

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

In the Matter of Instream Lease Renewal) **S U P E R S E D I N G**
IL-594, Certificates 5678, 40409 and 55638,) DETERMINATION and
Wasco County) 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 #1

Paul Schanno
82163 Dufur Valley Road
Dufur, Oregon 97201

Findings of Fact

1. On July 21, 2010 the Department issued a Determination and Final Order on Proposed Instream Lease IL-594, recorded at Special Order Volume 81, Pages 445 through 449. The order approving the renewal of IL-594 contained scrivener errors in Findings of Fact #5 and #7. This order corrects the error in Finding of Fact #5 ***bold italicized*** script and omits the extraneous language from Finding of Fact #7.
2. On June 1, 2010 Paul Schanno filed an application to renew instream lease L-594. The Department assigned the application number IL-594.
3. Certificate 55638 is a groundwater right for primary irrigation of 66.9 acres and supplemental irrigation of 24.4 acres. This right may not be leased instream. Groundwater rights are not one of the rights subject to being leased instream. OAR 690-077-0077(1).
4. The first right to be leased is as follows:

Certificate: 5678 in the name of SAM WARD
Use: Irrigation of 41.32 acres
Priority Date: 1869
Quantity: **Rate:** 1.03 Cubic Foot per Second (CFS)
Duty: 123.96 Acre-Feet (AF)
Limit: One-fortieth CFS per acre, not to exceed 3.0 AF per acre per year further limited to 1 AF in any 30-day period prior to July 1, and 3/4 AF in any 30-day period thereafter.

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.

Source: FIFTEEN MILE CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	3	SW SW	2.55
1 S	14 E	WM	9	NE NE	14.10
1 S	14 E	WM	9	SE NE	14.35
1 S	14 E	WM	10	NW NW	10.32
TOTAL:					41.32

5. Water Right Certificate 5678 does not specify the point of diversion(POD); however, the local Watermaster provided evidence that the POD is located as follows:

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	14 E	WM	9	SE NE	RUDIO DLC 37	<i>2231 FEET SOUTH AND 1049 FEET WEST OF THE NE CORNER OF SECTION 9</i>

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

Certificate: 40409 in the name of NICHOLAS FAX

Use: Irrigation of 30.3 acres

Priority Date: 1872

Quantity: **Rate:** 0.75 Cubic Foot per Second (CFS)

Duty: 90.9 Acre-Feet (AF)

Limit: One-fortieth CFS per acre, not to exceed 3.0 AF per acre per year further limited to 1.0 AF in any 30-day period prior to July 1, and ¼ AF in any 30-day period thereafter.

Source: FIFTEEN MILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	14 E	WM	3	NW SE	RUDIO DLC 38	3980 FEET SOUTH AND 1450 FEET EAST OF THE NW CORNER OF SECTION 3

**Certificate 40409 lists the POD as being mobile; however, for the purposes of this lease, the POD will be as shown above.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	14 E	WM	3	SW NE	0.8
1 S	14 E	WM	3	SE NE	6.5
1 S	14 E	WM	3	NE SW	2.9
1 S	14 E	WM	3	SE SW	2.3
1 S	14 E	WM	3	NE SE	2.5
1 S	14 E	WM	3	NW SE	15.3
TOTAL:					30.3

7. Neither Certificate 5678 nor Certificate 40409 specify the irrigation season. However, to avoid injury or enlargement, the rights leased herein will be protected instream from July 3 through October 31.
8. 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.
9. The instream use is as follows:

Fifteen Mile Creek a tributary to the Columbia River

Instream Reach #1: From the POD, as described in Finding of Fact #5, to the mouth of Fifteen Mile Creek.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
5678	1869	0.52	July 3 through October 31

Instream Reach #2: From the POD, as described in Finding of Fact #6, to the mouth of Fifteen Mile Creek.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
40409	1872	0.38	July 3 through October 31

10. Other conditions to prevent injury and enlargement are:

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.

The portion Certificate 40409 which allows the use of water for stock and domestic use will not be protected under this lease.

The portion of Certificate 55638 that allows supplemental irrigation may not be exercised, since the primary right associated with those lands is being leased instream, under Certificate 40409. OAR 690-077-0077(13).

The following lands may not receive irrigation under Certificate 55638 during the term of the lease:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	14 E	WM	3	SW NE		38	0.3
1 S	14 E	WM	3	SE NE	1		4.5
1 S	14 E	WM	3	NE SW		38	2.9
1 S	14 E	WM	3	SE SW		38	1.0
1 S	14 E	WM	3	NE SE		38	0.8
1 S	14 E	WM	3	NE SE	4		1.7
1 S	14 E	WM	3	NW SE		38	13.2
TOTAL:							24.4

11. 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.
12. 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.
13. 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.
14. The Lessor has requested that the lease terminate on October 31, 2014.
15. 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.

ORDER

Therefore, it is ORDERED:

1. The final order entered at Special Order Volume 81, Pages 445 through 449, is void and of no further force or effect.
2. That the Lease as described herein is APPROVED.
3. 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.

4. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (July 3) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
5. The lease will terminate on October 31, 2014.

Dated at Salem, Oregon this 4 day of August 2010.


Phillip C. Ward, Director

Mailing date: AUG 04 2010

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 Kody.J.Thurgood@ wrd.state.or.us