

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

In the Matter of Split Season Instream) DETERMINATION and
Lease Application SL-27, Union 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

Tony and Andrea Malmberg
1782 South Main Street
Union, OR 97883

Lessee

The Freshwater Trust (TFT)
401 NE 1st Street
Enterprise, Oregon 97885

Findings of Fact

1. On April 6, 2020, Tony and Andrea Malmberg and TFT filed an application to renew split-season instream lease SL-27, involving a portion of Certificate 57428.
2. The portion of the right to be leased is as follows:

Certificate: 57428 in the name of Guild United Ditches, c/o Edgar Barton (confirmed by the Grande Ronde River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 8, at Page 1)

Use: Irrigation of 19.16 acres

Priority Date: 1874

Quantity: **Rate:** 0.48 Cubic Foot per Second (CFS)
Volume: 57.48 Acre-Feet (AF)
Limit: three acre-feet per acre in any irrigation season diverted at the 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):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	19	NE NE	150 FEET SOUTH AND 1730 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	19	SW SW	19.16

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. The Watermaster identified that the ditch through which water is diverted, under Certificate 57428, is the Guild United Ditch.
4. Certificate 57428 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.
5. 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.
6. The instream lease application, as proposed, is a split season lease.

Under Certificate 57428, water may be used for its existing use up to a maximum rate of 0.48 CFS and no more than 20.35 AF, consistent with the water right limits identified in Finding of Fact No. 2. The existing use period (out of stream) will be May 1 through July 14, a period of 75 days.

7. A portion of the water diverted at the POD returns to Catherine Creek within the proposed reach near the confluence with Pyles Creek 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. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream must be modified to account for return flows at the confluence with Pyles Creek.
8. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:

Catherine Creek, tributary to the Grande Ronde River

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 2) to the confluence with Pyles Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
57428	1874	0.24	37.17	July 15 through September 30

Instream Reach No. 2: From confluence with Pyles Creek to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
57428	1874	0.19	29.70	July 15 through September 30

9. 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 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 Lessor in coordination with the Lessee shall make monthly measurements of use. The Lessee and Lessor shall report the measurement's using the Split Season Measurement Reporting Form to the Watermaster's office at least once per month. The Lessor and Lessee shall also report beginning and ending meter readings for the full irrigation season. 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. The measuring device shall be a sharp crested weir located in the conveyance ditch to measure water diverted from the point of diversion and a totalizing flow meter for the property involved.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. 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 no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right and have been accounted for in Reach No. 2.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. The Lessor and Lessee have requested that the lease terminate on October 31, 2021. The lease may commence on the date this final order is signed.

18. 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 place of use will continue to receive water (up to 20.35 AF under Certificate 57428 during the period May 1 through July 14) for irrigation. For the remainder of the irrigation season, during 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. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2021. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this day MAY 14 2020 .



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

Mailing date: MAY 15 2020

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