

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

In the Matter of Instream Lease Application) CORRECTING ORDER ON
IL-1326, Certificate 42756, Klamath) INSTREAM LEASE
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 #1

Caldwell Family Trust, UDA January 5, 1996
19683 Webber Rd.
Klamath Falls, OR 97603

Lessor #2

Glen R. Crouch and Sharline J. Crouch Joint
Revocable Trust
180 Commercial St. NE, Suite 9
Salem, OR 97301

Findings of Fact

1. On June 27, 2013, the Caldwell Family Trust and the Glen Crouch and Sharline Crouch Joint Revocable Trust filed an application to lease a portion of Certificates 42756 and 8201 for instream use. The Department assigned the application number IL-1326.
2. On September 26, 2013, the Department issued an order approving Instream lease Il-1200, as evidenced by Special Order Volume 91, Page 366. Following issuance of the order, it was identified that the order incorrectly described the place of use of the water right being leased. This order is being issued to correctly describe the originating place of use. The correct place of use for the portion of Certificate 42756 being leased instream is described in Finding of Fact #4.
3. When the lease application was originally submitted to the Department, the section of the application initially identifying which rights were involved in the lease identified Certificates 42756 and 7168. The instream lease was public noticed including both of these rights. However, upon further review of the application, it was identified that the application proposes to lease Certificates 42756 and 8201. This was confirmed in a conversation with Glen Crouch on September 18, 2013. Given that the public notice did not include Certificate 8201, Mr. Crouch requested that the Department remove Certificate 8201 from the lease application and proceed with the lease for Certificate 42756.

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 portion of the right to be leased is as follows:

Certificate: 42756 in the name of JOSEPH AND FRANCES A. CABRAL AND RICHARD CABRAL (perfected under Permit S-37147)

Use: IRRIGATION of 108.8 ACRES

Priority Date: NOVEMBER 23, 1973

Quantity: **Rate:** 2.72 CUBIC FEET PER SECOND (CFS)

Duty: 326.4 Acre-Feet (AF)

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3 acre-feet for each acre irrigated during the irrigation season of each year

Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	10 E	WM	4	SW NW	1990 FEET SOUTH AND 600 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use (corrected):

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	10 E	WM	32	SE SW		29.5
36 S	10 E	WM	4	NE NW	3	31.9
36 S	10 E	WM	5	NE NE	1	2.4
36 S	10 E	WM	5	NW NE	2	23.7
36 S	10 E	WM	5	NE NW	3	21.3
Total Acres						108.8

5. Certificate 42756 does not specify the irrigation season. However, the recent Order of Determination for the Klamath Basin Adjudication identifies the irrigation season for the area of the place of use as April 1 through October 31.
6. 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.
7. At the maximum rate and volume requested, water may only be protected instream for a period of 60 days. However, the lease application also requests to protect water instream from May 3 through September 30, a 151 day period. To protect water instream over the full period requested in the lease application, the instream rate has been reduced.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Sprague River, tributary to the Williamson River

Instream Reach: From the POD (as described in Finding of Fact #4) to the mouth of the Sprague River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
42756	11/23/1973	1.09	326.4	May 3 through September 30

9. 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.
10. 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. The order approving this instream 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.
11. 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.
12. The Lessor has requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.
13. 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. This correcting order supersedes Special Order Volume 91, Page 366.
3. During each year of the term of the lease, 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.

4. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2017. For multiyear leases, 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 prior to the period of allowed instream use (May 3 through September 30) or after the period of allowed use has begun for the water right being leased, water shall not be used under the right leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 1 day of April, 2014.


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

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*

Mailing date: APR 04 2014