

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-806, 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

Barry House
708 N Baker St
McMinnville, OR. 97128
ingles@willamettewest.com

Findings of Fact

1. On June 18, 2015, Barry House filed an application to renew instream lease IL-806, involving the entirety of Certificate 15101 and a portion of Certificate 66827 for instream use
2. The first right to be leased is as follows:

Certificate: 15101 in the name of V. H. Thompson (perfected under Permit S-14271)
Use: Irrigation of 11.2 acres
Priority Date: March 30, 1940
Quantity: **Rate:** 0.14 Cubic Foot per Second (CFS)
Volume: 28.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Unnamed Stream, tributary to Palmer Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
4 S	3 W	WM	21	SW SW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	20	NE SE	49	3.8
4 S	3 W	WM	21	NW SW	49	7.4
Total Acres:						11.2

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 portion of the second right to be leased is as follows:

Certificate: 66827 in the name of Barry House (perfected under Permit S-43209)
Use: Primary Irrigation of 55.8 acres and Supplemental Irrigation of 11.2 acres
Priority Date: February 18, 1977
Quantity: **Rate:** 0.70 Cubic Foot per Second (CFS) for Primary Irrigation
 0.14 CFS for Supplemental Irrigation
Volume: 139.5 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Willamette River, tributary to Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
4 S	3 W	WM	22	NW SW	3	1440 FEET NORTH AND 450 FEET EAST FROM THE SE CORNER OF DLC 49

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	20	SE NE	49	1.6
4 S	3 W	WM	20	NE SE	49	3.7
4 S	3 W	WM	21	SW NW	49	8.5
4 S	3 W	WM	21	SE NW	49	1.8
4 S	3 W	WM	21	NE SW	49	13.4
4 S	3 W	WM	21	NW SW	49	22.0
4 S	3 W	WM	21	SW SW	49	2.6
4 S	3 W	WM	21	SE SW	49	2.2
Total Acres:						55.8

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	20	NE SE	49	3.8
4 S	3 W	WM	21	NW SW	49	7.4
Total Acres:						11.2

4. Certificates 15101 and 66827 do not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250, for the purposes of instream leasing, an irrigation season of March 1 through October 31 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 lease application requests to protect water instream from an unnamed stream, tributary of Palmer into the Willamette River. An instream reach is generally from the point of diversion to the mouth of the source stream (unnamed creek) but may be protected further if measurable in the receiving stream (the Willamette River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the unnamed creek, tributary of Palmer Creek, is measurable into the Willamette River and may be protected instream in the Willamette River.

7. The instream use has been modified from the application and is as follows:

Unnamed Creek, tributary to Palmer Creek (Certificate 15101):

Instream Reach:

Certificate 15101: From the POD (as described in Finding of Fact No. 2) into Palmer Creek, into the Yamhill River, to the mouth of the Yamhill River

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3/30/1940	0.14	28.0	June 23 through September 30

Willamette River, tributary to the Columbia River (Certificate 66827):

Instream Reach 1:

Certificate 66827: From the POD (as described in Finding of Fact No. 3) to the confluence with the Yamhill River

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
2/18/1977	0.70	139.5	June 23 through September 30

Instream Reach 2:

Certificate 66827: From the confluence with the Yamhill River to the Willamette Falls at RM 27.

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
2/18/1977	0.84	167.5	June 23 through September 30

8. Other conditions to prevent injury and enlargement are:

A portion of Certificate 66827 is supplemental to Certificate 15101. The supplemental portion (0.14 CFS/28.00 AF) of Certificate 66827 being leased instream shall only be protected instream if the full rate and duty under Certificate 15101 is not available during the period for which water is being leased instream.

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:

- a. The instream water use begins at the recorded points 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 rights 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. 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.
13. 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.
14. 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.
15. 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.
16. The Lessor has requested that the lease terminate on September 30, 2019. The lease may commence on the date this final order is signed.
17. The Lessor has requested the option of terminating the lease early but only with consent of all parties to the lease.

Conclusions of Law

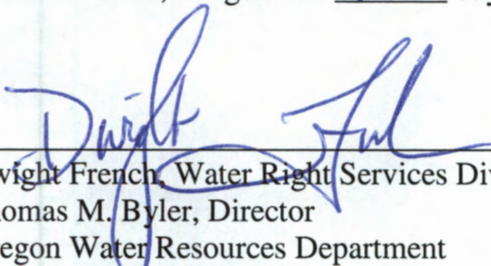
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, 2019. The lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (June 23 through September 30) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 11 day of August, 2015.



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

Mailing date: AUG 13 2015

*This document was prepared by Tracy
Fox and if you have any questions,
please call 503-986-0827.*