

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1385, 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

Dwaine Schubert
PO Box 612
Union, OR 97883

Lessee

The Freshwater Trust (TFT)
1782 South Main Street
Union, OR 97883
tony@thefreshwatertrust.org

Findings of Fact

1. On April 4, 2014, Dwaine Schubert and TFT filed an application to lease a portion of Certificates 6274 and 6489 for instream use. The Department assigned the application number IL-1385.
2. On May 13, 2014, the Department sent a request to the Lessee for additional information necessary to complete the lease application, including a revised map.
3. On May 29 and 30, 2014, TFT provided revised application maps clarifying the portion of each right to be leased instream.
4. On June 12, 2014, based upon continued evaluation of the lease application, the Department requested additional information, including potential use issues and clarification of the termination provision. Additional information was provided by the Lessee on June 12, 2014, which included a request to remove Certificate 6274 from the instream lease application.
5. The portion of the right to be leased is as follows:
Certificate: 6489 in the name of H.J. Nielson (perfected under the Grande Ronde River Decree, of record at Salem in the Order Record of the State Engineer, in Volume 8, at page 1)
Use: Irrigation of 12.3 acres
Priority Date: 1870

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.

Quantity: **Rate:** 0.31 Cubic Foot per Second (CFS)
Volume: 36.9 Acre-Feet (AF)
Limit: 3.0 AF per acre in any irrigation season, diverted at a rate of not to exceed one-fortieth of a cubic foot per second per acre

Source: Catherine Creek, tributary to the Grande Ronde River

Authorized Point of Diversion (POD): (not described on certificate)

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	39 E	WM	13	NW SE	12.3

6. Certificate 6489 does not provided a description of the location of the point of diversion. Based upon information provided by the Lessee and Lessor, the point of diversion appears to be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
4 S	39E	WM	13	SW SE	Latitude 45.210622, Longitude -117.868533

The POD is further identified as being located at approximately River Mile 16.7.

7. Certificate 6489 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
8. 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.
9. The quantities of water originally proposed to be leased to instream use require modification to clarify the amount of water that may be leased instream under each right. The Lessor and Lessee requested an instream use period of June 1 through September 30, a 122 day period. During that period, the Department has identified that up to 0.152 CFS and 36.9 AF may be protected instream under Certificate 6489.
10. A portion of the water diverted at the POD returns to the Catherine Creek within the proposed reach and is available to downstream water right holders. Approximately 20% return flows from the existing use generally return to the creek system below the POD. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for immediately below the POD.
11. In addition, the full quantity requested to be protected instream from the point of diversion to the mouth of Catherine Creek may not be made without enlargement. There are known areas of natural streamflow loss to the river bed downstream from the point of diversion. These loses are not accounted for within the proposed reach. The Watermaster has previously identified that a segment of Catherine Creek below River Mile 12 is a losing reach and loses as much as 50% at low flows late in the summer.

12. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Catherine Creek, tributary to the Grande Ronde River

Instream Point No. 1: At the POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
6489	1870	0.15	36.9	June 1 through September 30

Instream Reach No. 2: From immediately below the POD to River Mile 12

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
6489	1870	0.12	29.5	June 1 through September 30

Instream Reach No. 3: From River Mile 12 to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
6489	1870	0.06	14.8	June 1 through September 30

13. Other conditions to prevent injury and enlargement are:

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 senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach to the mouth of Catherine Creek, and whether the described instream flows below River Mile 12 may be adjusted. If adjusted, instream flows from River Mile 12 to the mouth of Catherine Creek may not exceed the quantities specified within Reach No. 2.

The lateral ditch that diverts water for the portion of the right being leased should continue to remain blocked or plugged during the term of the lease.

14. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

15. The protection of flows within the proposed reach 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 and have been accounted for in Reach No. 3 (Finding of Fact No. 12); and
- d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected instream in Reach No. 2 (Finding of Fact No. 12) has been reduced to account for return flows.

16. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
17. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
18. 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.
19. 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.
20. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
21. The Lessor and Lessee have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed.
22. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

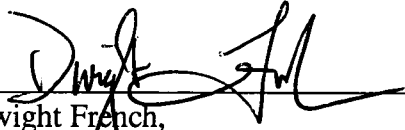
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During the term of this lease, the former place of use will not receive water as part of this right, any supplemental rights, or any other layered water rights for irrigation use, including groundwater registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2018. For multiyear leases, the lessor and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (June 1

through September 30) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 16 day of June, 2014.



Dwight French,
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUN 19 2014