

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1001, Certificate 75656) FINAL ORDER ON PROPOSED
Umatilla 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

Clear Creek Cattle Company
101 SW 3rd Avenue
Pendleton, OR 97801

Lessee

Oregon Water Trust
65 SW Yamhill St., Suite 200
Portland, Oregon 97204

Findings of Fact

1. On May 15, 2009 the Clear Creek Cattle Company and the Fresh Water Trust (FWT), filed an application to lease a portion of Certificate 75656 for instream use. The Department assigned the application number IL-1001.

2. The right to be leased is as follows:

Certificate: 75656 in the name of CLEAR CREEK CATTLE COMPANY

Use: Irrigation of 60 acres

Priority Date: 1880

Quantity: **Rate:** 0.75 Cubic Foot per Second (CFS)

Duty: 270 Acre-Feet (AF)

Source: BIRCH CREEK, tributary to the UMATILLA RIVER

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	19	NE SW	2.0
2 N	32 E	WM	19	SE SW	16.0
2 N	32 E	WM	19	SW SE	18.5
2 N	32 E	WM	30	NE NE	15.0
2 N	32 E	WM	30	NW NE	8.5
TOTAL:					60.0

3. Neither Certificate 75656, nor the Umatilla Decree, specifies the point of diversion; however, the applicant provided evidence that the POD is located on Birch Creek at approximately River Mile (RM) 1.5.
4. Certificate 75656 does not specify the irrigation season. The Umatilla Decree establishes an irrigation season of March 1 through November 1 of each year; however, the Department has determined that to avoid injury and enlargement, the season during which right may be protected instream, must be limited to April 3 through September 30.
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.
6. To prevent injury and enlargement and to account for return flows and stream channel losses as described in Findings of Fact #7 and #8, the quantities of water that may be protected instream have been modified from the lease application and are as follow:

BIRCH CREEK, tributary to the UMATILLA RIVER

Instream Point: From the POD as described in Finding of Fact #3.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
75656	1880	0.75 CFS	270 AF	April 3 through September 30

Instream Reach: From just below the POD (as described in Finding of Fact #3) to the mouth of Birch Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
75656	1880	0.24 CFS	41.65 AF	April
		0.35 CFS	46.12 AF	May
		0.46 CFS	44.63 AF	June
		0.56 CFS	46.12 AF	July
		0.47 CFS	46.12 AF	August
		0.31 CFS	44.63 AF	September

7. Finding of Fact #6 contains a 3% delivery loss per mile. This loss factor is used to prevent injury due to potential losses in the system and losses shall be calculated and measured at the POD.
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 quantity of water protected instream

9. The lease application requests the Department to protect water instream from *Birch Creek* into the *Umatilla River*. An instream reach is generally from the point of diversion to the mouth of the source stream (*Birch Creek*) but may be protected further if measurable in the receiving stream (the *Umatilla River*) (OAR 690-077-0015 (8)). The quantity that may be leased instream from *Birch Creek* is not measurable into the *Umatilla River* and cannot be protected instream in the *Umatilla River*.
10. 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.
11. 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.
12. 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.
13. The Lessor has requested that the lease terminate on November 1, 2013.
14. 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.

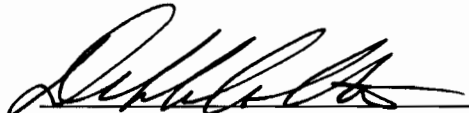
ORDER

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 November 1, 2013. 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 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 22nd day of July 2009.



Phillip C. Ward, Director

Mailing date: ~~JUL 28 2009~~