

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1628, 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.

Lessors

McKay Creek Farm
c/o Alfred Dinsdale
19540 SW Conzelmann
Sherwood, OR 97140

Peter B. Dinsdale
PO Box 357
Independence, OR 97351

Lessee

Tualatin Soil and Water Conservation District (TSWCD)
Lacey Townsend, District Manager
1080 SW Baseline, B-2
Hillsboro, OR 97123

Findings of Fact

1. On June 16, 2017, TSWCD, McKay Creek Farm c/o Alfred Dinsdale, and Peter Dinsdale filed an application involving a portion of Certificate 20032 for instream use. The Department assigned the application number IL-1628.
2. The portion of the right to be leased has been modified from the lease application and is as follows:

Certificate: 20032 in the name of Edward Spiering (perfected under S-18241)
Use: Irrigation of 4.4 acres
Priority Date: April 28, 1948

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.

Quantity: **Rate:** 0.015 Cubic Foot per Second (CFS)
Volume: 11.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: McKay Creek, a tributary of Dairy Creek, tributaries to Tualatin River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC
1 N	2 W	WM	6	SW NW	70

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	2 W	WM	6	NE NW	0.8
1 N	2 W	WM	6	SW NW	3.0
1 N	2 W	WM	6	SE NW	0.4
1 N	2 W	WM	6	NW SW	0.2
Total Acres					4.4

3. Certificate 20032 does not provided measured distance for the location of the point of diversion. Based upon additional information provided by the Lessor and Lessees, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 N	2 W	WM	6	SW NW	70	310 FEET NORTH AND 1020 FEET EAST FROM THE W1/4 CORNER OF SECTION 6

4. Certificate 20032 does not specify the irrigation season, however, the Tualatin River Decree establishes the irrigation season for the area as May 1 through September 30.
5. 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.
6. The instream use has been modified and is as follows:
 McKay Creek, tributary to Dairy Creek, tributaries to Tualatin River

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
20032	4/28/1948	0.015	11.0	June 22 – September 30

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

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. The Lessor and Lessee have requested that the lease terminate on September 30, 2021. The lease may commence on the date this final order is signed.
15. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

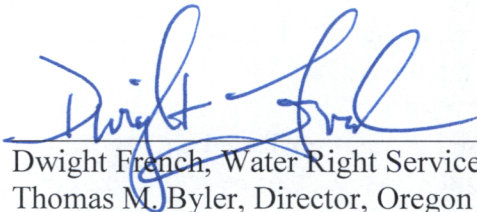
Conclusions of Law

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

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, 2021. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (June 22 – 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 31st day of July, 2017.



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

Mailing date: AUG 02 2017

*This document was prepared by
Jessica Joye and if you have any
questions, please call 503-986-0814.*