

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1333, Certificates 47332, 5626, 47333, ) FINAL ORDER ON PROPOSED  
47334, 48315, and 54586, Wasco 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**

Merle Keys, Mayor  
City of Dufur  
PO Box 145  
Dufur, OR 97021  
[dufurcity@ortelco.net](mailto:dufurcity@ortelco.net)

**Lessee**

The Freshwater Trust (TFT)  
700 SW Taylor St. Ste 200  
Portland, OR 97205  
[rob@thefreshwatertrust.org](mailto:rob@thefreshwatertrust.org)

**Findings of Fact**

1. On April 13, 2018, the City of Dufur and The Freshwater Trust filed an application to renew instream lease IL-1333, involving all of Certificates 47332, 5626, 47333, 47334, 48315, and 54586.
2. The first right to be leased is as follows:

**Certificate:** 47332 in the name of City of Dufur (perfected under permit S-5201)  
**Use:** Municipal Use  
**Priority Date:** August 26, 1921  
**Quantity:** **Rate:** 0.025 Cubic Foot per Second (CFS)  
**Limit:** during the irrigation season only  
**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	80 FEET SOUTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	25	S ½ NW ¼
1 S	13 E	WM	25	SW ¼
1 S	13 E	WM	25	SE ¼
1 S	13 E	WM	26	SE ¼ NE ¼
1 S	13 E	WM	26	E ½ SE ¼

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 47332 does not specify a volume limit associated with the right. However, the lease application identifies a 6.0 Acre-Feet (AF) volume limitation.
4. Certificate 47332 does not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. For purpose of this instream lease and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used to establish when water may be leased instream.
5. The second right to be leased is as follows:

**Certificate:** 5626 in the name of City of Dufur (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, and said decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 7, at Page 406)

**Use:** Municipal Purposes

**Priority Date:** 1886

**Quantity:** **Volume:** 300,000 Gallons per Day (GPD)

**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:** Not specified on certificate

**Authorized Place of Use:** Within and in the Vicinity of the City of Dufur

6. Certificate 5626 does not provided a description of the location of the point of diversion. This Certificate was modified by a transfer application, which changed the point of diversion. The point of diversion, as evidenced by Special Order Volume 1, Page 46, is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	Not provided

7. Certificate 5626 does not specify the period of allowed use. However, given the use is municipal; the period of allowed use is year round.
8. Certificate 5626 does not provide measured distances for the location of the point of diversion. However, it appears that the point of diversion is the same as that described for the other certificates involved in this lease application.
9. The third right to be leased is as follows:

**Certificate:** 47333 in the name of City of Dufur (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, and said decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 7, at Page 406)

**Use:** Municipal Use

**Priority Date:** 1905

**Quantity:** **Rate:** 0.04 CFS

**Volume:** 4.8 AF each year

**Limit:** 1.6 AF per 30 day period to July 1 and 1.2 AF per 30 day period thereafter, and further limited to use during the irrigation season only

**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	80 FEET SOUTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	25	S ½ NW ¼
1 S	13 E	WM	25	SW ¼
1 S	13 E	WM	25	SE ¼
1 S	13 E	WM	26	SE ¼ NE ¼
1 S	13 E	WM	26	E ½ SE ¼

10. Certificate 47333 does not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. For purpose of this instream lease and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used to establish when water may be leased instream.

11. The fourth right to be leased is as follows:

**Certificate:** 47334 in the name of City of Dufur (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, and said decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 7, at Page 406)

**Use:** Municipal Use

**Priority Date:** 1906

**Quantity:** **Rate:** 0.103 CFS

**Volume:** 12.3 AF each year

**Limit:** 4.1 AF per 30 day period to July 1 and 3.08 AF per 30 day period thereafter, and further limited to use during the irrigation season only

**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	80 FEET SOUTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	25	S ½ NW ¼
1 S	13 E	WM	25	SW ¼
1 S	13 E	WM	25	SE ¼
1 S	13 E	WM	26	SE ¼ NE ¼
1 S	13 E	WM	26	E ½ SE ¼

12. Certificate 47334 does not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. For purpose of this instream lease and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used to establish when water may be leased instream.

13. The fifth right to be leased is as follows:

**Certificate:** 48315 in the name of City of Dufur (perfected under permit S-28579)  
**Use:** Municipal Use  
**Priority Date:** January 3, 1963  
**Quantity:** **Rate:** 1.12 CFS  
**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	80 FEET SOUTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	25	S ½ NW ¼
1 S	13 E	WM	25	SW ¼
1 S	13 E	WM	25	SE ¼
1 S	13 E	WM	26	SE ¼ NE ¼
1 S	13 E	WM	26	E ½ SE ¼

14. Certificate 48315 does not specify the period of allowed use. However, given the use is municipal; the period of allowed use is year round.

