

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

In the Matter of Instream Lease Application)
IL-1480, Wasco County)
) DETERMINATION and
) 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

John Dillon
Dillon Land and Cattle Co.
83807 Dufur Valley Rd.
Dufur, OR 97021

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 200
Portland, Oregon 97204

Findings of Fact

1. On May 21, 2015, Dillon Land and Cattle Company and TFT filed an application to lease the entirety of Certificate 5674 for instream use. The Department assigned the application number IL-1480.

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

Certificate: 5674 in the name of W.M. T. Vanderpool (perfected under the Fifteenmile Creek Decree, of record at Salem, in the Order Record of the State Engineer, in Volume 7, at page 406)

Use: Irrigation of 44.88 acres in Tract No. 1, 28.87 acres in Tract No. 2, and 9.36 acres in Tract No. 3

Priority Date: 1860 for Tract No. 1, 1862 for Tract No. 2, and 1893 for Tract No. 3

Quantity: Volume: 134.4 Acre-Feet (AF) for Tract No. 1, 86.61 AF for Tract No. 2, and 28.08 AF for Tract No. 3

Limit: 3.0 AF per acre in any irrigation season

Source: Fifteenmile Creek, tributary to the Columbia River

Authorized Point of Diversion (POD): Not specified on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Tract	Q-Q	Acres
1 S	13 E	WM	34	1	NW NE	9.90
1 S	13 E	WM	34	2	NW NE	10.33
1 S	13 E	WM	34	1	SW NE	22.14

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.

Twp	Rng	Mer	Sec	Tract	Q-Q	Acres
1 S	13 E	WM	34	1	NE NW	2.40
1 S	13 E	WM	34	2	NE NW	18.54
1 S	13 E	WM	34	1	SE NW	10.44
1 S	13 E	WM	34	3	SE NW	9.36
Total Acres						83.11

3. Certificate 5674 does not provided a description of the location of the point of diversion. Transfer applications (I-15 and I-19) affecting the location of the points of diversion were approved by the Department on October 19, 1960, as evidenced by Special Order Volume 10, Page 196 (amended by Special Order Volume 13, Page 196) for Transfer I-15, and on March 24, 1964, as evidenced by Special Order Volume 13, Page 286, for Transfer I-19. The channel of Fifteenmile Creek has migrated since those transfers were originally approved by the Department. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease only, the points of diversion are described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	34	NE NW	Pump No. 1: 1130 FEET SOUTH AND 2150 FEET EAST FROM THE NW CORNER OF SECTION 34
1 S	13 E	WM	34	NW NE	Pump No. 2: 1100 FEET SOUTH AND 3120 FEET EAST FROM THE NW CORNER OF SECTION 34

4. The transfer orders for I-15 and I-19 further limited the use of each pump by Tract. Use of water from each point of diversion appears to be further limited as follows:

Twp	Rng	Mer	Sec	Tract	POD Pump	Q-Q	Acres
1 S	13 E	WM	34	1	1 & 2	NW NE	9.90
1 S	13 E	WM	34	2	2	NW NE	10.33
1 S	13 E	WM	34	1	1 & 2	SW NE	22.14
1 S	13 E	WM	34	1	1 & 2	NE NW	2.40
1 S	13 E	WM	34	2	1	NE NW	18.54
1 S	13 E	WM	34	1	1 & 2	SE NW	10.44
1 S	13 E	WM	34	3	1	SE NW	9.36
Total Acres							83.11

5. Certificate 5674 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.
6. Certificate 5674 describes the annual duty of their respective rights as 3.0 acre-feet (AF) per acre; however the Fifteenmile Creek Decree further describes the duty in the following 30-day volumes: Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30-day period. From July 1st, the diversion is limited to $\frac{3}{4}$ AF per acre in any 30-day period.

7. Certificate 5674 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree indicates that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40th of one Cubic Foot per Second (CFS) per acre after July 1st, except in case of rotation.

