

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

In the Matter of Instream Lease IL-1312,) DETERMINATION and
Certificate 39246, Douglas County) 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

Paul Fieber
8674 South Myrtle Road
Myrtle Creek, Oregon 97457

Findings of Fact

1. On May 2, 2018, Paul Fieber filed an application to renew instream lease IL-1312, involving a portion of Certificate 39246 for instream use.

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

Certificate: 39246 in the name of Mrs. F. A. Moan (perfected under Permit S-6647)
Use: Irrigation of 32.5 acres
Priority Date: December 29, 1924
Quantity: **Rate:** 0.41 Cubic foot Per Second (cfs)
Limit: One-eightieth of one cubic foot per second per acre.
Source: Louis Creek, tributary to the South Umpqua River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	4 W	WM	23	NW NW	830 FEET SOUTH AND 1250 FEET EAST FROM NW THE CORNER OF SECTION 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
29 S	4 W	WM	23	NE NW	38	0.7
29 S	4 W	WM	23	NW NW	38	31.8

3. Certificate 39246 indicates that Louis Creek is tributary to the South Umpqua River. Louis Creek is more accurately described as a tributary to South Myrtle Creek.

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. Certificate 39246 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
5. Certificate 39246 does not specify a duty limit per acre. The original instream lease, IL-353, used 2.5 Acre-Feet (AF) per acre as a general duty to calculate the instream volume and instream period. The Department has identified that this still appears to be an appropriate duty per acre.
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. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Louis Creek, tributary to South Myrtle Creek

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
39246	December 29, 1924	0.19	81.25	April 1 through October 31

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. The protection of flows within the proposed reach 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 river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
10. 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.
11. 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.
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. 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.
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 the lease terminate on October 31, 2022. The lease may commence on the date this final order is signed.
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.

Now, therefore it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2022. 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 (April 1 through October 31) 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 JUN 15 2018.

Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

This document was prepared by Arla Heard and if you have any questions, please call 503-986-0806

Mailing date: JUN 15 2018