

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

In the Matter of Instream Lease Application) DETERMINATION and
SL-25, Union County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

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

Susan Boyd, Trustee
Isabel W. Boyd Irrevocable Trust
PO Box 6
Union, OR 97883

Lessee

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

Findings of Fact

1. On April 4, 2014, Susan Boyd, Trustee, and TFT filed an application to lease a portion of Certificate 36610 as a split season instream use. The Department assigned the application number SL-25.
2. On May 9, 2014, the Department sent a request to the Lessee for additional information necessary to complete the lease application, including a revised map and clarification of begin and end dates for the instream and irrigation uses. A revised split season lease form was received on May 15, 2014.
3. On June 9, 2014, a finalized revised map was submitted to the Department, which reduced the number of acres proposed to be leased to instream use.
4. On June 11, 2014, the Department also clarified with the Lessee the quantities (rate and volume) to be leased for instream use and for irrigation purposes.
5. The portion of the right to be leased has been modified from the lease application and is as follows:

Certificate: 36610 in the name of Isabelle Hutchinson (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 22.0 acres in Tract 1

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.

Priority Date: 1863 for Tract 1
Quantity: **Rate:** 0.55 Cubic Foot per Second (CFS)
Volume: 66.0 Acre-Feet (AF)
Limit: 3.0 AF per acre in any irrigation season, diverted at a rate of not to exceed 1/40th 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	40 E	WM	18	NW NE	6.0
4 S	40 E	WM	18	SW NE	16.0
Total Acres					22.0

6. Certificate 6459 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 is miles Ditch and appears to be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40E	WM	18	SW NE	3250 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 18

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 lease application, as proposed, is a split season lease.

Under Certificate 36610, water may be used for its existing use up to a maximum rate of 0.55 CFS and no more than 33.0 AF, consistent with the water right limits identified in Findings of Fact No. 5. The existing use period (out of stream) will be May 5 through July 14, a period of 71 days.

9. The lease application requests to protect water instream from Little Creek into Catherine Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Creek) but may be protected further if measurable in the receiving stream (Catherine Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Little Creek is not measurable into Catherine Creek and may not be protected instream in Catherine Creek.

10. The instream use has been modified from the 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. 6) to the mouth of Little Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
36610	1963	0.21	33.0	July 15 through September 30

11. 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 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 Lessee and Lessor 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 totalizing flow meters installed in the ditch and on the diversion.

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

13. 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 downstream of the reach of the instream water right.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. The Lessor and Lessee have requested that the lease terminate on October 31, 2014. The lease may commence on the date this final order is signed.

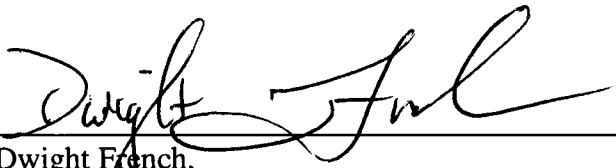
Conclusions of Law

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 the term of this lease, the place of use will continue to receive water (up to 33.0 AF under Certificate 36610 during the period May 5 through July 14) for irrigation. Also, 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, for the remainder of the irrigation season.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2014.

Dated at Salem, Oregon this 12th day of June, 2014.


Dwight French,
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

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

Mailing date: JUN 13 2014