments were received.
9. The instream use is as follows:  
Fifteenmile Creek, tributary to the Columbia River

**Instream Reach:** From the POD (as described in Finding of Fact No. 3) to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
5603	1907	0.12	28.8	June 2 through September 30



10. The Lessor and Lessee have requested that the instream use begin at the PODs, as described in finding of Fact No. 3. The POD is located within a known losing reach on Fifteenmile Creek, which begins at approximately River Mile 30.5. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to more than 50 percent. Therefore, the quantities of water that may be protected instream beginning at each POD will be reduced immediately below each POD by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.
11. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, stream channel losses and gains calculated based on available data and use by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach from the POD to the mouth of Fifteenmile Creek and whether the described instream flows below the POD may be adjusted. If adjusted, instream flows from immediately below the POD to the mouth of Fifteenmile Creek may not exceed the quantities specified at the POD.
12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
13. 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.
14. The instream right established by this instream lease shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470.
15. 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.
16. 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.
17. The instream use may also be conditioned to allow for more or less water to be protected instream below the POD based upon instream measurements conducted by Department staff or other approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at the POD.
18. 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.

19. 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.
20. 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.
21. The Lessor and Lessee have requested that the lease terminate on September 30, 2022. The last day of the term of a lease is generally the last day of the irrigation season. An irrigation season for Fifteenmile Creek is not defined by certificate or decree. Consistent with Finding of Fact No. 4, the lease may terminate on October 31, 2022. The lease may commence on the date this final order is signed.

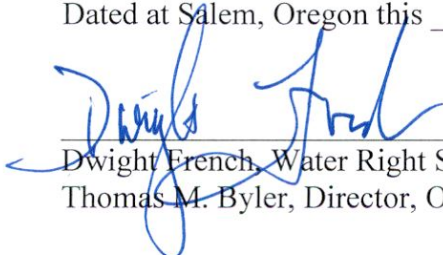
**Conclusions of Law**

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 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, 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 2 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           **MAY 24 2018**          

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

*This document was prepared by Joan Smith and if you have any questions, please call 503-986-0892.*

Mailing date:           **MAY 24 2018**