15. The sixth right to be leased is as follows:

**Certificate:** 54586 in the name of City of Dufur (perfected under permit S-41380)  
**Use:** Group Domestic Use for 53 families and use in Travel Trailer Park  
**Priority Date:** January 10, 1977  
**Quantity:** **Rate:** 0.1 CFS  
**Source:** FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	12 E	WM	15	NE SE	80 FEET SOUTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 15

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
1 S	12 E	WM	36	SE SE
1 S	13 E	WM	31	SW SW
1 S	13 E	WM	31	SE SE
1 S	13 E	WM	32	N ½ SE ¼
1 S	13 E	WM	32	SW SE
1 S	13 E	WM	33	N ½ SW ¼ *
1 S	13 E	WM	33	N ½ SE ¼
1 S	13 E	WM	34	NE ¼
1 S	13 E	WM	34	NW NW
1 S	13 E	WM	34	NE SW
1 S	13 E	WM	34	N ½ SE ¼
1 S	13 E	WM	35	NW NW
1 S	13 E	WM	35	SE NW
2 S	12 E	WM	1	SE NE
2 S	12 E	WM	1	W ½ SE ¼
2 S	12 E	WM	11	E ½ SE ¼

Twp	Rng	Mer	Sec	Q-Q
2 S	12 E	WM	12	NE NW
2 S	12 E	WM	12	SW NW
2 S	12 E	WM	14	E ½ NW ¼
2 S	13 E	WM	6	N ½ NE ¼
2 S	13 E	WM	6	N ½ NW ¼

\*Domestic and Trailer Park

16. Certificate 54586 does not specify the period of allowed use. However, given the use is group domestic; the period of allowed use is year round.
17. 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.
18. The authorized POD for each right is above a known losing reach on Fifteenmile Creek beginning 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, protected flows generated from this lease will be reduced at River Mile 30.5 by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.
19. The instream use may also be conditioned to allow more or less water to be protected instream below the POD based upon instream measurements conducted by Department staff or others approved by the Department. Measurements may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly. Instream flows, however, may not exceed the instream quantities identified at the POD.
20. During the review process, the Department identified that the original instream rates resulting from Certificates 47333 and 47334 require modification to prevent injury and enlargement. At the full rate and volume requested, water may be protected instream for a period of 60 days. The instream period requested, July 1 through October 29, is 121 days. To protect water instream over the full period requested, the instream rates have been reduced.
21. The instream use is as follows:

Fifteenmile Creek, tributary to the Columbia River

**Instream Reach #1:** At the POD (as described in Finding of Fact #2, 6, 9, 11, & 15)

Certificate	Priority Date	Jan 1 – June 30	July 1 – Oct 29	Oct 30 – Dec 31	Instream Volume (AF)
		Instream Rate (cfs)	Instream Rate (cfs)	Instream Rate (cfs)	
47332	8/26/1921		0.025		6.00
5626	1886	0.46	0.46	0.46	335.80
47333	1905		0.02		4.80
47334	1906		0.051		12.24
48315	1/3/1963	1.12	1.12	1.12	810.84
54586	1/10/1977	0.10	0.10	0.10	72.40
<b>Totals</b>		<b>1.68</b>	<b>1.776</b>	<b>1.68</b>	<b>1242.08</b>

**Instream Reach #2:** From immediately below the POD to the mouth of Fifteenmile Creek

Certificate	Priority Date	Jan 1 – June 30	July 1 – Oct 29	Oct 30 – Dec 31	Instream Volume (AF)
		Instream Rate (cfs)	Instream Rate (cfs)	Instream Rate (cfs)	
47332	8/26/1921		0.013		3.00
5626	1886	0.23	0.23	0.23	166.51
47333	1905		0.01		2.40
47334	1906		0.026		6.12
48315	1/3/1963	0.56	0.56	0.56	405.42
54586	1/10/1977	0.05	0.05	0.05	36.20
<b>Totals</b>		<b>0.84</b>	<b>0.889</b>	<b>0.84</b>	<b>619.65</b>

22. Other conditions to prevent injury and enlargement are:

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from River Mile 30.5 within the specified stream reach from River Mile 30.5 to the mouth of Fifteenmile Creek and whether the described instream flows may be adjusted. If adjusted, instream flows from River Mile 30.5 to the mouth of Fifteenmile Creek may not exceed the quantities specified at the POD.

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 and gains 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.

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

24. 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 known areas of natural loss of streamflow to the river bed downstream from the points of diversion and have been accounted for in Finding of Fact No. 10 immediately below each POD; 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.

25. 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.

26. 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.

27. 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.

28. 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.
29. 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. 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.
30. 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.
31. The Lessor has requested that the lease terminate on December 31, 2022. The lease may commence on the date this final order is signed.
32. The Lessor has requested the option of terminating the lease early with written notice to the Department.

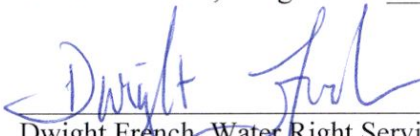
**CONCLUSIONS OF LAW**

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. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2022. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (January 1 through December 31) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this     MAY 25 2018    .

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

*This document was prepared by  
 Arla Heard and if you have any  
 questions, please call 503-986-0806.*

Mailing date:     MAY 25 2018