

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

In the Matter of Instream Lease Application)
IL-933, Jackson County) DETERMINATION and
) 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 No. 1

Jim & Rebecca Estremado
12162 Blackwell Rd.
Central Point, OR 97502

Lessor No. 2

H.V. Hymas
12300 Blackwell Rd.
Central Point, OR 97502

Lessor No. 3

Jean A. Beck
1933 N 2nd Ave.
Gold Hill, OR 97525

Findings of Fact

1. On April 18, 2014, Jim & Rebecca Estremado, H.V. Hymas, and Jean A. Beck filed an application to renew instream lease IL-933, involving lease a portion of Certificate 30666 and the entirety of Certificate 35857.
2. The portion of the first right to be leased is as follows:
Certificate: 30666 in the name of Chavner Thompson (perfected under Permit S-24546)
Use: Irrigation of 133.4 acres
Priority Date: September 17, 1956
Quantity: **Rate:** 1.88 Cubic Foot per Second (CFS)
Volume: 600.3 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: Rogue River, tributary to the Pacific Ocean

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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	3 W	WM	15	SW SE	5	None Provided

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
36 S	3 W	WM	15	SW SE	5		2.0
36 S	3 W	WM	15	SE SE			24.1
36 S	3 W	WM	22	NE NE	6		31.2
36 S	3 W	WM	22	NE NE		37	1.3
36 S	3 W	WM	22	NW NE	1		4.5
36 S	3 W	WM	22	SE NE		37	16.7
36 S	3 W	WM	23	NW NW	1		5.8
36 S	3 W	WM	23	NW NW		37	1.4
36 S	3 W	WM	23	SW NW	2		2.4
36 S	3 W	WM	23	SW NW		37	34.1
36 S	3 W	WM	23	SE NW			1.7
36 S	3 W	WM	23	NW SW		37	8.2
Total Acres							133.4

3. Certificate 30666 is for the purpose of irrigation of 133.4 acres and supplemental irrigation of 16.6 acres. For the purposes of this lease, only the 133.4 acres will be leased. The supplemental 16.6 acres are not included in this lease.

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

Certificate: 35857 in the name of Chavner Thompson (perfected under Permit S-30462)
Use: Irrigation of 49.1 acres
Priority Date: May 10, 1965
Quantity: **Rate:** 0.61 Cubic Foot per Second (CFS)
Volume: 220.95 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: Rogue River, tributary to the Pacific Ocean

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	3 W	WM	15	SW SE	4	1170 FEET NORTH AND 2020 FEET WEST FROM THE SE CORNER OF SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
36 S	3 W	WM	23	NW NE			2.9
36 S	3 W	WM	23	SW NE			0.2
36 S	3 W	WM	23	NE NW			23.0
36 S	3 W	WM	23	NW NW	1		8.4
36 S	3 W	WM	23	NW NW		37	0.2
36 S	3 W	WM	23	SW NW	2		0.2

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
36 S	3 W	WM	23	SE NW			14.2
Total Acres							49.1

5. Certificates 30666 and 35857 do not specify the irrigation season. However, the irrigation season by decree for the Rogue River is April 1 through October 31.
6. The POD for Certificate 35857 is the same as the POD for Certificate 30666. The POD for Cert 35857 shall be used as the instream point for purposes of this lease.
7. 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.
8. The instream period requested in the original lease application for Certificate 35857 was May 13 through October 31, a 173 day period. In the order approving IL-933 issued on July 30, 2008, as evidenced by Special order Volume 75, Page 430, the Department identified that at the full instream rate and volume requested water could be protected instream over a 182 day period. Based upon continued evaluation, the Department has identified that at the requested instream rate (0.61 CFS) and volume (221.0 AF), water may be protected instream for a period of 181 days.
9. Based on Finding of Fact No. 8, the instream use has been clarified and modified from the original lease application to prevent injury and enlargement and is as follows:
Rogue River, tributary to Pacific Ocean

Instream Point: At the POD (as described in Finding of Fact No. 4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
30666	9/17/1956	1.67	600.30	May 4 through October 31
35857	5/10/1965	0.61	220.95	
Total Instream		2.28	821.25	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. The protection of flows at the authorized points of diversion is appropriate, considering:
 - a. The instream water use begins at the recorded points of diversion;
 - b. The location of confluences with other streams downstream of the points of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d. Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the points of the instream water right.
12. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.

13. Certificate 35857 is junior to two existing instream water rights, Certificates 59806 and 59847, and will therefore be additive to these rights. On May 12, 2014, Oregon Department of Fish and Wildlife provided the following statement regarding additional flows in the Rogue River:

All water leased instream to the Rogue River will add to current minimum flow standards and assist in providing maintenance and enhancement of fish and wildlife populations and their habitats. Additional flow will also provide public benefit by adding water for recreation, pollution abatement, and navigation.

14. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
15. 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.
16. 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.
17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
18. The Lessors have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed.
19. The Lessors have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

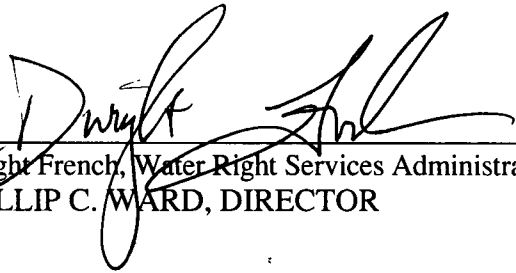
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. 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 irrigation water rights, including ground water registrations and permits.

3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2018. For multiyear leases, the lessors *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (May 4 through October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 22 day of May, 2014.



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

*This document was prepared by
Mellony Hoskinson and if you have any
questions, please call 503-986-0887.*

Mailing date: MAY 23 2014