

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

In the Matter of Instream Lease IL-700) DETERMINATION and
Renewal Application, Yamhill County) FINAL ORDER ON PROPOSED
(Reassigned as IL-1498)) 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

Thornton Ranch, LLC
19976 NW Moores Valley Road
Yamhill, OR 97148
harmonyhills@onlinenw.com

Findings of Fact

1. On April 27, 2015, Nancy Thornton of Thornton Ranch LLC filed an application to renew instream lease IL-700, involving the entirety of Certificates 13450 and 13451 and the irrigation portion of Certificate 38612. Instream lease IL-700 terminates on September 30, 2015.
2. Based upon continued review, clarification and changes to the instream use of certificate 38612 is necessary. Instream lease IL-700, evidenced by Special Order Volume 81, Page 392, requires modification. Therefore, the Department has assigned the application a new lease number, IL-1498, to differentiate it from the original lease.

3. The first right to be leased is as follows:

Certificate: 13450 in the name of J. L. JENNINGS (perfected under Permit S-10816)
Use: Irrigation of 57.0 acres
Priority Date: JANUARY 31, 1933
Quantity: **Rate:** 0.72 Cubic Foot per Second (CFS)
Limit: ONE-EIGHTIETH cfs per acre, or its equivalent for each acre irrigated
Source: HASKINS CREEK, tributary to the YAMHILL 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	DLC
3 S	5 W	WM	8	SW NE	47

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	4	SW SW	47	0.2
3 S	5 W	WM	4	SE SW	47	19.7
3 S	5 W	WM	4	SW SE	47	8.0
3 S	5 W	WM	9	NW NE	47	0.8
3 S	5 W	WM	9	NE NW	47	13.2
3 S	5 W	WM	9	NW NW	47	15.1
TOTAL:						57.0

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

Certificate: 13451 in the name of J. L. JENNINGS (perfected under Permit S-11065)

Use: Irrigation of 36.20 acres

Priority Date: SEPTEMBER 16, 1933

Quantity: **Rate:** 0.47 CFS

Limit: ONE-EIGHTIETH cfs per acre, or its equivalent for each acre irrigated

Source: HASKINS CREEK, tributary to the YAMHILL RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC
3 S	5 W	WM	8	SW NE	47

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	4	SW SE	47	0.4
3 S	5 W	WM	4	SW SE	48	1.1
3 S	5 W	WM	9	NW NE	47	3.6
3 S	5 W	WM	9	NW NE	48	12.5
3 S	5 W	WM	9	NE NW	47	12.3
3 S	5 W	WM	9	NW NW	47	2.0
3 S	5 W	WM	9	SW NW	47	3.3
3 S	5 W	WM	9	SE NW	47	1.0
TOTAL:						36.2

5. Certificates 13450 and 13451 both identify Haskins Creek as a tributary to the Yamhill River when in fact Haskins Creek is a tributary to the *North* Yamhill River on modern maps.
6. Certificates 13450 and 13451 do not specify a duty limit per acre. However, the original instream lease application requested volumes equivalent to 2.5 AF per acre, which is consistent with the duty limit under Certificate 38612, the third right involved in this lease.
7. The portion of the third right to be leased is as follows:
Certificate: 38612 in the name of ROBERT M. TURNER (perfected under Permit S-29989)
Use: IRRIGATION of 10.70 ACRES
Priority Date: AUGUST 24, 1964
Quantity: **Rate:** 0.13 CFS; being 0.09 CFS FROM STREAM No. 1, AND 0.04 CFS FROM STREAM No. 2
Duty: 26.75 Acre-Feet (AF)

Limit: ONE-EIGHTIETH cfs per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.50 AF per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed under permit R-4489

Source: TWO UNNAMED STREAMS, AND A RESERVOIR CONSTRUCTED UNDER PERMIT R-4489, tributary to HASKINS CREEK

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
3 S	5 W	WM	3	NE SW	50	Stream 1: 1250 FEET NORTH AND 1420 FEET EAST FROM SW CORNER OF DAVIS DLC 50
3 S	5 W	WM	3	NE SW	50	Stream 2: 680 FEET NORTH AND 1500 FEET EAST FROM SW CORNER OF DAVIS DLC 50

