

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

In the Matter of Instream Lease Application) DETERMINATION, CORRECTING
IL-1583, Union County) and CLARIFICATION of
) FINAL ORDER ON PROPOSED
) 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

Rodger Huffman
PO Box 847
Union, OR 97883

Lessee

The Freshwater Trust (TFT)
700 SW Taylor St., Suite 200
Portland, Oregon 97205
spencer@thefreshwatertrust.org

Findings of Fact

1. On March 6, 2017, Rodger Huffman and TFT filed an application to lease a portion of Certificate 81811 for instream use. The Department assigned the application number IL-1583.
2. On April 20, 2017, the applicant submitted an amended application and on May 10, 2017, an amended application map.
3. Following the issuance On May 24, 2017, of a final order approving instream lease application IL-1583, as evidenced by Special Order Volume 104, at Pages 1024-1027. The Lessee requested clarification of the instream reach. This order is issued to clarify the right as protected at the full rate at the point of diversion.
4. This Order is issued to clarify the protection at the point of diversion and supersedes Special Order Volume 104, Pages 1024-1027.
5. On August 8, 2017, the Department was notified by e-mail that the priority date for the second point to be protected instream was incorrectly identified. This order supersedes Special Order Volume 105, Pages 441-444. The correction will appear in bold italic in Finding of Fact No.11 below.
6. The portion of the right to be leased is as follows:

Certificate: 81811 in the name of Florence Dobbin (confirmed by decree of the Circuit Court of the State of Oregon for Union County; Volume 8, Page 1)

Use: Irrigation of 36.8 acres

Priority Dates: 1870 for Tract 1 and 1863 for Tract 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.

Quantity: **Rate:** 1.033 Cubic Foot per Second (CFS)
Duty: 123.9 Acre-Feet (AF)
Limit: One-fortieth of one cubic foot per second (CFS) per acre, not to exceed 3.0 AF per acre per year
Source: Catherine Creek for Tract 1 and Little Creek for Track 2, tributaries of the Grande Ronde River

Authorized Place of Use:

Priority Date	Twp	Rng	Mer	Sec	Q-Q	Tract #	Acres
1870	4 S	39 E	WM	13	SE NE	1	23.3
1863	4 S	39 E	WM	13	NE NE	2	13.5
Total:							41.3

7. Certificate 81811 does not specify the location of the authorized point of diversion. For purposes of this lease, based on information provided by the Department field staff, the POD may be described as indicated in the following table:

Authorized POD:

Twp	Rng	Mer	Sec	Q-Q	GPS Coordinates
4 S	40 E	WM	18	SW SW	POD #1: 45.2103, -117.8667
4 S	40 E	WM	18	SW SW	POD #2: 45.2209, -117.8874

8. Certificate 81811 does not specify the irrigation season. However, information was provided by the Watermaster specifying March 1 to October 31 of each year as the irrigation season for this area.
9. The lease application includes the information required under OAR 690-077-0076(3). On March 14, 2017, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
10. A portion of the water diverted at the POD returns to the system below the confluence of Little Creek on Catherine Creek 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 requires modification to account for surface return flows. The Watermaster has identified a reduction of 20% to mitigate for any injury as a result of the loss of any return flows.
11. The instream use has been modified from the lease application return flows resulting from the exercise of the existing water right would re-enter the river below the POD to prevent injury and enlargement and is as follows. The quantity of water to be protected instream has been reduced to account for return flows:
 Catherine Creek and Little Creek, tributaries of the Grande Ronde River

Instream Point #1: At POD #1 (as described in finding of Fact #7)

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
1870	0.58	69.90	July 1 – October 29

Instream Reach #1: From Immediately below the POD #1 (as described in Finding of Fact #7) to the mouth of Catherine Creek

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
1870	0.23	55.92	July 1 – October 29

Instream Point #2: At POD #2 (as described in finding of Fact #7)

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
1863	0.168	40.5	July 1 – October 29

Instream Reach #2: From Immediately below POD #2 (as described in Finding of Fact #7) to the mouth of Little Creek (at approximately RM 16.5)

Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
1863	0.14	32.40	July 1 – October 29

12. Other conditions to prevent injury and enlargement are:
 - a. The feeder ditches diverting water from the main ditch in this area must be blocked to assure the lands as identified in Finding of Fact #4 do not receive water during the term of this lease. The Lessor and Lessee shall coordinate with the local Watermaster to identify appropriate measures to prevent diversion of water during the term of this lease.
13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original right.
14. The protection of flows within the proposed reaches is appropriate considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the riverbed downstream from the point of diversion.
15. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
16. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
17. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
18. Based upon review of the application, 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.
19. 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.

20. The lease may terminate on the last day of the irrigation season, being October 31, 2017.
The lease may commence on the date this final order is signed.

21. The Lessors have indicated that they will not have the option of terminating the lease early.

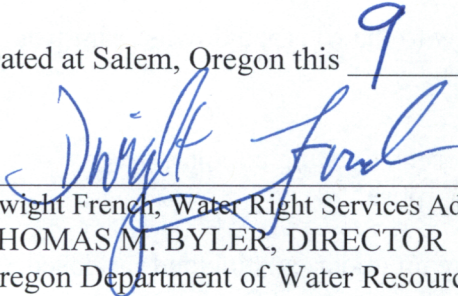
Conclusions of Law

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.

Now, therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. This order supersedes Special Order Volume 104, Pages 1024-1027 and Volume 105 Pages 441-444.
3. During 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.

Dated at Salem, Oregon this 9 day of August 2017.



Dwight French, Water Right Services Administrator, for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

*This document was prepared by
Joan Smith if you have questions;
please call 503-986-0892.*

Mailing date: AUG 15 2017