

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1311, Certificate 45105,) FINAL ORDER ON PROPOSED
Union County) 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

Tony Malmberg
1782 S Main Street
Union, OR 97883

Lessee

The Freshwater Trust
David Pilz
65 SW Yamhill ST, Suite 200
Portland, OR 97204

Findings of Fact

1. On March 29, 2013, Tony Malmberg and David Pilz, on behalf of The Freshwater Trust, filed an application to renew Instream Lease IL-1153, involving a portion of Certificate 45105.
2. During the review process, the Department identified that instream use required modification to account for updated information regarding streamflow losses and return flows. The Department has re-assigned the lease application number to IL-1311, to differentiate it from IL-1153.

3. The portion of the right to be leased is as follows:

Certificate: 45105 in the name of Union Orchard Company

Use: Irrigation of 29.2 acres

Priority Date: 1874

Quantity: **Rate:** 0.73 Cubic Feet per Second (CFS)

Duty: 87.6 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, a tributary of 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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	40 E	WM	19	NE NE	850 FEET SOUTH AND 2870 FEET WEST FROM THE N1/4 CORNER OF SECTION 20

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	40 E	WM	19	SW SW	10.0
4 S	40 E	WM	23	NW NW	19.2
Total:					29.2

4. Certificate 45105 does not specify the irrigation season. Furthermore, the decree for the Grande Ronde River Basin also does not specify the season. However, in consultation with the Watermaster, the established irrigation season for the area is March 1 to October 31 of each year.
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) on April 9, 2013. No comments were received in response to that notice.
6. The original lease application requested a reach from the POD, as described in Finding of Fact #3, to the mouth of Catherine Creek. In the order approving IL-1153, the instream reach was modified to extend from the POD to Lower Davis Dam, located at approximately River Mile (RM) 12.
7. A portion of the water diverted at the POD returns to the system below the confluence of Pyles Creek and 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 return flows. The Watermaster has identified an allowance of 0.066 CFS (or 20%) below the confluences of Pyles Creek (See Instream Reach #2 in Finding of Fact #8 below) as necessary to account for these return flows.
8. The instream use has been modified to maximize the instream protection period as well as to avoid injury or enlargement and is as follows:

CATHERINE CREEK, a tributary of the GRANDE RONDE RIVER

Instream Reach #1: From the POD at approximately River Mile 18, as described in Finding of Fact #2, to the confluence with Pyles Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
45105	1874	0.33	87.6	June 19 - October 30

Instream Reach #2: From the confluence with Pyles Creek to Lower Davis Dam, located at approximately RM 12.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
45105	1874	0.26	79.7	June 19 - October 30

9. Other conditions to prevent injury and enlargement are:
 - a. If transport losses within the instream reach become evident the quantity of water protected instream under this lease may be adjusted accordingly.
 - b. 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.
10. 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.
11. 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.
12. 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.
13. The portion of this right proposed to be leased instream, as described in Finding of Fact #3, is currently leased instream under IL-1153. The term of that lease expires on October 31, 2013.
14. The Lessor has requested that the lease terminate on October 31, 2018, and requested that the lease commence on June 19, 2014. The term of a lease commences upon the date the final order is signed or the first day of the irrigation season, whichever comes later. The lease may commence on March 1, 2014.
15. The Lessor has 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 pursuant to OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

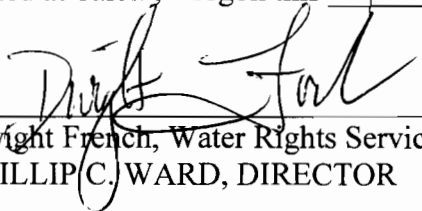
ORDER

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 right for irrigation use, including ground water registrations.
3. The term of the lease will commence on March 1, 2014, and terminate on October 31, 2018. The Lessor may only terminate the lease early with the consent of all the parties to the lease.

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



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

Mailing date: JUN 11 2013

The order approving this was prepared by Susan Douthit. If you have any questions about the information in this document, you may reach me at 503-986-0858 or susan.m.douthit@wrds.state.or.us