

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

In the Matter of Instream Lease Application) CORRECTING ORDER ON
SL-16, Certificate 25341) INSTREAM LEASE SL-16
Grant 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

Gordon and Julie Larson
24335 Hwy. 395 South
Canyon City, Oregon 97820

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 300
Portland, Oregon 97204

Findings of Fact

1. On April 12, 2012, Gordon and Julie Larson and The Freshwater Trust filed a Split Season Instream Lease Application proposing to lease a portion of Water Right Certificate 25341 for instream use. The Department assigned the application number SL-16.
2. On July 23, 2012 the Department issued an order approving Instream Lease SL-16, recorded at Special Order Volume 88, Page 123. Following issuance of the order, the Department determined the description of the right to be leased and the instream season and quantity of water to be protected were incorrect. This order is being issued to correctly describe the instream right.

3. The portion of the right to be leased is as follows:

Certificate: 25341 in the name of BUD HINTON; SUCCESSOR IN INTEREST TO MARY HALL (confirmed by John Day River Decree)

Use: IRRIGATION of 47.8 ACRES

Priority Date: JULY 3, 1883

Season of Use: April 1 to September 30

Quantity: Rate: 1.195 Cubic Feet per Second (CFS) to June 1, and 0.598 CFS thereafter

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.

Duty: 191.20 Acre-Feet (AF)

Limit: One-fortieth CFS per acre to June 1 and One-eightieth CFS per acre thereafter, not to exceed 1.0 AF per calendar month to June 1 and 4.0 AF per acre during the irrigation season.

Source: BERRY CREEK, tributary to CANYON CREEK, and CANYON CREEK

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 14 S | 31 E | WM | 36 | SW NW | 23.3 |
| 14 S | 31 E | WM | 36 | NW SW | 18.8 |
| 14 S | 31 E | WM | 36 | SW SW | 5.7 |
| TOTAL: | | | | | 47.8 |

4. Certificate 25341 does not describe the location of the point of diversion. Based upon additional information provided by the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as, 44.312318 degrees latitude and - 118.940463 degrees longitude. Based on the location, it appears that the POD may also be described as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--------------------|
| 14 S | 31 E | WM | 36 | SW NW | BERRY CREEK DITCH |

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 in response to that notice.
6. The Applicants requested that water be protected instream from the POD on Berry Creek, as described in Finding of Fact #4, to the mouth of Canyon Creek. A portion of the water diverted at the POD returns to the system within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream, below the point of diversion, must be limited to the consumptive use portion of the right.
7. Application SL-16 is a Split Season Lease Application. The right described in Certificate 25341 may be used according to the terms and conditions of the certificate from April 1 until June 30, or until a maximum of 83.24 AF of water have been diverted.

Out of Stream Use: At the original place of use, as described in Finding of Fact #3

| Certificate | Priority Date | Rate | Period Available for Use |
|-------------|---------------|-----------|--------------------------|
| 25341 | 7/3/1883 | 1.195 CFS | April 1 through May 31 |
| 25341 | 7/3/1883 | 0.598 CFS | June 1 through June 30 |

8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

BERRY CREEK, tributary to CANYON CREEK

Instream Point: At the POD* described in Finding of Fact #4:

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume | Period Protected Instream |
|-------------|---------------|---------------------|-----------------|-----------------------------|
| 25341 | 7/3/1883 | 0.59 CFS | 107.66 AF | July 1 through September 30 |

*Approximately RM 8.

Instream Reach: From immediately below the POD described in Finding of Fact #4, to the confluence with Canyon Creek and then to the Grant County Courthouse in Canyon City:

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume | Period Protected Instream |
|-------------|---------------|---------------------|-----------------|-----------------------------|
| 25341 | 7/3/1883 | 0.36 CFS | 65.67 AF | July 1 through September 30 |

*Approximately RM 8.

9. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. The quantity of water protected instream shall be reduced by 1% per mile below the point of diversion.

The instream right created herein shall not result in the regulation of other water rights, except for those rights, which have been previously regulated as a result of the actual use of the right, according to the terms and conditions of Water Right Certificate 25341.

The Freshwater Trust (Lessee) shall use a data logger to record the quantity of water used for out of stream purposes. The record shall be kept on a daily basis from April 1 through June 30. Two-weeks prior to the period of instream use, The Freshwater Trust shall submit a draft Split Season Measurement Reporting Form to the Department's District #4 Watermaster office. No later than July 1 or the first business day thereafter, The Freshwater Trust shall submit a final Split Season Measurement Reporting Form to the Department's District #4 Watermaster office. Reporting requirements may be altered if deemed necessary by the Department's District #4 Watermaster office.

10. The Applicants requested that water be protected instream from Berry Creek into Canyon Creek. An instream reach is generally from the point of diversion to the mouth of the source stream but may be protected further if the quantity of the water to be protected instream is a measurable portion of the receiving stream. (OAR 690-077-0015 (8)). The quantity of water to be protected instream from Berry Creek is a measurable portion of the receiving stream and is protectable in Canyon Creek.

11. This instream lease is not 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.

12. 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.

13. 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.

14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

15. The Lessor requested the lease terminate on September 30, 2014.

CONCLUSIONS OF LAW

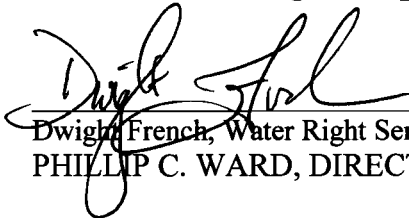
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 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 (March 1) prior to the first period of allowed use, 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 shall terminate on September 30, 2014.

Dated at Salem, Oregon this 16 day of April, 2013.


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

Mailing date: _____

Kody Thurgood prepared the order approving this Instream Lease. If you have any questions about the information in this document, you may contact Mr. Thurgood at 503-986-0892 or thurgokj@wrds.state.or.us.