

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

In the Matter of Instream Lease Application) DENIAL OF PROPOSED INSTREAM
IL-1103, Certificates 43201, 456910 and) LEASE
45691, Douglas County)

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

Cameron Craig
Hampton Lumber Mills
9600 SW Barnes Road, Suite 200
Portland Oregon 97225
cameroncraig@hamptonaffiliates.com

Findings of Fact

1. On January 19, 2011 Hampton Lumber Mills, Inc. filed an application to lease all of Water Right Certificates 43201, 45690 and 45691 for instream use. The Department assigned the application number IL-1103.
2. The first right to be leased is as follows:

Certificate: 43201 in the name of FORT HILL LUMBER CO. (perfected under Permit S-36783)
Use: SAWMILL USE INCLUDING SPRINKLING LOG DECKS AND MAINTENANCE OF A FIRE SUPPRESSION SYSTEM
Priority Date: AUGUST 7, 1972
Rate: 1.11 CUBIC FEET PER SECOND
Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
6 S	7 W	WM	9	NE SW			2490 FT N & 1330 FT E FM SW COR, S9

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:

MAINTENANCE OF A FIRE SUPPRESSION SYSTEM					
Twp	Rng	Mer	Sec	Q-Q	GLot
6 S	7 W	WM	9	NE SW	3

SAWMILL USE INCLUDING SPRINKLING LOG DECKS					
Twp	Rng	Mer	Sec	Q-Q	GLot
6 S	7 W	WM	9	NE SW	3

3. The second right to be leased is as follows:

Certificate: 45690 in the name of FORT HILL LUMBER CO. (perfected under Permit R-6246)
Use: MAINTENANCE OF A FIRE SUPPRESSION SYSTEM
Priority Date: JULY 25, 1974
Duty: 2.0 ACRE FEET PER YEAR
Limit: FURTHER LIMITED TO AN AMOUNT BENEFICIALLY USED FOR SAID PURPOSES
Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	STORAGE LOCATION
6 S	7 W	WM	8	SE NE	FORT HILL RESERVOIR

Authorized Place of Use:

MAINTENANCE OF A FIRE SUPPRESSION SYSTEM					
Twp	Rng	Mer	Sec	Q-Q	
6 S	7 W	WM	8	SE NE	

4. The third right to be leased is as follows:

Certificate: 45691 in the name of FORT HILL LUMBER CO. (perfected under Permit S-38829)
Use: MAINTENANCE OF A FIRE SUPPRESSION SYSTEM
Priority Date: JULY 25, 1974
Rate: 0.220 CUBIC FOOT PER SECOND
Limit: FURTHER LIMITED TO AN AMOUNT BENEFICIALLY USED FOR SAID PURPOSES
Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	7 W	WM	8	SE NE	FORT HILL RESERVOIR 900 FEET NORTH AND 1145 FEET WEST FROM THE WEST ¼ CORNER OF SECTION 9
6 S	7 W	WM	9	NE SW	170 FEET SOUTH AND 1395 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 9

Authorized Place of Use:

MAINTENANCE OF A FIRE SUPPRESSION SYSTEM				
Twp	Rng	Mer	Sec	Q-Q
6 S	7 W	WM	9	NE SW

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. On January 21, 2011 the Department requested the local Watermaster to perform the customary review of Instream Lease Application IL-1103 pursuant to OAR 690-077-0077. The Watermaster indicated that he was uncertain as to when the water rights described above were last used. The Watermaster also indicated that the sawmill to which Water Right Certificates 43201, 45690 and 45691 are appurtenant, went out of business in the late 1990s and has been vacant for quite some time.
7. On January 31, and March 3, 2011 the Department notified Mr. Craig, via telephone and via email, that the lease could not be approved without additional evidence, sufficient to establish whether the rights described above have been used according to the terms and conditions specified in the certificates described above, during the five years prior to submission of Instream Lease application IL-1103.
8. On March 22, 2011 the Department notified, Mr. Craig, via email, that the Department had not received the requested additional evidence sufficient to establish that the water rights described by Water Right Certificates 43201, 45690 and 45691 have been used according to the terms and conditions specified in the certificates. The same notice also stated that failure to provide evidence sufficient to establish that the right had been used according to the terms and conditions of the certificates, during the five years prior to submission of Instream Lease Application IL-1103, could result in denial of the application.
9. The March 22, 2011 notice also informed Mr. Craig that if he was not able to provide the requested evidence prior to April 6, 2011, he could withdraw the instream lease application entirely, or withdraw the instream lease application and submit a Time Limited Instream Transfer as provided under OAR 690-077-0075, which would allow the Department to perform a more in-depth investigation regarding the actual use of the rights.
10. On March 25, 2011 Mr. Craig notified the Department that the property to which Water Right Certificates 43201, 45690 and 45691 are appurtenant, had been leased to Cascade Laminates from September 5, 2006 through December 23, 2009.
11. Mr. Craig did not provide any evidence that would indicate how much water, if any, had actually been used by Cascade Laminates or by any other party during previous five years.

CONCLUSIONS OF LAW

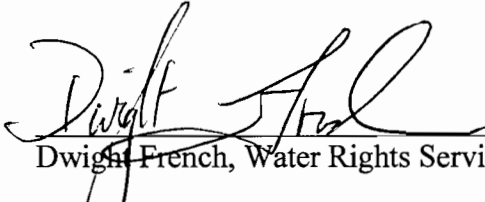
1. The Department concludes that approval of instream Lease Application IL-1103 is not consistent with the requirements OAR 690-077-0077.
2. The proposed instream lease does not conform to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is DENIED..

Dated at Salem, Oregon this 13 day of June 2011.


Dwight French, Water Rights Services Administrator for
Phillip C. Ward, Director

Mailing date: JUN 13 2011

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@ wrd.state.or.us