

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

In the Matter of Instream Lease Renewal) DETERMINATION and
IL-742, Certificate 21986, Washington) FINAL ORDER ON PROPOSED
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

Rick Krueger
P.O. Box 32
North Plains, OR 97133

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 300
Portland, Oregon 97204

Findings of Fact

1. On August 13, 2013, Rick Krueger and The Freshwater Trust filed an application to renew instream lease IL-742, involving a portion of Certificate 21986 for instream use.
2. The portion of the right to be leased is as follows:

Certificate: 21986 in the name of Charles Schmidlin, perfected under Permit S-17634
Use: Irrigation of 7.7 acres
Priority Date: March 26, 1947
Quantity: **Rate:** 0.10 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: DAIRY CREEK, tributary to TUALATIN RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	24	NW NW	NOT SPECIFIED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	4 W	WM	13	SW SW	0.1
2 N	4 W	WM	14	SE SE	5.5
2 N	4 W	WM	23	NE NE	0.1
2 N	4 W	WM	24	NW NW	2.0

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.

- Certificate 21986 does not provide measured distances for a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 N	4 W	WM	24	NW NW	LATITUDE 45.64964294 LONGITUDE -123.13365936

- Certificate 21986 does not specify the irrigation season. However, the Tualatin River Decree identifies the irrigation season as May 1 through September 30.
- Certificate 21986 describes the source of water as Dairy Creek. The applicant and the Department have identified that current maps more accurately describe the source as West Fork Dairy Creek.
- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on August 20, 2013 pursuant to OAR 690-077-0077(1). No comments were received.
- The instream use is as follows:
WEST FORK DAIRY CREEK tributary to TUALATIN RIVER

Instream Reach: From POD (as described in Finding of Fact #4) to the mouth of the West Fork Dairy Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
21986	March 26, 1947	0.10	19.25	June 22 through September 30

- 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.
- 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.
- 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.
- The Lessor has requested that the lease terminate on September 30, 2017. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on May 1, 2014, being the first day of the irrigation season.

12. The Lessor has indicated that they will not have the option of terminating the lease early without consent by all parties to the lease.

CONCLUSIONS OF LAW

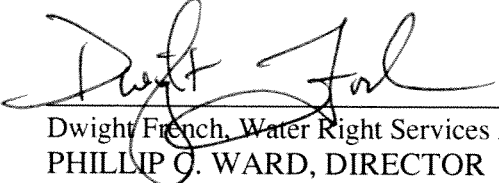
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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.

Dated at Salem, Oregon this 10 day of December, 2013.



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

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0898*

Mailing date: DEC 16 2013

