

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

In the Matter of Instream Lease Application	)	DETERMINATION and
IL-1252, Certificates 53236,	)	FINAL ORDER ON PROPOSED
Lane 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**

Curtin Mitchell  
2400 Charnelton Street  
Eugene, Oregon 97405

**Findings of Fact**

1. On June 28, 2012 Curtin Mitchell filed an application to lease a portion of Certificate 53236 for instream use. The Department assigned the application number IL-1252.
2. The portion of the right to be leased is as follows:

**Certificate:** 53236 in the name of CURTIN MITCHELL (perfected under Permit S-41879)  
**Use:** Irrigation of 7.1 Acres  
**Priority Date:** MAY 3, 1977  
**Quantity:** **Rate:** 0.09 Cubic Foot per Second (CFS)  
**Volume:** 17.75 Acre-Feet (AF)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year  
**Source:,** SOUTH FORK SIUSLAW RIVER, tributary to the SIUSLAW RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	5 W	WM	23	NE NW	890 FEET SOUTH AND 1200 FEET EAST FROM THE NW CORNER OF THE NE NW OF SECTION 23

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:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
20 S	5 W	WM	14	SW SE	Gardner DLC 47	0.7
20 S	5 W	WM	23	NW NE	Gardner DLC 47	6.4
<b>TOTAL:</b>						<b>7.1</b>

3. Certificate 53236 does not specify the irrigation season. However, OAR 690-250-0070 established a 245-day default irrigation season between March 1 and October 31. The default irrigation season shall serve as the basis for this instream lease.
4. 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
5. The Applicant proposed to protect water under Certificate 53236 at a rate of 0.089 CFS (7.1 Acres x 1/80 CFS per Acre = 0.089 CFS). However, if water was protected at the maximum rate, 1/80 CFS per acre, over the full 245-day season, the 2.5 acre-feet per acre limitation imposed by Water Right Certificate 53236 would be exceeded, which would cause the right to be enlarged. To prevent enlargement of the right, the maximum rate that can be protected instream during the full 245-day season (March 1 through October 31), is 0.037 CFS.
6. The instream use has been modified from the lease application to prevent enlargement and is as follows:

SOUTH FORK SIUSLAW RIVER, tributary to the SIUSLAW RIVER

**Instream Point:** At the POD described in Finding of Fact #2.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
53236	May 3, 1977	0.037 CFS	17.75 AF	March 1 through October 31

7. 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.
8. 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.
9. 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.

10. The Lessor requested that the lease terminate at the end of the 2017 season. However, OAR 690-077-0076 prohibits the term of an instream lease from exceeding five-years. Therefore, Instream Lease IL-1252 shall terminate on October 31, 2016.
11. The Lessor 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, 2016.
4. The Lessor *shall* have the option of terminating the lease by submitting a written request 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 (February 1) 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.

Dated at Salem, Oregon this 28 day of August, 2012.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

**AUG 30 2012**

Mailing date: \_\_\_\_\_

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or [thurgokj@wrds.state.or.us](mailto:thurgokj@wrds.state.or.us).