

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1170, Certificate 38639,)	FINAL ORDER ON PROPOSED
Polk 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

Gregory Koloen, Muir & McDonald Tannery
561 SW Hayter ST
Dallas, Oregon 97338
dallasdognews@aol.com

Lessee

The Freshwater Trust

Natasha Bellis
65 SW Yamhill ST, Suite 200
Portland, OR 97204
Natasha@thefreshwatertrust.org

Findings of Fact

1. On May 10, 2011 the Gregory Koloen, Muir & McDonald Tannery and The Freshwater Trust filed an application to lease all of Water Right Certificate 38639 for instream use. The Department assigned the application number IL-1170.

2. The right to be leased is as follows:

Certificate:	38639 in the name of Muir & McDonald Company
Use:	Industrial Tannery Use
Priority Date:	1863
Rate:	0.18 Cubic Foot per Second (CFS)
Source:	Rickreall Creek, tributary to the Willamette River

<p>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.</p>

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	5 W	WM	32	NE NE	J. LYLE DLC 68	NA

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC
7 S	5 W	WM	32	NE NE	J. LYLE DLC 68

3. Certificate 38639 does not specify the irrigation season. However, the general season of use for rights is January 1 through December 31.
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.
5. The instream use is as follows:

Rickreall Creek, tributary to the Willamette River

Instream Reach: From the POD, as described in Finding of Fact #2, to the mouth of Rickreall Creek

Certificate	Priority Date	Instream Rate	Period Protected Instream
38639	1863	0.18 CFS	January 1 through December 31

6. The Applicant requested the Department to protect the water instream from the POD on Rickreall Creek into the Willamette River. An instream reach is generally from the point of diversion to the mouth of the source stream but may be protected further if the right to be leased is measurable in the receiving stream (OAR 690-077-0015 (8)). The quantity of water protected under this lease, is not a measurable portion of the Willamette River and; therefore, cannot be protected beyond the mouth of Rickreall Creek.
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 has requested that the lease terminate on December 31, 2012.

CONCLUSIONS OF LAW

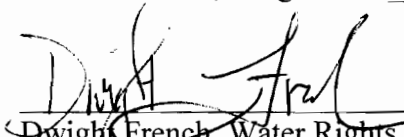
The Department concludes that the lease will not result in injury or enlargement pursuant to OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 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 (December 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.
4. The lease will terminate on December 31, 2012.

Dated at Salem, Oregon this 9 day of June 2011.


Dwight French, Water Rights Services Administrator for

Phillip C. Ward, Director

JUN 13 2011

Mailing date: _____

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrdd.state.or.us