

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

In the Matter of Instream Lease Renewal) DETERMINATION and
 IL-700, Certificates 13450, 13451 and) FINAL ORDER ON PROPOSED
 38612, Yamhill 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 #1

Thornton Ranch, LLC
 19976 NW Moores Valley Road
 Yamhill, Oregon 97418
 harmonyhills@onlinenw.com

Findings of Fact

1. On June 2, 2010 Nancy Thornton of Thornton Ranch LLC., filed an application to renew instream lease L-700, involving lease all of Certificates 13450 and 13451 and a portion of Certificate 38612.

2. The first right to be leased is as follows:

Certificate: 13450 in the name of J. L. JENNINGS (perfected under Permit S-10816)
Use: Irrigation of 57 acres
Priority Date: JANUARY 31, 1933
Quantity: **Rate:** 0.72 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre
Source: HASKINS CREEK, tributary to the NORTH YAMHILL RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
3 S	5 W	WM	8	SW NE

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	4	SW SW	47	0.2
3 S	5 W	WM	4	SE SW	47	19.7
3 S	5 W	WM	4	SW SE	47	8.0
3 S	5 W	WM	9	NW NE	47	0.8
3 S	5 W	WM	9	NE NW	47	13.2
3 S	5 W	WM	9	NW NW	47	15.1
TOTAL:						57.0

3. The second right to be leased is as follows:

Certificate: 13451 in the name of J. L. JENNINGS (perfected under Permit S-11065)

Use: Irrigation of 36.20 acres

Priority Date: SEPTEMBER 16, 1933

Quantity: **Rate:** 0.47 Cubic Foot per Second (CFS)

Limit: ONE-EIGHTIETH cfs per acre

Source: HASKINS CREEK, tributary to NORTH YAMHILL RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC
3 S	5 W	WM	8	SW NE	Peleg DLC #47

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	4	SW SE	47	0.4
3 S	5 W	WM	4	SW SE	48	1.1
3 S	5 W	WM	9	NW NE	47	3.6
3 S	5 W	WM	9	NW NE	48	12.5
3 S	5 W	WM	9	NE NW	47	12.3
3 S	5 W	WM	9	NW NW	47	2.0
3 S	5 W	WM	9	SW NW	47	3.3
3 S	5 W	WM	9	SE NW	47	1.0
TOTAL:						36.2

4. The third right to be leased is as follows:

Certificate: 38612 in the name of ROBERT M TURNER (perfected under Permit S-29989)

Use: IRRIGATION of 10.70 ACRES (the entire irrigation portion of the right will be leased instream, however the domestic portion of the right will not be leased instream)

Priority Date: AUGUST 24, 1964

Quantity: **Rate:** 0.13 CUBIC FEET PER SECOND; being 0.09 CFS FROM STREAM #1, AND 0.04 CFS FROM STREAM #2

Duty: 26.75 Acre-Feet (AF)

Limit: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 AF/AC FOR IRRIGATION acre-feet per acre per year

Source: TWO UNNAMED STREAMS, AND A RESERVOIR CONSTRUCTED UNDER PERMIT R-4489, tributary to HASKINS CREEK

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
3 S	5 W	WM	3	NE SW	50	Stream #1: 1250 FEET NORTH & 1420 FEET EAST FROM SW CORNER, DAVIS DLC 50
3 S	5 W	WM	3	NE SW	50	Stream #2: 680 FEET NORTH & 1500 FEET EAST FROM SW CORNER, DAVIS DLC 50

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	3	NE SW	50	10.70

5. None of the certificates to be leased herein specify the irrigation season. However, the Yamhill Decree establishes an irrigation season from April 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 in response to that notice.
7. The Applicant requests to protect 142.5 AF (2.5 AF/ac) under certificate 13450 and 90.5 AF (2.5 AF/ac) under certificate 13451.
8. The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:

HASKINS CREEK tributary to the NORTH YAMHILL RIVER

Instream Reach: From the POD, as described in Finding of Fact #2, to the mouth of Haskins Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
13450	JANUARY 31, 1933	0.71	JUNE 22 THROUGH SEPTEMBER 30
13451	SEPTEMBER 16, 1933	0.45	JUNE 22 THROUGH SEPTEMBER 30
38612	AUGUST 24, 1964	0.09*	JUNE 22 THROUGH SEPTEMBER 30
		0.04**	JUNE 22 THROUGH SEPTEMBER 30
<i>Total:</i>		1.29	

*From stream #1. **From stream #2.

9. Other conditions to prevent injury and enlargement are:

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.

10. 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.
11. 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.
12. 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.
13. The Lessor has requested that the lease commence on the first day of the 2011 irrigation season and terminate on September 30, 2015.
14. 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 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 (June 22) 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.

4. The lease will commence on June 22, 2011 and terminate on September 30, 2015.

Dated at Salem, Oregon this 13 day of July 2010.


Phillip C. Ward, Director

Mailing date: JUL 14 2010

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or Kody.J.Thurgood@wrд.state.or.us