

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-748, Certificate 22034, Douglas County) FINAL ORDER ON PROPOSED
) 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

William R. and Vanessa R. Pence
 360 Pack Saddle Road
 Myrtle Creek, OR 97457

Findings of Fact

1. On April 8, 2013, William and Vanessa Pence filed an application to renew instream lease IL-748, involving a portion of Certificate 22034.
2. The portion of the right to be leased is as follows:

Certificate: 22034 in the name of Frank L. Radford (perfected under permit S-20318)
Use: Irrigation of 10.0 acres
Priority Date: May 2, 1951
Quantity: **Rate:** 0.13 Cubic Foot per Second (CFS)
Duty: 25.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre during the irrigation season of each year
Source: South Myrtle Creek, tributary to the Umpqua River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	DLC	Q-Q	Measured Distances
29 S	4 W	WM	20	39	SE NE	Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
29 S	4 W	WM	20	39	SE NE	9.8
29 S	4 W	WM	20	39	SW NE	0.2

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.

3. Certificate 22034 does not provided measured distances for the location of the point of diversion. Based upon consultation with the Department's local Watermaster, the point of diversion is located at approximately River Mile 7.3.
4. Certificate 22034 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.
5. Certificate 22034 identifies that South Myrtle Creek is tributary to the South Umpqua River. South Myrtle Creek is actually tributary to Myrtle Creek, which is tributary to the South Umpqua River.
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 use is as follows:
South Myrtle Creek, tributary to Myrtle Creek

Instream Reach: From the POD (as described in Finding of Fact #2), located at approximately River Mile 7.3, to the mouth of South Myrtle Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
22034	5/2/1951	0.12	25.0	July 15 through October 27

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. 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.
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 has requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.
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. During each year of the term of the lease, 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.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2017. For multiyear leases, 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 (July 15 through October 29) or after the period of allowed use has begun for the water right being leased, water shall not be used under the right leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 12 day of August, 2013.


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

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: AUG 15 2013