

**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 56490, Jackson 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

J-Diamond L-5 Trust
Lawrence and Sharon Martin Trustees
P.O. Box 870
Rogue River, Oregon 97537

Lessee

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

Findings of Fact

1. On May 5, 2008, J-Diamond L-5 Trust and Oregon Water Trust filed an application to renew instream lease SL-5, involving all of Certificates 56490 to instream use. The Department assigned the application number SL-5.
2. The right to be leased is as follows:

Certificate: 56490 in the name of JAMES H AND LOTTIE L MARTIN (confirmed by Rogue River (F) State Water Board decree)

Use: DOMESTIC, STOCK, AND IRRIGATION OF 54.0 ACRES

Priority Date: 1902

Rate: 0.90 CUBIC FEET PER SECOND

Source: EVANS CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	4 W	WM	15	SE NW	1650 FEET SOUTH & 500 FEET WEST FROM N1/4 CORNER OF SECTION 15

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:

DOMESTIC, IRRIGATION, & LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	4 W	WM	15	NE NE	4.4
35 S	4 W	WM	15	NW NE	15.9
35 S	4 W	WM	15	SW NE	28.2
35 S	4 W	WM	15	SE NE	3.5
35 S	4 W	WM	15	NE NW	2.0

- 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.
- The existing use period is from May 12 through July 10. Water may be used up to a maximum rate of 0.90 cfs.
- The instream use is clarified from the original lease application to prevent injury and enlargement and is as follows:
Evans Creek
Tributary to Rogue River in the Rogue Basin

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

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
56490	1902	0.90	July 11 through September 23

- Other conditions to prevent injury and enlargement are:
The lessor shall make daily measurements of use during the existing use period. The measuring device shall be an inline flow totalizer that is place in the first length of mainline pipe near the pump, or another acceptable device to the Director. The daily measurements shall be submitted on a monthly basis to the Jackson County Watermaster.
- 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.
- 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.
- 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 lease will terminate on October 31, 2012.
11. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

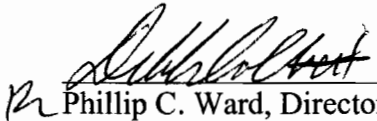
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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. The Lessor has the option of terminating the lease each year, with notification to the Department by April 12 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 12th day of June 2008.


Phillip C. Ward, Director

JUN 18 2008

Mailing date: _____