

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

In the Matter of Split-Season Instream Lease Application SL-34, Union County)
) DETERMINATION and
) FINAL ORDER ON PROPOSED
) SPLIT-SEASON 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.

Lessor

C. Glen and Ronda G. Smith
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Pendleton, Oregon 97801
glen.smith@pioneer.com

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 200
Portland, Oregon 97204
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Findings of Fact

1. On March 30, 2016, C. Glen and Ronda G. Smith and TFT filed an application to lease a portion of Certificate 6459 as a split season instream use. The Department assigned the application number SL-34.
2. Add finding describing requests for additional information and when received – for example, the lease map.
3. The portion of the right to be leased is as follows:

Certificate: 6459 in the name of E.H. Mills (perfected under the Grande Ronde River Decree, of record at Salem in the Order Record of the State Engineer, in Volume 8, at page 1)

Use: Irrigation of 28.6 acres

Priority Date: 1872

Quantity: Rate: 0.715 Cubic Foot per Second (CFS)

Volume: 85.8 Acre-Feet (AF)

Limit: 3.0 AF per acre in any irrigation season, diverted at a rate of not to exceed 1/40th of a cubic foot per second per acre

Source: Catherine Creek, tributary to the Grande Ronde River

Authorized Point of Diversion (POD): (not described on certificate)

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	Acres
4 S	40 E	WM	34	SW NW	19.2
4 S	40 E	WM	34	SE NW	4.4
4 S	40 E	WM	34	NE SW	3.5
4 S	40 E	WM	34	NW SW	1.5
Total Acres					28.6

4. Certificate 6459 does not provided a description of the location of the point of diversion. Based upon information provided by the Lessee, and Lessor the point of diversion is miles Ditch and appears to be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
4 S	40E	WM	34	NW SE	Latitude 45.169637, Longitude -117.799648

5. Certificate 6459 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.
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.
7. The instream lease application, as proposed, is a split season lease.

Under Certificate 6459, water may be used for its existing use up to a maximum rate of 0.715 CFS and no more than 42.9 AF, consistent with the water right limits identified in Findings of Fact No. 3. The existing use period (out of stream) will be May 1 through July 14, a period of 75 days.

8. The instream use is as follows:
Catherine Creek, tributary to the Grande Ronde River

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
6459	1872	0.36	42.9	July 15 to September 12

9. Other conditions to prevent injury and enlargement are:

The Lessor in coordination with the Lessee shall make monthly measurements of use. The Lessee and Lessor shall report the measurement's using the Split Season Measurement Reporting Form to the Watermaster's office at least once per month. The measuring device will, at minimum, be checked three times over the irrigation season on April 1, July 15 and October 30. The Lessor and Lessee shall also report beginning and ending meter readings for the full irrigation season. The Watermaster may also request to read the Lessor's meter to verify meter readings supplied by the Lessor and/or Lessee and/or request more frequent

reporting. The measuring device shall be a McCrometer flow meter and is installed at Latitude 45.17305556, Longitude -177.8025.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. The Lessors and Lessee have requested that the lease terminate on October 31, 2016. The lease may commence on the date this final order is signed.

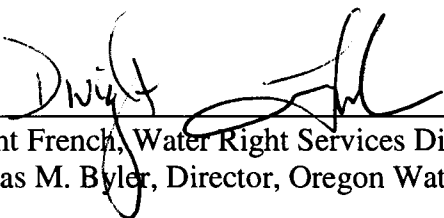
Conclusions of Law

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 the term of this lease, the place of use will continue to receive water (up to 42.9 AF under Certificate 6459 during the period May 1 through July 14) for irrigation. Also, during the term of this lease, the former place of use will not receive water as part of this right, any supplemental rights, or any other layered water rights for irrigation use, including groundwater registrations, for the remainder of the irrigation season.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2016.

Dated at Salem, Oregon this 7 day of June, 2016.



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

Mailing date: JUN 09 2016

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*