

Limit: limited to an amount actually beneficially used for said purposes, and shall not exceed one-fortieth CFS per acre irrigated to June 1 and one-eightieth CFS per acre thereafter; further limited to one AF per calendar month to June 1 and four AF per acre during season April 1 to September 30, measured at the point of diversion

Source: Berry Creek, tributary to Canyon Creek, and Canyon Creek

Authorized Point of Diversion (POD): Not described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	31 E	WM	36	SW NW	23.3
14 S	31 E	WM	36	NW SW	18.8
14 S	31 E	WM	36	SW SW	5.7
Total Acres					47.8

4. Certificate 25341 does not provide a description of the location of the point of diversion. However, based upon additional information provided by the applicant and evaluation of Certificate 25341, for purposes of this instream lease, the point of diversion on Berry Creek is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude-Longitude / River Mile
14 S	31 E	WM	36	NW SE	Latitude 44.312318, Longitude -118.940463, approximately River Mile 0.65

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 lease application, as proposed, is a split season lease. Under Certificate 25341, water may be used for its existing use up to a maximum rate of 1.2 CFS prior to June 1 and 0.6 CFS thereafter. In addition, no more than 83.54 AF may be used for irrigation, consistent with the water right limits identified in Findings of Fact No. 3. The existing use period (out of stream) will be April 1 through June 30, a period of 91 days.
7. A portion of the water diverted at the place of use returns to Berry Creek and Canyon Creek and is available to downstream water right holders. To prevent injury to downstream rights and enlargement, the quantity of water that may be protected instream below the point of diversion requires modification. The instream use below the point of diversion has been reduced to the consumptive portion of the use.
8. The lease application requests to protect water instream from Berry Creek into Canyon Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Berry Creek) but may be protected further if measurable in the receiving stream (Canyon Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Berry Creek is measurable into Canyon Creek and may be protected instream in Berry Creek.
9. Streamflows are lost within the proposed reach due to evaporation. Reductions of 1% per mile in the quantities that may be protected instream are necessary to prevent injury to downstream water users and enlargement of the right.

10. The instream use is as follows:
Berry Creek, tributary to Canyon Creek

Instream Point No. 1: At the POD (as described in Finding of Fact No. 4) on Berry Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
25341	7/3/1883	0.59	107.66	July 1 through September 30

Instream Point No. 2: Immediately below the POD on Berry Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
25341	7/3/1883	0.36	65.49	July 1 through September 30

Instream Point No. 3: At location of Grant County Courthouse on Canyon Creek, located approximately at River Mile 2.5

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
25341	7/3/1883	0.34	60.96	July 1 through September 30

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 points of diversion within the specified stream reach.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

Water rights on Canyon Creek shall not be regulated as a result of this instream lease, except for those rights that have been previously regulated as a result of the exercise of Certificate 25341.

The Lessor shall be responsible for taking measurements when water is being used for irrigation. The Lessee (the Freshwater Trust) shall be responsible for calibrating the flow to the weirs installed at each of the diversion points. The record shall be kept on a daily basis from April 1 through June 30. Two-weeks prior to the period of instream use, The Freshwater Trust shall submit a draft Split Season Measurement Reporting Form to the Department's District No. 4 Watermaster office. No later than July 1 or the first business day thereafter, The Freshwater Trust shall submit a final Split Season Measurement Reporting Form to the Department's District No. 4 Watermaster office. Reporting requirements may be altered if deemed necessary by the Department's District No. 4 Watermaster office. The measuring device shall be a weir installed on each of the diversion points. In addition, water recording devices have been installed to quantitatively total the amount of water diverted by the Lessor.

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

13. 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 no known areas of natural loss of streamflow to the river bed downstream from the point of diversion. There are known losses to stream flow due to evaporation. Evaporative losses of 1% per mile have been accounted for in Finding of Fact No. 10; and
 - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the proposed reach, below the point of diversion. The quantity of water protected instream below the point of diversion at Instream Point No. 2 has been reduced to account for return flows.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. The Lessor and Lessee have requested that the lease terminate on September 30, 2016. The lease may commence on the date this final order is signed.
20. 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 each year of the term of the lease, the former place of use will continue to receive water (up to 83.54 AF under Certificate 25341 during the period April 1 through June 30) for irrigation. Also, for the term of this lease and during the remainder of the irrigation season (July 1 through September 30), the former place of use will no longer receive water as part of this right, 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 September 30, 2016. 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 (July 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 27 day of May, 2015.



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

MAY 28 2015

Mailing date: _____

*This document was prepared by Laura
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