

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

In the Matter of the Proposed Lease of            )     DETERMINATION and  
Existing Water Rights for Instream Use         )     FINAL ORDER ON PROPOSED  
Certificates 14495, 22032, 22077 and 22544     )     INSTREAM LEASE  
Washington County

**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**

John Petshow  
2725 NW Gales Creek RD  
Forrest Grove, Oregon 97116

**Lessee**

Oregon Water Trust (OWT)  
522 SW Fifth Avenue, Suite 825  
Portland, Oregon 97204

**Findings of Fact**

1. On June 20, 2008 John Petshow and OWT filed an application to lease all of Certificates 14495, 22032, 22077 and 22544 for instream use. The Department assigned the application number IL-942.

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

**Certificate:** 22032 in the name of MELVIN N. OBERG (perfected under Permit S-20135)

**Use:** IRRIGATION of 26.0 ACRES

**Priority Date:** MARCH 2, 1951

**Rate:** 0.33 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** GALES CREEK, tributary to the TUALATIN RIVER

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 Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 N	4 W	WM	31	SW SW	Not Specified

**Authorized Places of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 N	4 W	WM	31	SW SW	4	Parson DLC #37	3.3
2 N	4 W	WM	31	SE SW		Parson DLC #37	10.0
2 N	4 W	WM	31	SE SW	3	Parson DLC #37	11.8
2 N	4 W	WM	31	SW SE	2	Parson DLC #37	0.9
<b>TOTAL:</b>							<b>26.0</b>

3. Certificate 22032 does not describe the location of the point of diversion; however, information is available from OWT indicating that the point of diversion is located as follows:

**Authorized Point of Diversion (POD) #1:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
2 N	4 W	WM	31	SW SW	Parson DLC #37	Latitude 45.608428, Longitude -123.233261. (River Mile 14.2)

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

**Certificate:** 22077 in the name of CHARLES NEWTON JAMES (perfected under Permit S-22038)

**Use:** IRRIGATION of 7.4 ACRES

**Priority Date:** JANUARY 19, 1953

**Rate:** 0.09 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** GALES CREEK, tributary to TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	4 W	WM	6	NE SE	Not Specified

**Authorized Places of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	4 W	WM	5	NW SW	7.4
<b>TOTAL:</b>					<b>7.4</b>

5. Certificate 22077 does not describe the location of the point of diversion, however information is available from OWT indicating that the point of diversion is located as follows:

**Authorized Point of Diversion (POD) #2:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	4 W	WM	6	NE SE	Latitude 45.599831, Longitude -123.215553. (River Mile 13.2)

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

**Certificate:** 22544 in the name of BERNARD J. LARSEN (perfected under Permit S-22188)

**Use:** IRRIGATION of 15.8 ACRES

**Priority Date:** MARCH 16, 1953

**Rate:** 0.20 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** GALES CREEK, tributary to TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	4 W	WM	27	NE SW	Not Specified

**Authorized Places of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	4 W	WM	27	NE SW	M.W. Watts DLC #48	5.8
1 N	4 W	WM	27	NW SE	M.W. Watts DLC #48	10.0
<b>TOTAL:</b>						<b>15.8</b>

7. Certificate 22544 does not describe the location of the point of diversion, however information is available from OWT indicating that the point of diversion is located as follows:

**Authorized Point of Diversion (POD) #3:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	4 W	WM	27	NE SW	M.W. Watts DLC #48	Latitude 45.538758, Longitude -123.166208. (River Mile 7.1)

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

**Certificate:** 14495 in the name of MILTON N. SIMON (perfected under Permit S-14246)

**Use:** IRRIGATION of 20.40 ACRES

**Priority Date:** MARCH 9, 1940

**Rate:** 0.26 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre during the irrigation season of each year

**Source:** GALES CREEK, tributary to TUALATIN RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	4 W	WM	27	SE SW	Not Specified

**Authorized Places of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 N	4 W	WM	27	SE SW	Marvil Watts DLC #48	1.0
1 N	4 W	WM	27	NW SE	Marvil Watts DLC #48	10.4
1 N	4 W	WM	27	SW SE	Marvil Watts DLC #48	9.0
<b>TOTAL:</b>						20.4

9. Certificate 14495 does not describe the location of the point of diversion, however information is available from OWT indicating that the point of diversion is located as follows:

**Authorized Point of Diversion (POD) #4:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 N	4 W	WM	27	SE SW	Marvil Watts DLC #48	Latitude 45.536794, Longitude -123.165792. (River Mile 6.8)

10. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on June 24, 2008 pursuant to OAR 690-077-0077(1). No comments were received.

The instream use is as follows:

**Instream Reach No. 1:** From POD #1 (as described in Finding of Fact #2) to POD #2 (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
22032	March 2, 1951	0.33 cfs	65.0 AF	May 1 through September 30

**Instream Reach No. 2:** From POD #2 (as described in Finding of Fact #4) to POD #3 (as described in Finding of Fact #6)

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
22032	March 2, 1951	0.33 cfs	65.0 AF	May 1 through September 30
22077	January 19, 1953	0.09 cfs	18.5 AF	
<b>TOTAL:</b>		<b>0.42 cfs</b>	<b>83.5 AF</b>	

**Instream Reach No. 3:** From POD #3 (as described in Finding of Fact #6) to POD #4 (as described in Finding of Fact #8)

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
22032	March 2, 1951	0.33 cfs	65.0 AF	May 1 through September 30
22077	January 19, 1953	0.09 cfs	18.5 AF	
22544	March 16, 1953	0.20 cfs	39.5 AF	
<b>TOTAL:</b>		<b>0.62 cfs</b>	<b>123.0 AF</b>	

**Instream Reach No. 4:** From POD #4 (as described in Finding of Fact #8) to the mouth of Gales Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
22032	March 2, 1951	0.33 cfs	65.0 AF	May 1 through September 30
22077	January 19, 1953	0.09 cfs	18.5 AF	
22544	March 16, 1953	0.20 cfs	39.5 AF	
14495	March 9, 1940	0.26 cfs	51.0 AF	
<b>TOTAL:</b>		<b>0.88 cfs</b>	<b>174.0 AF</b>	

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, 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.
13. 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.
14. The lease will terminate on September 30, 2008.

### 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 terminate on September 30, 2008.

Dated at Salem, Oregon this 23<sup>rd</sup> day of July 2008.

*for*   
Phillip C. Ward, Director

Mailing date: JUL 24 2008