

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificate 35602, Wasco 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

Monte B. Wassan
6088 Eight Mile Road
The Dalles, Oregon
97058

Findings of Fact

1. On April 1, 2009 Monte B. Wasson filed an application to lease a portion of Certificate 35062 for instream use. The Department assigned the application number IL-979.

2. The right to be leased is as follows:

Certificate: 35602 Certificate in the name of DAVIDSON BROTHERS
Use: Irrigation of 3.4 acres
Season of Use: Not Specified
Priority Date: May 16, 1961
Quantity: **Rate:** 0.04 Cubic Foot per Second (CFS)
Duty: 10.2 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 3.0 AF per acre per year
Source: EIGHT MILE CREEK, tributary to FIFTEEN MILE CREEK

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1S	13E	WM	15	SE NW	40 FEET NORTH AND 790 FEET WEST FROM THE CENTER OF SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1S	13E	WM	15	SW NE	3.4

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.

3. Certificate 35602 does not specify the irrigation season. For the purposes instream leasing, OAR 690-250 sets forth a general a general irrigation season of March 1 through October 31. However, in consultation with the local Watermaster, the Department has determined that the full rate of this right may only protected instream for a period of 120 days without causing injury or enlargement. Therefore, to be consistent with other leases in the area, this right will be protected instream from June 1 through September 28.
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 the notice.
5. The instream use is as follows:
EIGHT MILE CREEK tributary to FIFTEEN MILE CREEK
Instream Reach: From POD (as described in Finding of Fact #2) to the mouth of Eight Mile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35602	May 16, 1962	0.04	10.2	June 1 through September 28

6. 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 POD. 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 POD, within the specified reach.

7. Supplemental water right, Ground Water Permit G-16394 is appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have not requested that this water permit be included as part of this lease application. During the term of the lease, water use under this permit 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. 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.
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 has requested that the lease terminate on April 1, 2010. However, to be consistent with Department policy, the termination date has been modified to reflect the end of the 2009 irrigation season rather than the beginning of the 2010 irrigation season. This lease will terminate on October 31, 2009.

CONCLUSIONS OF LAW

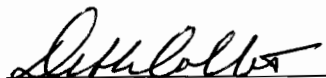
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. 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.
3. The lease will terminate on October 31, 2009.

Dated at Salem, Oregon this 5th day of May 2009.


Phillip C. Ward, Director *PCW*

Mailing date: MAY 11 2009