

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1158, Certificate 49739,) FINAL ORDER ON PROPOSED
Union 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

John Sheehy
P.O. Box 253
Union, OR 97882

Lessee

The Freshwater Trust
David Pilz
65 SW Yamhill ST, Suite 200
Portland, OR 97204

Findings of Fact

1. On April 14, 2011 John Sheehy and David Pilz of The Freshwater Trust filed an application to lease a portion of Certificate 49739 for instream use. The Department assigned the application number IL-1158.

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

Certificate: 49739 in the name of ROBERT W KIMBRO (confirmed by Grande Ronde River Decree)

Use: Irrigation of 34.2 acres

Priority Date: 1867

Quantity: **Rate:** 0.85 Cubic Foot per Second (CFS)

Duty: 102.6 Acre-Feet (AF)

Limit: One-fortieth CFS per acre, not to exceed 3.0 AF per acre per year

Source: CATHERINE CREEK, a tributary of the GRANDE RONDE RIVER

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	Measured Distances
4 S	39 E	WM	14	SW SE	400 FEET NORTH AND 1140 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	23	NW NE	13.6
4 S	39 E	WM	23	NE NW	20.6
Total:					34.2

3. Certificate 49739 does not specify the irrigation season. However, the Applicants have requested that the water protected under this lease be protected from July 1 through October 30.
4. 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 in response to that notice.
5. The instream use is as follows:

CATHERINE CREEK, a tributary of the GRANDE RONDE RIVER

Instream Reach #1: From the POD, as described in Finding of Fact #2, to the gauging station located at the 10th Street Bridge.

Certificate	Priority Date	Instream Rate	Period Protected Instream
49739	1867	0.42 CFS	July 1 through October 30

Instream Reach #2: From the gauging station located at the 10th Street Bridge to the Lower Davis Dam.

Certificate	Priority Date	Instream Rate	Period Protected Instream
49739	1867	0.35 CFS	July 1 through October 30

6. Other conditions to prevent injury and enlargement are:
 - a. To avoid injury and enlargement, the second reach has been reduced to the consumptive use portion of the right.
 - b. If transport losses become evident the quantity of water protected instream under this lease may be adjusted accordingly.
 - c. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.
7. 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.

8. 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. This finding is made through an abbreviated review recognizing that the 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.
9. 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.
10. The Lessor requested that the lease terminate on October 30, 2011.

CONCLUSIONS OF LAW

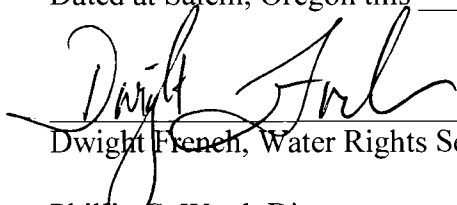
The Department concludes that the lease will not result in injury or enlargement pursuant to OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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 during the term of the lease.
3. The lease will terminate on October 30, 2011.

Dated at Salem, Oregon this 27 day of June 2011.



Dwight French, Water Rights Services Administrator for

Phillip C. Ward, Director

Mailing date: _____

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrds.state.or.us