

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1030, Certificate 61599) FINAL ORDER ON PROPOSED
Josephine 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

The Nature Conservancy
33 North Central Ave, Suite 405
Medford, OR 97501
msullivan@tnc.org

Findings of Fact

1. On January 28, 2010 the Nature Conservancy filed an application to lease all of Certificate 61599 for instream use. The Department assigned the application number IL-1030.

2. The right to be leased is as follows:

Certificate: 61599 in the name of ERROS W. FEEHELY
Use: Irrigation of 4.0 acres
Season of Use: April 1 to November 1
Priority Date: June 12, 1979
Quantity: **Rate:** 0.08 Cubic Foot per Second (CFS)
Duty: 14.0 Acre-Feet (AF)
Limit: One-fiftieth CFS per acre, not to exceed 3.5 AF per acre per year
Source: Rough and Ready Creek, tributary to the West Fork Illinois River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 W	WM	14	NE SW	1380 FEET NORTH AND 2440 FEET EAST FROM THE SW CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	9 W	WM	14	SE SW	4.0

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 61599 does not specify the irrigation season. However, the season established by decree is April 1 through November 1.
4. 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 in response to that notice.
5. The instream use is as follows:
Rough and Ready Creek, tributary to the West Fork Illinois River

Instream Point: At the POD, as described in Finding of Fact #2.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
61599	June 12, 1979	0.033 CFS	14.0 AF	April 1 through November 1

6. 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.
7. 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.
8. 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.
9. The Lessor requested that the lease commence April 1, 2010 and terminate on November 1, 2014.
10. 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.

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, 2010 and terminate on November 1, 2014. 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 or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 26th day of February 2010.


for Phillip C. Ward, Director

Mailing date: MAR 04 2010