

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1261, Certificate 50158) FINAL ORDER ON PROPOSED
Josephine 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

Benjamin and Laura Davis
P.O. Box 324
Cave Junction, OR 97523

Findings of Fact

1. On December 14, 2012, Benjamin and Laura Davis filed an application to lease all of Certificate 50158 for instream use. The Department assigned the application number IL-1261.
2. The right to be leased is as follows:

Certificate: 50158 in the name of ED MCCANN (confirmed by decree of the Circuit Court of the State of Oregon for Josephine County recorded at Salem in Volume 1 at Page 253)
Use: Irrigation of 47.0 acres
Season of Use: April 1 to October 31
Priority Date: 1875
Rate: 0.96 Cubic Foot per Second (CFS)
Source: SUCKER CREEK, tributary to the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	21	SE SE	GATES MCCANN DITCH: 530 FEET NORTH AND 610 FEET WEST FROM THE SE CORNER OF SECTION 21

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	Acres
40 S	7 W	WM	5	NW NW	27.0
40 S	7 W	WM	6	NE NE	20.0
TOTAL:					47.0

3. Certificate 50158 does not specify a duty. In consultation with the Department's Watermaster and other water right records and information the duty per acre associated with this right, for the purposes of this lease is clarified as being 3.5 acre-feet per acre.
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 Lessor requested to protect up to 0.96 CFS over the full irrigation season, a period of 214 days. The Department has identified that the original use may use the equivalent of 3.5 acre-feet per acre, which would provide for the diversion of up to 164.5 acre-feet over the irrigation season. At 0.96 CFS and 164.5 acre-feet, water may be protected instream for a period of 86 days. The instream rate requires modification to protect water over the full instream period requested without injury or enlargement.
6. The instream use has been modified from the lease application to prevent injury and/or enlargement and is as follows:

SUCKER CREEK, tributary to the EAST FORK ILLINOIS RIVER

Instream Reach: At the POD described in Finding of Fact #2

Certificate	Priority Date	Instream Rate	Instream Volume (af)	Period Protected Instream
50158	1875	0.39 CFS	164.5	April 1 to October 31

7. Water Right Certificate 14601 is appurtenant to a portion of the lands described in Finding of Fact #2. The Lessor requested Certificate 14601 not be included as part of this lease application. During the term of the lease, water use under Certificate 14601, on the lands described in Finding of Fact #2, will be suspended.
8. 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.
9. 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. 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.
10. 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.

11. The Lessor requested the lease terminate on December 31, 2017. However, the term of the lease may not be extended past the last day of the irrigation season. Therefore, the lease will terminate on October 31, 2017. The lease may commence on the date this final order is signed.
12. 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. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2017. For multiyear leases, 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 (April 1 through October 31) or after the period of allowed use has begun for the water right being leased, water shall not be used under the right leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 28 day of May, 2013.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: MAY 28 2013

This document was prepared by Susan Douthit. If you have any questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrds.state.or.us