

**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
Certificate 29185, Washington 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

U.S. Fish & Wildlife Service
911 NE 11th Avenue
Portland, Oregon 97232-4181

Findings of Fact

1. The U.S. Fish & Wildlife Service filed an application to lease all of Certificate 29185 to instream use. The Department assigned the application number IL-869.
2. The right to be leased is as follows:

Certificate: 29185 in the name of DAVID/GERDA CEREGHINO (confirmed by Tualatin River decree)

Use: IRRIGATION of 8.0 ACRES

Priority Date: 1890

Rate: 0.10 CUBIC FEET PER SECOND

Limit/Duty: Not described on certificate

Source: CUMMINGS DITCH, tributary to ROCK CREEK

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	21	NW SW	1.5
2 S	1 W	WM	21	SW SW	6.5

3. For purposes of this lease, the applicant has identified the point of diversion (POD) as:

Twp	Rng	Mer	Sec	Q-Q
2 S	1 W	WM	20	NE NE

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.

4. The Tualatin River Decree limits the duty to 2.5 acre-feet/acre.
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 instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
CUMMINGS DITCH, tributary to ROCK CREEK

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

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
29185	1890	0.10	June 23 through September 30

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 lease will commence on April 1, 2008 and terminate on September 30, 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 commence on April 1, 2008 and terminate on September 30, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by May 23 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 22nd day of October 2007.


Phillip C. Ward, Director

Mailing date: OCT 24 2007