

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1011, Yamhill County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Grauer Bros.
21400 SW Gopher Valley Road
Sheridan, OR 97378

Findings of Fact

1. On February 2, 2015, Grauer Bros. filed an application to renew instream lease IL-1011, involving the entirety of Certificates 22025, 40630, 46112 and 57110 and a portion of Certificate 76306.
2. The first right to be leased is as follows:

Certificate: 22025 in the name of Jacob Grauer (perfected under permit S-20016)
Use: Irrigation of 10.0 acres
Priority Date: November 24, 1950
Quantity: **Rate:** 0.13 Cubic Foot per Second (CFS)
Duty: 25.0 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 2.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: Deer Creek, tributary to South Fork Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	NONE SPECIFIED

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	DLC	Acres
5 S	6 W	WM	24	NE SE	64	2.5
5 S	6 W	WM	24	NW SE	64	7.5

3. The second right to be leased is as follows:

Certificate: 40630 in the name of Jacob Grauer (perfected under permit S-33091)

Use: Irrigation of 28.0 acres

Priority Date: December 6, 1967 for 0.13 CFS and
January 22, 1968 for 0.22 CFS

Quantity: Rate: 0.35 CFS

Duty: 70.0 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 2.5 AF per acre for each acre irrigated during the irrigation season of each year

Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	2420 FEET SOUTH AND 1860 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	NE NE	64	15.2
5 S	6 W	WM	24	SE NE	64	12.8

4. The third right to be leased is as follows:

Certificate: 46112 in the name of Jacob Grauer (perfected under permit S-19100)

Use: Irrigation of 14.7 acres

Priority Date: August 10, 1949

Quantity: Rate: 0.18 CFS

Duty: 36.75 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 2.5 AF per acre for each acre irrigated during the irrigation season of each year

Source: Deer Creek, tributary to South Fork Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	280 FEET NORTH AND 2160 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	SW NE	64	9.2
5 S	6 W	WM	24	SE NE	64	5.5

5. The fourth right to be leased is as follows:

Certificate: 57110 in the name of Eugene Grauer (perfected under permit S-37968)
Use: Irrigation of 29.1 acres
Priority Date: April 10, 1973
Quantity: **Rate:** 0.36 CFS
Duty: 72.75AF
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 2.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	350 FEET NORTH AND 1850 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	6 W	WM	24	SE NE	64	13.3
5 S	6 W	WM	24	NE SE	64	13.1
5 S	6 W	WM	24	NW SE	64	2.7

6. Certificate 22025 does not provided a measured distance of the point of diversion. Based upon additional information provided by the Department’s Watermaster, this is the same point of diversion as described in Certificates 40630, 46112, and 57110. For purposes of this instream lease, the description point of diversion for Certificates 22025, 40630, 46112, and 57110 is as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	6 W	WM	24	SW NE	64	350 FEET NORTH AND 1850 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 24

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

Certificate: 76306 in the name of Jan P. and Linda K. Wepster (perfected under permit S-45983)
Use: Irrigation of 46.8 acres
Priority Date: May 1, 1981
Quantity: **Rate:** 0.59 CFS
Duty: 117.0 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 2.5 AF per acre for each acre irrigated during the irrigation season of each year
Source: Deer Creek, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	5 W	WM	30	NE SE	53	1500 FEET NORTH AND 550 FEET WEST FROM THE SE CORNER OF SECTION 30

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	30	NE NE	53	4.8
5 S	5 W	WM	30	SE NE	53	24.7
5 S	5 W	WM	30	NE SE	53	17.3

8. Certificates 40630, 57110 and 76306 incorrectly identify that Deer Creek is a tributary to the Yamhill River. Deer Creek is actually a tributary to the South Yamhill River.
9. Certificates 22025, 40630, 46112, 57110 and 76306 do not specify the irrigation season. However, based upon the Yamhill River Decree, the irrigation season for the Yamhill River and its tributaries is April 1 through September 30 of each year.
10. 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.
11. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deer Creek, tributary to South Yamhill River

Instream Reach No. 1: From the POD described in Finding of Fact No. 6 to the POD described in Finding of Fact No. 7.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
22025	November 24, 1950	0.13	25.00	June 22 through September 30
40630	December 6, 1967	0.13	25.90	
	January 22, 1968	0.22	44.10	
46112	August 10, 1949	0.18	36.75	
57110	April 10, 1973	0.36	72.75	
Total		1.02	204.5	

Instream Reach No. 2: From the POD described in Finding of Fact No. 7 to the point at which Hwy 18 crosses Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
22025	November 24, 1950	0.13	25.0	June 22 through September 30
40630	December 6, 1967	0.13	25.9	
	January 22, 1968	0.22	44.1	
46112	August 10, 1949	0.18	36.75	
57110	April 10, 1973	0.36	72.75	
76306	May 1, 1981	0.584	117.0	
Total		1.604	321.5	

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

13. The protection of flows within the proposed reach 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 right would re-enter the river downstream of the reach of the instream water right.
14. Instream water rights, with a senior priority date, created through an instream lease, instream transfer, and/or allocation of conserved water are generally additive to each other and replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion (ORS 537.346) or the state agency application process (ORS 537.341) to establish new instream water rights. There are two instream rights currently on Deer Creek within the same proposed reach. There is an instream lease, IL-232, with a priority date of December 12, 1951. There is also an instream water right, Certificate 72984, established under ORS 537.341, with a priority date of August 5, 1993. This instream right protects up to 1.5 CFS year round for pollution abatement.
15. By replacing the quantities protected instream under Certificate 72984 with the quantities protected under IL-232 and proposed under IL-1011, the total monthly instream quantities will exceed the amounts identified as necessary for pollution abatement under Certificate 72984. However, the Department has identified that this instream lease will provide an additional beneficial purpose. The Department of Environmental Quality (DEQ) has listed Deer Creek on the 2010 Water Quality Assessment 303D list, as a water body with water quality issues that need to be addressed. In addition, DEQ staff has identified that additional flows are beneficial for pollution abatement.

Therefore, during the term of this lease, the quantities projected instream under this lease may be additive to other existing water rights established under ORS 537.348 (instream lease and instream transfer) and 537.470 (allocation of conserved water) and may replace all or a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes. In addition, the quantities protected instream over 1.5 CFS under this lease and IL-232 may be additive to Certificate 72984.
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 significantly affect land use 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, transferred and/or reviewed under 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.
20. The Lessor has requested that the lease terminate on September 30, 2019. The lease may commence on the date this final order is.
21. 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. 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 September 30, 2019. For multiyear leases, the lessor *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 (June 22 through September 30) 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 15 day of April, 2015.


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

APR 17 2015

Mailing date: _____

This document was prepared by
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questions, please call 503-986-0888.