

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

In the Matter of Instream Lease Application) CORRECTING AND SUPERSEDING
IL-1762, Union County) FINAL ORDER

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

Lee and Denise Shoemaker
PO Box 706
Union, OR 97883

Lessee

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Findings of Fact

1. On April 25, 2019, Lee and Denise Shoemaker and TFT filed an application to renew instream lease IL-1385, involving a portion of Certificate 6489 for instream use.
2. During the evaluation of the instream lease application, Department staff identified a number of changes that needed to be made; the number of acres to be leased instream, the instream rate and volume identified in the reach, and the identification of the reach. Therefore, this lease is being assigned a new lease number to differentiate it from the original lease application. This lease application has been re-assigned lease number IL-1762.
3. During the review of the instream lease renewal application, the Department identified acreage under Certificate 6489 that has a portion of a pond totaling approximately 0.2 acre, this acreage is being omitted from the instream lease renewal application and will not be leased instream.
4. On June 26, 2019, the Department issued an order approving Instream Lease IL-1762, as evidenced by Special Order Volume 113, Pages 467-470. Following issuance of the order, a scrivener's error was identified in the instream use being protected. This order is being issued to correctly describe the instream points and reach and the rate and duty being protected instream.

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.

5. The portion of the right to be leased is as follows:

Certificate: 6489 in the name of H.J. Nielson (perfected under the Grande Ronde River Decree, of record at Salem in the Order Record of the State Engineer, in Volume 8, at page 1)
Use: Irrigation of 12.1 acres
Priority Date: 1870
Quantity: **Rate:** 0.30 Cubic Foot per Second (CFS)
Volume: 36.3 Acre-Feet (AF)
Limit: 3.0 AF 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 the Grande Ronde River
Authorized Point of Diversion (POD): (not described on certificate)
Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-----|------|-----|-----|-------|-------|
| 4 S | 39 E | WM | 13 | NW SE | 12.1 |

6. Certificate 6489 does not provided a description of the location of the point of diversion. Based upon information provided by the Lessee and Lessor, the point of diversion appears to be located as follows:

| Twp | Rng | Mer | Sec | Q-Q | Coordinates |
|-----|-----|-----|-----|-------|-------------------------------------------|
| 4 S | 39E | WM | 13 | SW SE | Latitude 45.210622, Longitude -117.868533 |

7. Certificate 6489 does not specify the irrigation season; nor is an irrigation season specified by 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.
8. 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.
9. 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. 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 immediately below the POD.
10. 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. (*Oregon Crop Water Use and Irrigation Requirements* (Cuenca, 1992)). The maximum duty of water that could be transferred without enlargement would be 2.44 acre feet (af) per acre.

Therefore, to prevent enlargement of this right, the maximum diverted annual volume of water for the new use under this right is limited to 29.52 acre feet (12.1 acre x 2.44 af = 29.52 af). The rate will be reduced immediately below the POD as described in the instream reach below to prevent enlargement of the right. Likewise, the cubic feet per second (CFS) was calculated by taking the volume / the number of days in the season / 1.983471. ((29.52af / 122) / 1.983471 = 0.12)

11. In addition, the full quantity requested to be protected instream from the point of diversion to the mouth of Catherine Creek may not be made without enlargement. There are known areas of natural streamflow loss to the river bed downstream from the point of diversion. The Watermaster has identified that below the point of diversion on Catherine Creek, there is a losing reach and a loss of 1% per mile. The quantities that may be protected instream below the point of diversion 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 and the previous final order 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. 6)

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-----------------------------|
| 6489 | 1870 | 0.15 | 36.3 | June 1 through September 30 |

Instream Reach: Immediately below the POD to the mouth of Catherine Creek

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-----------------------------|
| 6489 | 1870 | 0.12 | 29.5 | June 1 through September 30 |

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

| Certificate | Priority Date | Instream Rate (cfs) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-----------------------------|
| 6489 | 1870 | 0.10 | 24.5 | June 1 through September 30 |

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 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 to the mouth of Catherine Creek, and whether the described instream flows.

The lateral ditch that diverts water for the portion of the right being leased should continue to remain blocked or plugged during the term of the lease.

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; and
 - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected instream has been reduced to account for return flows.
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 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 for 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 September 30, 2023. 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.

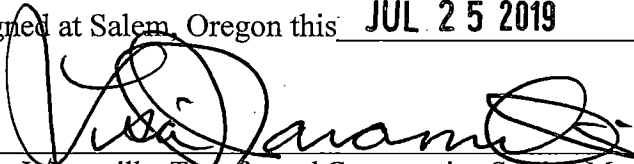
Conclusions of Law

The Department concludes that the lease 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 this lease, the former place of use will not receive water as part of this right, any supplemental rights, or any other layered water rights for irrigation use, including groundwater registrations.
3. This correcting order supersedes Special Order Volume 113, Pages 467-470.
4. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2023. The lease may not be terminated by any party to the lease prior to the specified termination date.

Signed at Salem, Oregon this JUL 25 2019.



Lisa J. Garamillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, DIRECTOR,
Oregon Water Resources Department

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

Mailing date: JUL 26 2019