

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1565, Yamhill County) FINAL ORDER ON PROPOSED
) 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

Sundance Stock Farm
Steve Langer and Terry Brooks
4025 SE Arnold Lane
McMinnville, OR 97128

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 200
Portland, Oregon 97204

Findings of Fact

1. On June 24, 2016, Steve Langer, Terry Brooks and The Freshwater Trust filed an application to renew instream lease IL-63, involving the entirety of Certificates 15702 and 28151.
2. During the review process, the Department identified that the instream rate associated with Certificate 28151, identified in the Final Order approving IL-63, evidenced by Special Order Volume 64, Page 574, requires modification. The original instream rate was identified as 0.25 Cubic Foot per Second (CFS). Based on the instream period and the volume that may be protected instream, the Department has identified that the instream rate may be adjusted to 0.26 CFS. Therefore, the Department has assigned the application a new lease number, IL-1565, to differentiate it from the original lease.

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

Certificate: 15702 in the name of HERBERT C AND LUCILLE I MCGHEHEY
(perfected under Permit S-13389)
Use: IRRIGATION of 37.7 ACRES
Priority Date: DECEMBER 23, 1938
Quantity: **Rate:** 0.472 CFS
Volume: 94.25 Acre-Feet (AF)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot 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.

or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: YAMHILL RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	DLC	Q-Q
4 S	4 W	WM	14	50	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
4 S	4 W	WM	11	50	SE SE	2.3
4 S	4 W	WM	12	50	SW SW	0.2
4 S	4 W	WM	12	51	SW SW	1.7
4 S	4 W	WM	13	50	NW NW	1.1
4 S	4 W	WM	13	51	NW NW	10.0
4 S	4 W	WM	14	50	NE NE	22.4
Total Acres						37.7

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

Certificate: 28151 in the name of STANLEY MALOTT (perfected under Permit S-25379)

Use: IRRIGATION of 25 ACRES

Priority Date: MARCH 7, 1958

Quantity: **Rate:** 0.31 CFS
Volume: 62.5 AF

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: YAMHILL RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	DLC	Q-Q
4 S	4 W	WM	14	50	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	DLC	Q-Q	Acres
4 S	4 W	WM	13	50	NW NW	1.5
4 S	4 W	WM	13	51	NW NW	9.0
4 S	4 W	WM	13	78	NW NW	2.2
4 S	4 W	WM	13		NW NW	2.4
4 S	4 W	WM	13	78	SW NW	2.5
4 S	4 W	WM	13	79	SW NW	0.6
4 S	4 W	WM	13		SW NW	0.5
4 S	4 W	WM	14	50	NE NE	6.3
Total Acres						25.0

5. Certificates 15702 and 28151 do not specify the irrigation season. However, the Yamhill River Decree establishes the irrigation season for the area as April 1 through September 30.

6. Certificates 15702 and 28151 do not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Coordinates
4 S	4 W	WM	14	NE NE	50	Latitude 45.2268528102 Longitude -123.1384582741

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 use requires modification to clarify the instream rate associated with Certificate 28151 and is as follows:

Yamhill River, tributary to Willamette River

Instream Reach: From the POD (as described in Finding of Fact No. 2) to the confluence with Hawn Creek located at approximately River Mile 9.0

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
15702	12/23/1938	0.39	94.25	June 1 to September 30
28151	3/7/1958	0.26	62.50	
Total Instream		0.65	156.75	

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
10. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
11. 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.
12. 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.
13. 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.

14. 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.
15. The Lessors and Lessee have requested that the lease terminate on September 30, 2017. The lease may commence on the date this final order is signed
16. The Lessors and Lessee have requested that there not be an option to terminate the lease.


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.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2017. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this 22 day of August, 2016.



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

Mailing date: AUG 24 2016

This document was prepared by Kate Fitzgerald. If you have any questions, please call 503-986-0898.