

**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 53156, Marion 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**

Eric Gossler  
1200 Weaver Rd.  
Springfield, OR 97478  
[eric@gosslerfarms.com](mailto:eric@gosslerfarms.com)

**Findings of Fact**

1. On June 25, 2008, Eric Gossler filed an application to lease a portion of Certificate 53156 to instream use. The Department assigned the application number IL-944.
2. The description of the portion of the right to be leased has been modified from the lease application to clarify the portion of the right available to be leased and is as follows:

**Certificate:** 53156  
**Use:** Irrigation  
**Acres:** 19.7 acres  
**Priority Date:** August 6, 1976  
**Quantity:** Rate: 0.25 Cubic Foot per Second (CFS)  
Duty: 49.25 Acre-Feet (AF)  
**Source:** Cedar Creek, tributary to the McKenzie River

**Authorized Points of Diversion (POD) (approximate location):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
17 S	2 W	WM	26	SW SW	53	POD #1 – 620 FEET NORTH AND 1400 FEET WEST FROM THE NE CORNER OF MILLER DLC 48
17 S	2 W	WM	35	NE NE	53	POD #2 - 90 FEET SOUTH AND 210 FEET WEST FROM THE NW CORNER OF DAVIS DLC 50

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	2 W	WM	26	SW SE	53	8.2

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.

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	2 W	WM	26	SE SE	53	6.6
17 S	2 W	WM	35	NE NE	53	1.2
17 S	2 W	WM	3	NW NE	53	3.7

7. The irrigation season is not identified on Certificate 53156 requested to be leased instream. The irrigation season for the McKenzie River and its tributaries is March 1 through October 31.
8. 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.
9. The instream lease application seems to suggest that water is requested to be protected instream at POD #2 (as described in Finding of Fact #2). However, on July 31, 2008, the Watermaster for District 2 identified that water could be protected instream within a reach and recommended a reach beginning at the POD #2 and extending down to the mouth of Cedar Creek.
10. The lease application requests to protect water instream at the full rate and duty described in finding of Fact #2 but does not specify when water is requested to be protected instream. At the full rate and duty, water may be protected instream for a 100 day period or the rate may be reduced to protect water over the full irrigation season, March 1 through October 31. Based upon additional evaluation, the Department has identified that protecting water instream at the full rate and duty over a 100 day time period may provide greater instream benefit.
11. Based upon Finding of Fact #9 and #10, the instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Cedar Creek, tributary to the McKenzie River

**Instream Reach:** From POD #2 (as described in Finding of Fact 2) to the mouth of Cedar Creek

Certificate	Priority Date	Instream Rate	Instream Volume	Instream Period
53156	August 6, 1976	0.25 CFS	49.25 AF	June 23 through Sept 30

12. 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.
13. 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.

14. 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.
15. The Lessor has requested that this lease terminate on October 31, 2012.
16. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### CONCLUSIONS OF LAW

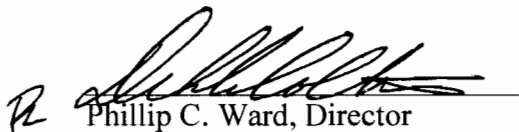
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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 February 1 of each year, and before any use has occurred on the property

Dated at Salem, Oregon this 5<sup>th</sup> day of August 2008.

  
Phillip C. Ward, Director

Mailing date: AUG 06 2008