

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1603, Klamath County) FINAL ORDER CORRECTING
) 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

Mosby Family Trust
Steve Mosby, Successor Trustee
294 Bitterroot Dr.
Lewistown, MT 59457
mosbdjl@gmail.com

Findings of Fact

1. On March 23, 2017, Steve Mosby, for Mosby Family Trust, filed an application to lease a portion of Certificates 31364 and 33523 for instream use. The Department assigned the application number IL-1603.
2. On May 4, 2017, the Department informed the applicant by e-mail of several deficiencies in the application, including several acres that were associated with the wrong certificate. The Department requested that the deficiencies be resolved by June 4, 2017.
3. On May 15, 2017, the applicant amended the lease application to include Certificate 33422.
4. On May 26, 2017, the applicant provided the necessary information to resolve the identified deficiencies.
5. On August 9 and 10, 2017, the applicant provided information to the Department with regard to acres inadvertently omitted from the order approving IL-1606. This order is issued to correct the omitted acres and supersedes Special Order Volume 105, Page 174-178. Corrections shall appear in ***bold and italic***.

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.

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

Certificate: 31364 in the name of Yamsey Land & Cattle Co. (confirmed by Permit S-23046)

Use: Irrigation of 20.0 Acres

Priority Date: February 7, 1951

Quantity: **Rate:** 0.31 Cubic Feet per Second (CFS)

Volume: 60.0 Acre-Feet (AF)

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of One-Fortieth of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Sand Creek, tributary of Williamson River

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--------------------|
| 31 S | 8 E | WM | 20 | NW NW | NONE GIVEN |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|--------|-----|-----|-----|-------|-------|
| 31 S | 8 E | WM | 32 | SW NE | 2.7 |
| 31 S | 8 E | WM | 32 | SE NE | 4.3 |
| 31 S | 8 E | WM | 32 | SE NW | 2.5 |
| 31 S | 8 E | WM | 32 | NE SW | 5.0 |
| 31 S | 8 E | WM | 32 | SE SW | 5.5 |
| Total: | | | | | 20.0 |

7. Certificate 31364 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

| Twp | Rng | Mer | Sec | Q-Q | Latitude and Longitude |
|------|-----|-----|-----|-------|------------------------|
| 31 S | 8 E | WM | 20 | NW NW | -121.799451, 42.878234 |

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

Certificate: 33422 in the name of Yamsey Land & Cattle Co. (confirmed by Permit S-27254)

Use: Irrigation of 14.9 Acres

Priority Date: March 9, 1961

Quantity: **Rate:** 0.19 CFS

Volume: 44.7 AF

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of One-Fortieth of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Williamson River, tributary of Klamath Lake

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 31 S | 8 E | WM | 33 | SE NW | 8410 FEET NORTH AND 4670 FEET EAST FROM THE S1/4 CORNER OF SECTION 5 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
|--------|-----|-----|-----|-------|------|-------|
| 32 S | 8 E | WM | 5 | NE NW | 3 | 7.2 |
| 32 S | 8 E | WM | 5 | SW NW | | 2.2 |
| 32 S | 8 E | WM | 6 | NE SE | | 5.5 |
| Total: | | | | | | 14.9 |

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

Certificate: 33523 in the name of Yamsey Land & Cattle Co. (confirmed by Permit S-25337)

Use: Irrigation of **28.2** ACRES

Priority Date: FEBRUARY 10, 1958

Quantity: **Rate: 0.26 CFS**

Volume: 84.6 AF

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of One-Fortieth of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Williamson River, tributary of Klamath Lake

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|-----|-----|-----|-------|--|
| 31 S | 8 E | WM | 33 | SE NW | 8410 FEET NORTH AND 4670 FEET EAST FROM THE S1/4 CORNER OF SECTION 5, T. 32 S., R. 8 E. WM |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------------|------------|-----------|----------|--------------|-------------|
| 31 S | 8 E | WM | 32 | SW NE | 5.3 |
| 31 S | 8 E | WM | 32 | SE NE | 5.8 |
| <i>32 S</i> | <i>8 E</i> | <i>WM</i> | <i>5</i> | <i>SE NW</i> | <i>1.3</i> |
| <i>32 S</i> | <i>8 E</i> | <i>WM</i> | <i>5</i> | <i>NW SW</i> | <i>3.3</i> |
| 31 S | 8 E | WM | 32 | SE NW | 1.1 |
| 31 S | 8 E | WM | 32 | NE SW | 7.4 |
| 31 S | 8 E | WM | 32 | SE SW | 4.0 |
| Totals: | | | | | 28.2 |

10. Certificates 31364, 33422, and 33523 do 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.

11. There are supplemental irrigation water rights, Certificate 33522 and Permit G-8842, appurtenant to all or a portion of the lands described in Finding of Fact Nos. 6, 8 and 9. 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.
12. 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.
13. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Sand Creek, tributary to Williamson River

Instream Reach No. 1: From the POD on Sand Creek (as described in Finding of Fact No. 7) to the mouth of Sand Creek.

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|------------------|---------------------|----------------------|----------------------------|
| 31364 | February 7, 1951 | 0.12 | 60.0 | March 1 through October 31 |

Instream Reach No. 2: From the POD on Williamson River (as described in Finding of Fact No. 8 and 9) to Upper Klamath Lake.

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|---------------|-------------------|---------------------|----------------------|----------------------------|
| 33422 | March 9, 1961 | 0.09 | 44.7 | March 1 through October 31 |
| 33523 | February 10, 1958 | <i>0.17</i> | <i>84.6</i> | |
| Total: | | <i>0.26</i> | <i>129.3</i> | |

14. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
15. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point 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.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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.
21. The Lessor has requested that the lease terminate on October 31, 2021. The lease may commence on the date this final order is signed.
22. The Lessor has requested the option of terminating the lease early with written notice to the Department.

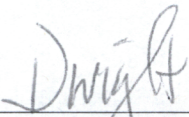
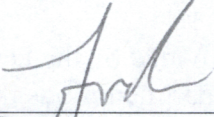
Conclusions of Law

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 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. This order supersedes Special Order Volume 105, Pages 174-178.
4. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2021. 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 (March 1 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 18 day of August, 2017.

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

Mailing date: AUG 22 2017

*This document was prepared by Joan
Smith if you have questions, please
call 503-986-0892*