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
3 S	5 W	WM	3	NE SW	50	10.70

8. Water from the reservoir constructed under Permit R-4489, and evidenced as certificate 38611, will not be released for instream purposes. Certificate 38611 is not involved or included in this lease.
9. None of the certificates to be leased specify the irrigation season. However, the Yamhill River Decree establishes the irrigation season for the area as April 1 through September 30 so this period will be considered for instream use.
10. 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.
11. The lease renewal application requests to protect water instream as approved in the previous lease, IL-700, from each of the POD's to the mouth of Haskins Creek. For certificates 13450 and 13451, which have Haskins Creek as the water source, this is appropriate. However, for certificate 38612 which is sourced by two unnamed streams that are tributaries to Haskins Creek, protection to the mouth of Haskins Creek requires consideration of whether the quantity is measurable into Haskins Creek, the receiving stream. As described in (OAR 690-077-0015 (8)), an instream reach is generally from the point of diversion to the mouth of the source stream but may be protected further if measurable in the receiving stream. The quantities of water to be leased instream from certificate 38612 (0.13 cfs total) are not measurable into Haskins Creek which has an estimated average natural flow as low as 6.03 cfs in September. Therefore, certificate 38612 cannot be protected into Haskins Creek, since the protected quantity is only 2% of the receiving streams' lowest flow.
12. The two unnamed source streams associated with certificate 38612 are believed to be intermittent during summer months that do not experience significant precipitation. The allowed diversion rates associated with the right are likely to exceed the estimated average natural flow in the unnamed streams during the months of the July, August and September. The right will be protected instream only during the months of April, May and June when the unnamed streams should have some flowing water associated with periodic significant rain events. This restriction also requires that the duty of water protected instream (23.46 AF) be

slightly reduced from the full allowed duty of the right (26.75 AF) to fit within the 91 day period (see Findings of Fact No. 7 above, and No. 14 below).

13. The two unnamed source streams associated with certificate 38612 flow into the small storage reservoir for certificate 38611, which is not involved in this lease. The reservoir reportedly does not have a mechanism for controlling and directing the flow back into the source stream channels. Therefore, right 38612 can be protected instream only at the points of diversion on the two unnamed source streams upstream of the reservoir.
14. The instream use has been modified from the previous orders approving the preceding instream lease IL-700 and is as follows:

HASKINS CREEK tributary to the NORTH YAMHILL RIVER

Instream Reach: From the POD's, as described in Finding of Fact Nos. 3 and 4 to the mouth of Haskins Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
13450	JANUARY 31, 1933	0.71	142.5	JUNE 22 THROUGH SEPTEMBER 30
13451	SEPTEMBER 16, 1933	0.45	90.5	JUNE 22 THROUGH SEPTEMBER 30
Total		1.16	233.0	

UNNAMED STREAM 1 and UNNAMED STREAM 2, tributaries to HASKINS CREEK

Instream Points: At the POD's, as described in Finding of Fact No. 7

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
38612	AUGUST 24, 1964	Stream 1 0.09	16.24	APRIL 1 THROUGH JUNE 30
		Stream 2 0.04	7.22	APRIL 1 THROUGH JUNE 30
Total:		0.13	23.46	

15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
16. The protection of flows within the proposed reaches 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 points of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the points 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, and the points, of the instream water rights.
17. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach, and at the points, will provide for a beneficial purpose.

18. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach, and at the points, do not exceed the estimated average natural flow.
19. 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.
20. 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.
21. 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.
22. The lease may commence on October 1, 2015. The Lessor has requested that the lease terminate on September 30, 2019.
23. The Lessor has requested the option of terminating the lease early with written notice to the Department.

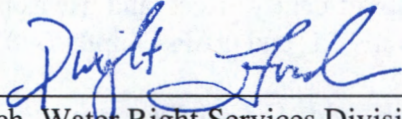
Conclusions of Law

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 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, except domestic use will continue under certificate 38612.
3. The term of the lease will commence October 1, 2015, and terminate on September 30, 2019. 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, April 1 through September 30, 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 30 day of July, 2015.



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

Mailing date: JULY 31 2015

*This document was prepared by
Steven Parrett. If you have any
questions, please call 503-986-0919.*