

**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 30666 and 35857, Jackson) INSTREAM LEASE
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

Jim Estremado
30 Sardine Creek Rd.
Gold Hill, OR 97525

Lessor #2

Herbert Hymas
12300 Blackwell Rd.
Central Point, OR 97502

Lessee

Oregon Water Trust (OWT)
522 SW 5th Ave., Suite 825
Portland, OR 97204
steve@owt.org

Findings of Fact

1. On June 11, 2008, Jim Estremado, Herbert Hymas, and OWT filed an application to lease a portion of Certificates 30666 and 35857 to instream use. The Department assigned the application number IL-933.

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

Certificate: 30666
Use: Irrigation
Acres: 133.4 acres
Priority Date: September 17, 1956
Quantity: Rate: 1.67 Cubic Foot per Second (CFS)
Duty: 600.3 Acre-Feet (AF)
Source: Rogue River, tributary to the Pacific Ocean

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	3 W	WM	15	SW SE	Lot 5

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	Gov't Lot	DLC	Acres
36 S	3 W	WM	15	SW SE	5		2.0
36 S	3 W	WM	15	SE SE			24.1
36 S	3 W	WM	22	NE NE	6		31.2
36 S	3 W	WM	22	NE NE		37	1.3
36 S	3 W	WM	22	NW NE	1		4.5
36 S	3 W	WM	22	SE NE		37	16.7
36 S	3 W	WM	23	NW NW	1		5.8
36 S	3 W	WM	23	NW NW		37	1.4
36 S	3 W	WM	23	SW NW	2		2.4
36 S	3 W	WM	23	SW NW		37	34.1
36 S	3 W	WM	23	SE NW		37	1.7
36 S	3 W	WM	23	NW SW		37	8.2

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

Certificate: 35857

Use: Irrigation

Acres: 49.1 acres

Priority Date: May 10, 1965

Quantity: Rate: 0.61 Cubic Foot per Second (CFS)
Duty: 220.95 Acre-Feet (AF)

Source: Rogue River, tributary to the Pacific Ocean

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Survey Coordinates
36 S	3 W	WM	15	SW SE	4	1170 FEET NORTH AND 2020 FEET WEST FROM THE SE CORNER OF SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
36 S	3 W	WM	23	NW NE			2.9
36 S	3 W	WM	23	SW NE			0.2
36 S	3 W	WM	23	NE NW			23.0
36 S	3 W	WM	23	NW NW	1		8.4
36 S	3 W	WM	23	NW NW		37	0.2
36 S	3 W	WM	23	SW NW	2		0.2
36 S	3 W	WM	23	SE NW			14.2

4. Neither of the above certificates identifies a specified irrigation season. However, the irrigation season by decree for the Rogue River is April 1 through October 31.
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 requested instream period for Certificate 35857 is May 13 through October 31, a 173 day period. However, at the requested instream rate (0.61 CFS) and volume (221.0 AF), water may be protected instream for a period of 182 days.

7. Based upon Finding of Fact #6, the instream use has been modified from the lease application and is as follows:
Rogue River, tributary to the Pacific Ocean

Instream Point #1: At the POD (as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate	Instream Volume	Instream Period
30666	9/17/1956	1.67 CFS	600.3 AF	May 4 through Oct. 31

Instream Point #2: At the POD (as described in Finding of Fact #3)

Certificate	Priority Date	Instream Rate	Instream Volume	Instream Period
35857	5/10/1965	0.61 CFS	221.0 AF	May 3 through Oct. 31

8. 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.
9. 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.
10. 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.
11. The Lessor and Lessee have requested that the lease terminate on October 31, 2012.
12. 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.

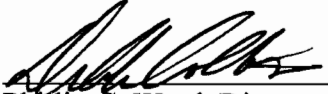
ORDER

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 terminate on October 31, 2012.

Dated at Salem, Oregon this 30th day of July 2008.


Phillip C. Ward, Director

Mailing date: AUG 01 2008