Priority Date	Max Rate After July 1 st
1860	1.12 CFS
1862	0.72 CFS
1893	0.23 CFS

8. There appears to be one supplemental irrigation water right, Certificate 55629, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
9. 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.
10. The Lessor and Lessee have requested that the instream use begin at the PODs, as described in Finding of Fact No. 3. The PODs are located above a known losing reach on Fifteenmile Creek, which begins at approximately River Mile 30.5. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to more than 50 percent. Therefore, the quantities of water that may be protected instream beginning at each POD will be reduced at River Mile 30.5 by 50 percent to prevent injury to downstream water users and/or enlargement of the water right.
11. The instream use may also be conditioned to allow more or less water to be protected instream below the POD based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at the POD.
12. The instream quantities and period requested require modification. Use of water under Certificate 5674 is limited to a duty of no more than 0.75 AF per acre after July 1. At the instream rates requested during the requested instream period July 1 through September 30, this duty limitation would be exceeded. The instream rates have been reduced to the equivalent of 1/80th CFS per acre, which will not exceed the duty limitations described in Finding of Fact No. 6. The instream period may also be expanded based upon the reduced instream rate.

13. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Fifteenmile Creek, tributary to the Columbia River

Instream Reach No. 1: From Pump No. 1 to Pump No. 2 (both as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5674	1860	0.56	134.64	June 2 through September 30
	1862	0.23	55.62	
	1893	0.12	28.08	
	Total Instream	0.91	218.34	

Instream Reach No. 2: From Pump No. 2 to River Mile 30.5

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5674	1860	0.56	134.64	June 2 through September 30
	1862	0.36	86.61	
	1893	0.12	28.08	
	Total Instream	1.04	249.33	

Instream Reach No. 3: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5674	1860	0.28	67.20	June 2 through September 30
	1862	0.18	43.08	
	1893	0.06	14.04	
	Total Instream	0.52	124.32	

14. Other conditions to prevent injury and enlargement are:

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the points of diversion, within the specified stream reach from the River Mile 30.5 to the mouth of Fifteenmile Creek, and whether the described instream flows below River Mile 30.5 may be adjusted. If adjusted, instream flows from River Mile 30.5 to the mouth of Fifteenmile Creek may not exceed the quantities specified at the pump locations.

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

16. 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 point of diversion.
- c. There are known areas of natural loss of streamflow to the river bed downstream from the points of diversion and have been accounted for in Reach No. 3; 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.
17. Instream water rights, with a senior priority date, created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach, during the month of September, will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 64744, which was created under ORS 537.341, the application process for state agencies to establish new instream water rights, and Certificate 59678, which was established under ORS 537.346, the conversion of minimum streamflows to instream rights. However, the Department has identified that this instream lease will provide an additional beneficial purpose. The proposed instream lease has priority dates of 1860, 1862 and 1893. Several of the existing instream water rights on Fifteenmile Creek have priority dates junior to 1909 and may only be 85 percent reliable depending upon the water year.
18. Based upon additional information from the Department's Watermaster, water rights with priority dates junior to 1909 are generally regulated off by August 1, if not sooner. Given the current water year, the Watermaster has identified that water rights with priority dates junior to 1909 may be regulated off as early as July 1. The Oregon Department of Fish and Wildlife has identified that this portion of Fifteenmile Creek is a high priority for streamflow restoration and that additional streamflow is significant for the protection of aquatic habitat and recovery of salmonids in the Fifteenmile Creek watershed.
19. The Department has identified that during the term of this lease, the quantities protected instream may be additive to other existing instream water rights established within the same reach under ORS 537.341 (state agency instream water right application process), 537.346 (minimum streamflow conversion process), 537.348 (instream transfer and instream lease process) or 537.470 (allocation of conserved water process) during the month of September. During June 2 through August 31, this instream use will be additive to instream rights created under ORS 537.348 and 537.470 and replace portions of instream rights created under ORS 537.341 and 537.346.
20. 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.
21. 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.
22. 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.
23. 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.

24. 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.
25. The Lessor and Lessee have requested that the lease terminate on September 30, 2015. The last day in the term of a lease is generally the last day of the irrigation season. An irrigation season for Fifteenmile Creek is not defined by certificate or decree. Consistent with Finding of Fact No. 4, the lease may terminate on October 31, 2015. The lease may commence on the date this final order is signed.

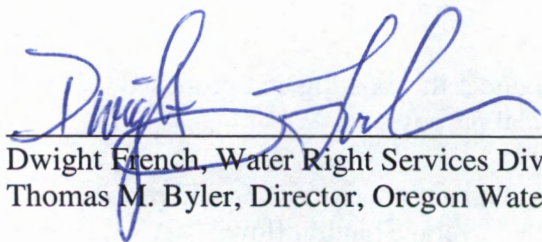
Conclusions of Law

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 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, 2015.

Dated at Salem, Oregon this 13 day of July, 2015.



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

Mailing date: JUL 15 2015

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.