

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

In the Matter of Instream Lease Application) DETERMINATION and
SL-15, Certificate 57428,) FINAL ORDER ON PROPOSED
Union 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

Tony Malmberg
1782 South Main Street
Union, OR 97883

Lessee

The Freshwater Trust
65 SW Yamhill ST, Suite 200
Portland, Oregon 97204

Findings of Fact

1. On April 10, 2012 Tony Malmberg, in conjunction with The Freshwater Trust, filed a Split Season Instream Lease Application proposing to lease a portion of Water Right Certificate 57428 for instream use. The Department assigned the application number SL-15.
2. On August 30, 2012 The Freshwater Trust (TFT) installed a Sharp Crested Weir at the Catherine Creek POD for Water Right Certificate 57428. The Department's District #6 Watermaster had previously determined that a gage or meter would be required at the Catherine Creek POD to ensure the rights to be leased herein were not unintentionally diverted via the Guild United common delivery ditch.

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

Certificate: 57428 in the name of GUILD UNITED DITCHES (confirmed by Grande Ronde River)
Use: Irrigation of 20.0 Acres
Priority Date: 1874
Quantity: **Rate:** 0.5 Cubic Foot per Second (CFS)
Volume: 60.0 Acre-Feet (AF)
Limit: Not more than THREE ACRE feet per ACRE in any irrigation season diverted at a rate of not to exceed One-Fortieth CFS per acre

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.

Source:, CATHERINE CREEK, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	19	NE NE	150 FEET SOUTH AND 1730 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	19	SW SW	20.0

4. 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.
5. Certificate 57428 does not specify the irrigation season. OAR 690-250-0070 established a 245-day default irrigation season between March 1 and October 31. However, to provide the greatest benefit both on-farm and to the environment the Applicants requested the season be limited to the period from April 1 through September 30.
6. Application SL-15 is a Split Season Lease Application. The right described in Certificate 57428 may be used according to the certificate terms and conditions from April 1 until July 14, or until a maximum of 30.0 AF of water has been diverted.
7. The instream use is as follows:

Catherine Creek, tributary to the Grande Ronde River

Instream Reach: From the POD described in Finding of Fact #3, to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
57428	1874	0.19 CFS	30.0 AF	July 15 through September 30

8. 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. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

The Freshwater Trust (Lessee) shall use a totalizing flow meter 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 July 14. Prior to water being protected instream; The Freshwater Trust shall submit a completed Split Season Measurement Reporting Form to the Department's District #6 Watermaster's office within 7-days after the end of the on-farm use period.

9. If approved, this instream lease is not expected to 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. 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.
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 requested that the lease terminate on October 1, 2014.
13. The Lessor requested the option of terminating the lease early by written request 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 1, 2014.
4. The Lessor *shall* have the option of terminating the lease by submitting a written request 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 (March 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 17 day of Sept, 2012.



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

Mailing date: SEP 18 2012

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