

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

In the Matter of the Proposed Lease of	)	DETERMINATION and
Existing Water Rights for Instream Use,	)	FINAL ORDER ON PROPOSED
Certificate 31626, Polk 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

Hans Koennecke
9095 Harmony Road
Sheridan, Oregon 97378-9002

Findings of Fact

1. On September 4, 2007, Hans Koennecke filed an application to renew instream lease L-169, involving a portion of Certificate 31626 to instream use.
2. Instream Lease L-169 was approved for the 2001 and 2002 irrigation seasons (Special Order Volume 55, Page 441) and renewed for the 2003 through 2007 irrigation seasons (Special Order Volume 57, Page 251). The Special Orders did not specify the acres involved in the leases, but instead referenced the original application. The original application indicated that 6.3 acres were to be leased instream and provided a map showing the lands to be leased.
3. In the Department's review of the new lease application submitted on September 4, 2007, the Department determined that there are fewer acres that may be leased instream than previously approved. Consequently, the Department has assigned a new lease application number, IL-887.

4. The right to be leased is as follows:

Certificate: 31626 in the name of MRS GERTRUDE B. SWARTZ (perfected under Permit S-26520)

Use: IRRIGATION of 3.2 ACRES

Priority Date: JANUARY 11, 1960

Rate: 0.04 CUBIC FEET PER SECOND

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

Source: MILL CREEK, tributary to SOUTH YAMHILL 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:

Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	6 W	WM	9	SE NW	39

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	6 W	WM	9	SE NW	39	1.0
6 S	6 W	WM	9	NE SW	39	2.2

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). The application was noticed as IL-169. No comments were received.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
MILL CREEK tributary to SOUTH YAMHILL RIVER

Instream Reach: From POD (as described in Finding of Fact #4) to mouth of Mill Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
31626	JANUARY 11, 1960	0.04	June 23 through September 30

7. 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.
8. 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.
9. 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.
10. The lease will commence on April 1, 2008 and terminate on September 30, 2012.

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 April 1, 2008 and terminate on September 30, 2012.

Dated at Salem, Oregon this 27th day of December 2007.


Phillip C. Ward, Director

Mailing date: JAN 11 2008