

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

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificates 5652 and 63645, Wasco)
County

DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

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 short-term instream lease applications.

Lessor

John Fulton and Ruth Fulton
3865 Fifteenmile Road
The Dalles, Oregon 97058

Lessee

Oregon Water Trust
522 SW Fifth Avenue, Suite 825
Portland, Oregon 97204

Findings of Fact

1. On May 19, 2006, John Fulton and the Oregon Water Trust filed an application to renew L-198, involving all of Certificate 5652 and a portion of Certificate 63645 to instream use. The Department assigned the application number L-198.
2. The rights to be leased are as follows:

Certificate 5652 (Fivemile and Eightmile Creeks)

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	14 E	WM	4	NW SW	0.70
1 N	14 E	WM	4	SW SW	5.30
1 N	14 E	WM	9	NW NE	1.80
1 N	14 E	WM	9	SW NE	6.40
1 N	14 E	WM	9	NE NW	13.20
1 N	14 E	WM	9	NW NW	19.40
1 N	14 E	WM	9	SW NW	11.70
1 N	14 E	WM	9	SE NW	1.60
1 N	14 E	WM	9	NW SW	3.40

Points of Diversion:

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.

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 N	14 E	WM	9	NW SW	Fivemile Water Right: Ketchum Ditch Lat=45.58061, Long= 121.08286
1 N	14 E	WM	9	SE NW & NE NW	Eightmile Water Right:

Certificate 63645 (Eightmile Creek)

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	14 E	WM	4	SW NW	0.80
1 N	14 E	WM	4	SE NW	0.10
1 N	14 E	WM	4	NW SW	2.90
1 N	14 E	WM	4	SW SW	2.50
1 N	14 E	WM	4	SE SW	1.20

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	14 E	WM	4	SW SW	4.00
1 N	14 E	WM	9	NW NW	6.30
1 N	14 E	WM	9	SW NW	7.90

Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
1 N	14 E	WM	4	NW SW and SW SW

- On June 20, 2006, the Oregon Water Trust clarified that The Stanek Loving Trust is no longer a water right holder for the rights described in Finding of Fact #2 and that John and Ruth Fulton are the water right holders.
- The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
- The Oregon Water Trust has requested to extend the reach of the Eightmile Creek water rights, so that they can be protected into Fifteenmile Creek. The Department has determined that these rights contribute a measurable portion of the flow in Fifteenmile Creek, and therefore the reach may be extended pursuant to OAR 690-077-0015(7).
- The instream use is clarified from the lease application:
Fivemile Creek, Tributary to Eightmile Creek and
Eightmile Creek, Tributary to Fifteenmile Creek in the Columbia Basin

Instream Reach: From respective PODs (as described in Finding of Fact #2) to mouth of Fivemile Creek for rights originating from Fivemile Creek and to mouth of Fifteenmile Creek for rights originating from Eightmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
5652 (Fivemile Cr)	1878	0.50	June 1 through September 28
5652 (Eightmile Cr)	1875	0.30	June 1 through September 28
63645 (Eightmile Cr)	September 22, 1980	0.09	June 1 through September 28

7. 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 point of diversion within the specified stream reach.
8. 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.
9. 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.
10. The lease will terminate on September 30, 2010.
11. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

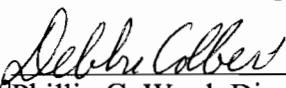
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on September 30, 2010. The lessor shall have the option of terminating the lease each year, with notification to the Department by May 1 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 21ST day of June 2006.



Phillip C. Ward, Director

Mailing date: JUN 28 2006