

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

In the Matter of the Proposed Lease of)
Existing Water Rights for Instream Use,)
Certificates 16125, 50907, 34514, and)
43252, Jackson 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 instream lease applications.

Lessor
R D Jensen
14773 East Evans Creek Road
Rogue River, Oregon 97537

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

Findings of Fact

1. R D Jensen and the Oregon Water Trust filed an application to lease all of Certificates 16125, 50907, 34514, and 43252 to instream use. The Department assigned the application number IL-853.

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

Certificate: 16125 in the name of DAN NEATHAMMER (confirmed by Rogue River decree)

Use: IRRIGATION of 4.0 ACRES

Priority Date: 1874

Rate: 0.10 CUBIC FEET PER SECOND

Source: NEATHAMMER GULCH, tributary to EVANS CREEK

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	33	SW SW	4.0

3. For the purposes of this lease, the point of diversion associated with Certificate 16125 is

Twp	Rng	Mer	Sec	Q-Q
34 S	3 W	WM	33	SW SW

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.

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

Certificate: 50907 in the name of J W NEATHAMER (perfected under Permit S-6124)
Use: IRRIGATION of 1.9 ACRES
Priority Date: DECEMBER 1, 1923
Rate: 0.024 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre
Source: EVANS CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	34	SE SW	CARTER DITCH: 530 FEET NORTH AND 790 FEET WEST FROM S1/4 CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	3 W	WM	4	NW NE	1.9

5. The third right to be leased is as follows:

Certificate: 34514 in the name of DON L FOWLER, DON A FOWLER; AND JEAN C FOWLER (perfected under Permit S-30466)
Use: IRRIGATION of 1.2 ACRES
Priority Date: MAY 10, 1965
Rate: 0.02 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre-feet per acre per year
Source: NEATHAMMER GULCH, tributary to EVANS CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	3 W	WM	33	NE SW	1370 FEET NORTH AND 1800 FEET EAST FROM SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	33	SW SW	1.2

6. The fourth right to be leased is as follows:

Certificate: 43252 in the name of DON A FOWLER AND ELWYN L ROWE (perfected under Permit S-34699)
Use: IRRIGATION of 4.4 ACRES, SUPPLEMENTAL IRRIGATION of 8.4 ACRES
Priority Date: SEPTEMBER 25, 1969
Rate: 0.16 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 4.5 acre-feet/acre FOR IRRIGATION
Source: EVANS CREEK, tributary to ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	3 W	WM	4	NE NW	POD #1: 70 FEET SOUTH AND 1850 FEET EAST FROM NW CORNER OF SECTION 4
35 S	3 W	WM	4	NE NW	POD #2: 240 FEET SOUTH AND 1450 FEET EAST FROM NW CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	33	SW SW	3.0
34 S	3 W	WM	33	SE SW	1.4

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	3 W	WM	33	SW SW	5.2
34 S	3 W	WM	33	SE SW	3.2

7. For the purposes of this lease, the point of diversion associated with Certificate 16125 is

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
35 S	3 W	WM	4	NE NW	POD #1: 70 FEET SOUTH AND 1850 FEET EAST FROM NW CORNER OF SECTION 4

8. The applicant requested to protect instream only the water associated with primary acres of Certificate 16125.
9. 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.
10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

NEATHAMMER CREEK tributary to EVANS CREEK

Instream Reach: From POD (as described in Findings of Fact #3 and 5) to mouth of Neathammer Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
16125	1874	0.10	July 3 through September 30
34514	MAY 10, 1965	0.02	June 18 through October 31
<i>Total</i>		<i>0.12</i>	

EVANS CREEK tributary to ROGUE RIVER

Instream Reach: At the POD (as described in Findings of Fact #4 and 7)

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
50907	DECEMBER 1, 1923	0.024	May 1 through October 31
43252	SEPTEMBER 25, 1969	0.055	May 4 through October 31
<i>Total</i>		<i>0.079</i>	

11. 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.
12. 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.
13. 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.
14. The applicant requests that the lease terminate on October 1, 2011. However the irrigation season ends on October 31, and leases typically terminate on the last day of the irrigation season.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

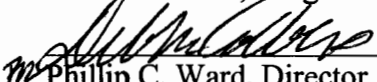
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, including the supplemental portion of Certificate 43252, 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, 2011. The Lessor has the option of terminating the lease each year, with notification to the Department by April 1st of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 17th day of August 2007.


Phillip C. Ward, Director

Mailing date: AUG 23 2007