

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1284, Certificate 81811, 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 #1**

Lynden L. Charlson  
PO Box 24  
Union, OR 97883

**Lessor #2**

The Freshwater Trust (TFT)  
65 SW Yamhill St., Suite 300  
Portland, Oregon 97204  
mike@thefreshwatertrust.org

**Findings of Fact**

1. On April 1, 2013, Lynden Charlson and TFT filed an application to lease a portion of Certificate 81811 for instream use. The Department assigned the application number IL-1284.
2. The lease application submitted to the Department, requested to lease 41.5 acres of irrigation to instream use. However, based upon review of the lease application, the Department as identified that there only appear to be 37.67 acres of irrigation available to be leased based on the size of the property and location of roadways that are now located on lands that may have been irrigated. On June 3, 2013, the Freshwater Trust agreed to modify the lease application accordingly.
3. The portion of the right to be leased is as follows:

**Certificate:** 81811 in the name of Florence Dobbin (confirmed by decree of the Circuit Court of the State of Oregon for Union County; Volume 8, Page 1)

**Use:** Irrigation of 37.67 acres

**Priority Date:** 1870

**Quantity:** **Rate:** 0.94 Cubic Foot per Second (CFS)

**Duty:** 113.01 Acre-Feet (AF)

**Limit:** One-fortieth of one cubic foot per second (CFS) per acre, not to exceed 3.0 AF per acre per year

**Source:** Catherine Creek, tributary to the Grande Ronde River

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.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tract #	Acres
4 S	39 E	WM	13	NW NE	1	1.50
4 S	39 E	WM	13	SW NE	1	36.17
<b>Total:</b>						<b>37.67</b>

4. Certificate 81811 does not specify the location of the authorized point of diversion. For purposes of this lease, based on information provided by the Department field staff, the POD may be described as indicated in the following table:

**Authorized POD:**

Twp	Rng	Mer	Sec	Q-Q	GPS Coordinates
4 S	40 E	WM	18	SW SW	45.21086, -117.86838

5. Certificate 81811 does not specify the irrigation season. However, information was provided by the Watermaster specifying March 1 to October 31 of each year as the irrigation season for this area.
6. The lease application includes the information required under OAR 690-077-0076(3). On April 9, 2013, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
7. A portion of the water diverted at the POD returns to the system below the confluence of Little Creek on Catherine Creek 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 to account for surface return flows. The Watermaster has identified an allowance of 0.01 CFS (or 20%) below the confluence with Little Creek (See Instream Reach #2 in Finding of Fact #7 below) as necessary to account for these return flows.
8. The applicant has requested to protect water instream from July 1 through October 30, a 122 day period. At the maximum rate and volume specified in the lease application, water may only be protected instream for a period of 80 days. To protect water over the full time period requested, the instream rate must be reduced to prevent injury and enlargement.
9. The instream use has been modified from the lease application in consideration of return from and to prevent injury and enlargement and is as follows:  
Catherine Creek, tributary to Grande Ronde River

**Instream Reach:** From the POD (as described in Finding of Fact #4) to the confluence with Little Creek (at approximately RM 16.5)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81811	1870	0.47	113.01	July 1 – October 30

**Instream Reach:** From below the confluence with Little Creek (approximately RM 13.5) to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81811	1870	0.46	111.31	July 1 – October 30

10. Other conditions to prevent injury and enlargement are:
  - a. The feeder ditches diverting water from the main ditch in this area must be blocked to assure the lands as identified in Finding of Fact #3 do not receive water during the term of this lease. The Lessor and Lessee shall coordinate with the local Watermaster to identify appropriate measures to prevent diversion of water during the term of this lease.
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. 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.
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 Lessors have requested that the lease terminate on November 1, 2017. The lease may terminate on the last day of the irrigation season, being October 31, 2017. The lease may commence on the date this final order is signed.
15. The Lessors have indicated that they will not have the option of terminating the lease early without consent by 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.

### **ORDER**

Therefore, it is ORDERED:

1. That 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 water rights for irrigation use, including ground water registrations.

3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2017. The Lessor may only terminate the lease early with the consent of all parties to the lease.

Dated at Salem, Oregon this 7 day of June, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Susan Douthit and if you have any questions, please call 503-986-0858.*

Mailing date: JUN 11 2013