

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

In the Matter of Instream Lease Application)
SL-49, Union County) SUPERSEDING and CORRECTING FINAL
ORDER ON PROPOSED SPLIT-SEASON
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

Buffalo Peak Land & Livestock, LLC
1782 South Main Street
Union, Oregon 97883

Lessee

The Freshwater Trust (TFT)
Attn: Jessica Humphreys
400 NE 1st Street
Enterprise, Oregon 97828

Findings of Fact

1. On April 6, 2020, Buffalo Peak Land & Livestock, LLC and TFT filed an application to lease a portion of Certificate 6264 for a split-season instream use. The Department assigned the application number SL-49.
2. On June 8, 2020, the Department contacted the Lessee about a deficiency in the application, being acres that were not able to be dried-up and under roads or buildings. On June 10, 2020, the Lessee submitted amended pages resolving the deficiency.
3. On July 8, 2020, the Department issued an order approving Split-Season Instream Lease SL-49, as evidenced by Special Order Volume 117, Pages 7-11. Following issuance of the order, a scrivener's error was identified in the instream volume and rate being leased instream. This order is being issued to correctly describe the amount of water being protected instream.
4. The portion of the right to be leased has been modified from the lease application and is as follows:

Certificate: 6264 in the name of JACK FICKLE (confirmed by decree of the Circuit Court of the State of Oregon for Union County, and of record at Salem, in Volume 8, at Page 1)
Use: IRRIGATION of 108.0 ACRES FROM TRACT 2
Priority Date: 1864
Rate: 1.35 CUBIC FEET PER SECOND

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.

Limit/Duty: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.0 acre-feet per acre in any irrigation season, diverted at a rate of not to exceed ONE-FORTIETH of a cubic foot per second per acre.

Source: CATHERINE CREEK, tributary to GRANDE RONDE RIVER

Authorized Points of Appropriation: Not described on certificate

Authorized Place of Use:

| Tract 2 – Catherine Creek | | | | | |
|---------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 40 E | WM | 18 | SE SE | 27.5 |
| 4 S | 40 E | WM | 18 | NE SE | 12.0 |
| 4 S | 40 E | WM | 19 | NE NE | 2.0 |
| 4 S | 40 E | WM | 20 | SE NW | 21.9 |
| 4 S | 40 E | WM | 20 | NE NW | 22.0 |
| 4 S | 40 E | WM | 20 | NW NW | 22.6 |
| Total | | | | | 108.0 |

5. Certificate 6264 does not provide a description of the location of the points of diversion. Based upon additional information from the Lessor and Lessee, for the purpose of this instream lease, the point of diversion appears to be located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Coordinates |
|-----|------|-----|-----|-------|---|
| 4 S | 40 E | WM | 29 | NE NE | CATHERINE CREEK: LATITUDE 45.193; LONGITUDE -117.834 |

6. Certificate 6264 does not specify the irrigation season; nor is an irrigation season specified by the 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.
7. 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.
8. The instream lease application, as proposed, is a split season lease. Under Certificate 6264, water may be used for its existing use up to a maximum rate of 0.75 CFS and no more than 131.76 acre-feet (af), consistent with the water right limits. The existing use period (out-of-stream) will be April 18 through July 14, a period of 88 days.
9. As defined by OAR 690-077-0077 (3) and (4), the proposed change could result in enlargement of the right if not conditioned to prevent use of more water than could have been beneficially used without waste for the existing authorized use. The best currently available information indicates that the most consumptive crop in the area is pasture with a net irrigation requirement of 2.44 acre feet per acre which equates to approximately 81% of the 3.0 acre feet per acre allowed by the water right. (*Oregon Crop Water Use and Irrigation Requirements* (Cuenca, 1992)). Therefore, to prevent enlargement of this right,

the instream rate and duty will be reduced immediately below the POD as described in the instream reach below to prevent enlargement of the right.

The maximum diverted annual volume of water for the new use under Certificate 6264 for Catherine Creek acres is limited to 131.76 acre feet (108.0 acre x 2.44 af = 263.52 minus 131.76 af (out-of-stream use) = 131.76 af). Likewise, the cubic feet per second (CFS) was calculated by taking the volume / the number of days in the season / 1.983471. ((131.76 af / 60) / 1.983471 = 0.75). To prevent enlargement of the right, the rate will be reduced immediately below the POD as described in Finding of Fact #12 below.

10. A portion of the water diverted at the POD returns to the Catherine Creek within the proposed reach and is available to downstream water right holders. Approximately 20% of return flows from the existing use return to the creek system below the POD near stream gage 13320300 (approximately RM 17). To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for.
11. In addition, there are known areas of natural streamflow loss to the river bed downstream from the point of diversion. The Watermaster has identified that at approximately river mile 12.0 on Catherine Creek, there is a losing reach and a loss of 1% per mile. The quantities that may be protected instream below river mile 12.0 will be adjusted to prevent injury to downstream users and enlargement of the right.
12. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Catherine Creek, tributary to the Grande Ronde River

Instream Point No. 1: At the POD (as described in Finding of Fact No. 5)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|------------------------------|
| 6264 | 1864 | 1.35 | 162.00 | July 15 through September 12 |

Instream Reach No. 1: Immediately below the POD to River Mile 17.0

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|------------------------------|
| 6264 | 1864 | 1.11 | 131.76 | July 15 through September 12 |

Instream Reach No. 2: From River Mile 17.0 to River Mile 12.0

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|------------------------------|
| 6264 | 1864 | 0.89 | 105.41 | July 15 through September 12 |

Instream Point No. 2: At the mouth of Catherine Creek

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|------------------------------|
| 6264 | 1864 | 0.80 | 94.70 | July 15 through September 12 |

13. 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 Lessee and Lessor shall measure and report the use of the existing water right and the instream water right. The Freshwater Trust will work with the Watermaster and the Watermaster may also request to read the Lessor's meter to verify meter readings supplied by the Lessor and/or Lessee and/or request more frequent reporting.

14. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

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 known areas of natural loss of streamflow to the river bed downstream from the point of diversion and have been accounted for in the instream reach; and
- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right and have been accounted for in the instream reach.

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, as conditioned, 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 and Lessee have requested that the lease terminate on October 31, 2020. The lease may commence on the date this final order is signed.
22. The Lessor and Lessee have requested that there not be an option to terminate the lease.

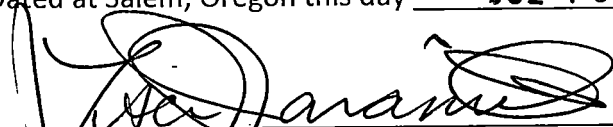
Conclusions of Law

The Department concludes that the lease, as conditioned, 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. This correcting order supersedes Special Order Volume 117, Pages 7-11.
3. During the term of this lease, the place of use will continue to receive water for irrigation (up to 131.76 AF under Certificate 6264 during the period April 18 through July 14). Also, during the term of the lease, the former place of use will no longer receive water as part of this right, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits for the remainder of the irrigation season.
4. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2020. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day JUL 16 2020



 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
 Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: JUL 17 2020

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.