

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1415, Umatilla 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

UmaBirch LLC
Jim Whitney
PO Box 1614
Pendleton, OR 97801

Lessee

The Freshwater Trust
700 SW Taylor Street, Suite 200
Portland, OR 97205

Findings of Fact

1. On March 24, 2017, UmaBirch LLC and The Freshwater Trust filed an application to renew instream lease IL-1415, involving a portion of Certificate 75656.
2. The portion of the right to be leased is as follows:

Certificate: 75656 in the name of CLEAR CREEK CATTLE COMPANY (Confirmed by Umatilla River Decree of record at Salem, in the Order of Record of the Water Resources Director in Volume 3, page 127)

Use: Irrigation of 60 acres

Priority Date: 1880

Quantity: **Rate:** 0.75 Cubic Foot per Second (CFS)
Limit: limited to the amount actually beneficially used and shall not exceed 1.06 cubic feet per second, subject to the provision of paragraph 33 of said decree, and all other conditions and limitations contained in said decree.

Source: BIRCH CREEK, tributary of the UMATILLA RIVER

Authorized Place of Use (POU):

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	19	NE SW	2.0
2 N	32 E	WM	19	SE SW	16.0
2 N	32 E	WM	19	SW SE	18.5
2 N	32 E	WM	30	NE NE	15.0
2 N	32 E	WM	30	NW NE	8.5

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.

Twp	Rng	Mer	Sec	Q-Q	Acres
Total					60.0

3. Certificate 75656 does not provided the location of the point of diversion. The Watermaster identified that the POD description provided by the applicant was incorrect so, for the purpose of this instream lease, the point of diversion is located at approximately:

Twp	Rng	Mer	Sec	Q-Q	River Mile
2 N	32 E	WM	30	SE NE	PETERSON DAM, APPROXIMATELY 2.5 RIVER MILES FROM THE MOUTH OF BIRCH CREEK

4. Certificate 75656 does not specify the irrigation season. The Umatilla River Decree establishes an irrigation season of March 1 through October 31 of each year.
5. Certificate 75656 does not specify the rate and duty for the portion of lands described in Finding of Fact #2. The Umatilla River Decree, in Paragraphs 33 and 34, establishes that lands characterized as being the bottom lands along the tributaries of the Umatilla river will be limited to a rate of one-eightieth CFS per acre (up to 0.75 CFS) and duty of 4.5 acre feet (AF) per acre (up to 270.0 AF).
6. 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.
7. The original lease application requested the Department to protect water instream from Birch Creek into the Umatilla River. An instream reach is generally from the point of diversion to the mouth of the source stream (Birch Creek) but may be protected further if measurable in the receiving stream (the Umatilla River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Birch Creek is not measurable into the Umatilla River and cannot be protected instream in the Umatilla River.
8. Streamflows are lost within the proposed reach due to channel losses. Quantities protected instream have been reduced by 3% per mile at Instream Point #3 (Finding of Fact #9) to account for streamflow losses within the channel, as well as, prevent injury and enlargement. The instream reach is approximately 2.5 miles in length.
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
BIRCH CREEK, tributary to the UMATILLA RIVER

Instream Reach #1: At the POD (as described in Finding of Fact #3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
75656	1880	0.59	270.0	March 16 through October 31

Instream Point #2: Immediately below the POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
75656	1880	0.42	192.0	March 16 through October 31

Instream Point #3: At the mouth of Birch Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
75656	1880	0.39	177.5	March 16 through October 31

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. The protection of flows at the authorized point of diversion 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 known areas of natural loss of streamflow to the river bed downstream from the point of diversion. The rate and volume of water protected instream has been reduced 3% per mile at Instream Point #3; and
 - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the instream reach and have been accounted for at Instream Point #2.
12. The total monthly quantities of water to be protected under the existing and proposed instream rights at each point will provide for a beneficial purpose.
13. The total monthly quantities of water to be protected instream under existing and proposed instream rights at each point do not exceed the estimated average natural flow.
14. 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.
15. 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.
16. 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.
17. The Lessor and Lessee have requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.
18. The Lessor and Lessee have requested that there not be an option to terminate the lease.

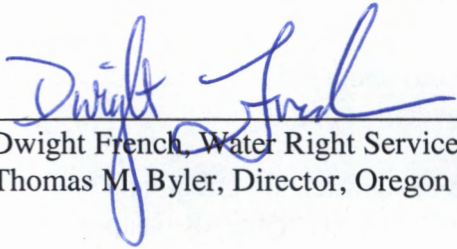
Conclusions of Law

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 the term 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 October 31, 2017

Dated at Salem, Oregon this 4 day of May, 2017.



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

Mailing date: MAY - 8 2017

This document was prepared by Kate Fitzgerald. If you have any questions, please call 503-986-0898.