

**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 64753, 55641, 35601, 52909,)
67109, and 75935, Wasco 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

Eugene M. Underhill
Colleen F. Underhill-Bergsma
82541 Dufur Valley Road
Dufur, OR 97021

Lessee

Oregon Water Trust
522 SW Fifth Avenue, Suite 825
Portland, OR 97204

Findings of Fact

1. Eugene M. Underhill and the Oregon Water Trust filed an application to renew instream lease L-68, involving all of Certificates 55641, 35601, and 75935 and a portion of Certificates 64753, 52909, and 67109 to instream use. The Department assigned the application number IL-68.
2. The first right to be leased is as follows:

Certificate: 64753 in the name of GENE UNDERHILL (confirmed by Fifteen Mile Creek decree)

Use: IRRIGATION of 18.6 ACRES

Priority Date: 1856

Rate: Not described on certificate

Limit/Duty: Not to exceed ONE-FORTIETH cubic foot per second per acre after July 1st; 1.0 acre-feet per acre during any 30 day period up to July 1st and ¾ acre-feet per acre thereafter, not to exceed 3.0 acre-feet per acre per year and

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	13 E	WM	33	NE SW	SIGMAN DITCH: 2480 FEET NORTH AND 2250 FEET EAST FROM SW CORNER OF SECTION 33
1 S	13 E	WM	34	SW NW	CREEK: 1620 FEET SOUTH AND 30 FEET EAST FROM NW CORNER OF SECTION 34

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	Tract
1 S	13 E	WM	33	SW NE	9.0	2
1 S	13 E	WM	33	SE NW	6.5	2
1 S	13 E	WM	33	NE SW	1.5	2
1 S	13 E	WM	33	NW SE	1.6	2

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

Certificate: 55641 in the name of WILLIAM HULSE (confirmed by Fifteen Mile Creek decree)

Use: IRRIGATION of 8.0 ACRES

Priority Date: 1885

Rate: Not described on certificate.

Limit/Duty: Not to exceed 3.0 acre-feet per acre per year

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
1 S	13 E	WM	34	SW NW	37	260 FEET SOUTH AND 690 FEET WEST FROM NE CORNER OF HENDERSON DLC 37

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	13 E	WM	34	NW NW	5	8.0

4. The original point of diversion for Certificate 55641 is:

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	13 E	WM	32	NW SE	STRACHAN DITCH: 1720 FEET NORTH AND 1830 FEET WEST FROM SE CORNER OF SECTION 32

5. The third right to be leased is as follows:

Certificate: 35601 in the name of WILLIAM L HULSE (perfected under Permit S-29637)

Use: IRRIGATION of 22.3 ACRES

Priority Date: APRIL 21, 1964

Rate: 0.26 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	13 E	WM	32	SW SW	870 FEET NORTH AND 1060 FEET EAST FROM SW CORNER OF SECTION 32
1 S	13 E	WM	32	SE SW	980 FEET NORTH AND 1410 FEET EAST FROM SW CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	SE SE	3.8
1 S	13 E	WM	32	NE SW	0.7
1 S	13 E	WM	32	SW SW	15.4
1 S	13 E	WM	32	SE SW	2.4

6. The fourth right to be leased is as follows:

Certificate: 52909 in the name of GENE UNDERHILL (perfected under Permit S-41261)

Use: IRRIGATION of 5.9 ACRES

Priority Date: NOVEMBER 26, 1976

Rate: 0.07 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	13 E	WM	32	NE SW	1380 FEET NORTH AND 2250 FEET EAST FROM SW CORNER OF SECTION 32
1 S	13 E	WM	32	SW SW	900 FEET NORTH AND 1010 FEET EAST FROM SW CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	NE SE	1.2
1 S	13 E	WM	31	SE SE	2.0
1 S	13 E	WM	32	NW SW	1.4
1 S	13 E	WM	32	SW SW	1.3

7. The fifth right to be leased is as follows:

Certificate: 67109 in the name of GENE UNDERHILL (perfected under Permit S-44313)

Use: IRRIGATION of 28.6 ACRES

Priority Date: MAY 19, 1977

Rate: 0.35 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
1 S	13 E	WM	33	NE SW	4		220 FEET NORTH FROM SW CORNER OF DLC 37
1 S	13 E	WM	34	SW NW		37	260 FEET SOUTH AND 690 FEET WEST FROM NE CORNER OF DLC 37

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	13 E	WM	33	NE NE		37	0.1
1 S	13 E	WM	33	SW NE	2	37	6.3
1 S	13 E	WM	33	SW NE		37	0.1
1 S	13 E	WM	33	SE NE		37	9.3
1 S	13 E	WM	33	SE NE	2		2.2
1 S	13 E	WM	34	NE NW		37	0.6
1 S	13 E	WM	34	NW NW		37	2.9
1 S	13 E	WM	34	SW NW		37	6.3
1 S	13 E	WM	34	SE NW		37	0.8

8. The sixth right to be leased is as follows:

Certificate: 75935 in the name of GENE UNDERHILL (perfected under Permit S-44313)

Use: IRRIGATION of 10.5 ACRES

Priority Date: MAY 19, 1977

Rate: 0.13 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: FIFTEENMILE CREEK, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1 S	13 E	WM	33	NE SW	2480 FEET NORTH AND 2250 FEET EAST FROM SW CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	33	SW NE	9.5
1 S	13 E	WM	33	SE NE	1.0

9. 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.

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

FIFTEENMILE CREEK tributary to COLUMBIA RIVER

Instream Reach: From PODs at approximately RM 33 [as described in Finding of Fact #2 (from Creek), 4, 5 (in the SW SW), 6 (in the SW SW), and 7 (in the NE SW)] to mouth of FIFTEENMILE CREEK

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
64753	1856	0.23	July 1 through October 29
55641	1885	0.10	July 1 through October 29
35601	APRIL 21, 1964	0.26	July 1 through October 29
52909	NOVEMBER 26, 1976	0.07	July 1 through October 29
67109	MAY 19, 1977	0.35	July 1 through October 29
75935	MAY 19, 1977	0.13	July 1 through October 29

11. 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 water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specific stream reach.
12. 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.
13. 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.
14. 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.
15. The lease will terminate on December 31, 2012.
16. 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 terminate on December 31, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by June 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 16th day of May 2008.



PCW

Phillip C. Ward, Director

Mailing date: MAY 27 2008