

**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 47573 and 27268, Benton)
County) DETERMINATION and
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

Fred Hendrix Trust
Barry Hendrix, Trustee
22510 Oregon City Loop
West Linn, Oregon 97068

Findings of Fact

1. The Fred Hendrix Trust (Barry Hendrix, Trustee), filed an application to renew instream lease L-341, involving all of Certificates 47573 and 27268 to instream use. The Department assigned the application number IL-341.

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

Certificate: 47573 in the name of JOHN F SAPP, C/O LOBSTER VALLEY FARMS (perfected under Permit S-7893)

Use: IRRIGATION of 47.0 ACRES

Priority Date: MARCH 25, 1927

Rate: 0.59 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: LOBSTER CREEK AND COAL BANK CREEK, tributary to ALSEA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	8 W	WM	4	SE SE	COAL BANK CR: 5.9 CHAINS WEST AND 4.4 CHAINS NORTH FROM NE CORNER OF SECTION 9
15 S	8 W	WM	9	NE NE	LOBSTER CR: 5.4 CHAINS WEST AND 13.6 CHAINS SOUTH FROM NE CORNER OF SECTION 9

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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	8 W	WM	4	SW NE	10.0
15 S	8 W	WM	4	SW NW	16.0
15 S	8 W	WM	4	SE NW	10.0
15 S	8 W	WM	4	NE SW	4.0
15 S	8 W	WM	4	NW SW	7.0

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

Certificate: 27268 in the name of LOBSTER VALLEY FARMS (perfected under Permit S-23512)

Use: IRRIGATION of 47.2 ACRES

Priority Date: MARCH 18, 1955

Rate: 0.59 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: LOBSTER CREEK, tributary to ALSEA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
15 S	8 W	WM	5	NE SW
15 S	8 W	WM	6	NE SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	8 W	WM	5	NE SW	10.0
15 S	8 W	WM	5	NW SW	24.8
15 S	8 W	WM	6	NE NE	11.8
15 S	8 W	WM	6	SE SE	0.6

4. Coal Bank Creek is more accurately described as a tributary of Lobster Creek. Lobster Creek is a tributary of Five Rivers, which is a tributary to the Alsea River.
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 instream use is clarified from the lease application to prevent injury and enlargement and is as follows:

LOBSTER CREEK tributary to FIVE RIVERS

Instream Reach: From PODs (as described below and in Findings of Fact #2 and #3) to the mouth of LOBSTER CREEK

Certificate	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
47573	15 S	8 W	WM	9	NE NE	LOBSTER CR: 5.4 CHAINS WEST AND 13.6 CHAINS SOUTH FROM NE CORNER OF SECTION 9
27268	15 S	8 W	WM	5	NE SW	

Certificate	Priority Date	Instream Rate (cfs)		Period Protected Instream
		At POD	Reach Below POD	
47573	MARCH 25, 1927	0.59	0.295	June 23 through September 30
27268	MARCH 18, 1955	0.59	0.295	June 23 through September 30
<i>Total</i>		<i>1.18</i>	<i>0.59</i>	<i>June 23 through September 30</i>

7. Other conditions to prevent injury and enlargement are:
To account for return flows the instream rate has been reduce by 50 percent below the POD.
8. 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.
9. 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.
10. 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.
11. The lease will commence on March 1, 2008 and terminate on October 1, 2012.
12. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

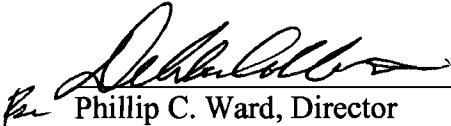
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will commence on March 1, 2008 and terminate on October 1, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by May 23 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 20th day of December 2007.


Phillip C. Ward, Director

Mailing date: DEC 21 2007