

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1564, Jackson 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

Jim Coonan, Vice President
C2 Management Company;
C2 Cattle Company Limited Partnership
18495 Highway 140
Eagle Point, OR 97524

Lessee

Chrysten Lambert
Trout Unlimited
700 Main Street, Suite 201A
Klamath Falls, OR 97601

Findings of Fact

1. On July 20, 2016, C2 Cattle Company and Trout Unlimited filed an application to lease the entirety of Certificates 35226 and 35228 for instream use. The Department assigned the application number IL-1564.
2. When the lease application was originally received, it also appeared that Certificates 35230 and 35232 were included in the lease application. However, Trout Unlimited clarified that the lease only involves the water rights associated with Salt, Yew and Maple Creeks, being Certificates 35226, 35228, and 35232. Certificate 35230 is not requested to be leased instream.
3. On September 21, 2016, Trout Unlimited requested to amend the lease application to lease only a portion of Certificates 35226 and 35228, being up to 211.2 Acre-Feet (AF) of the water that may be stored under those rights. On September 28, 2016, Trout Unlimited further clarified that 180.9 AF is requested to be leased instream from Certificate 35226 and 30.3 AF from Certificate 35228. Up to 150.0 AF is requested to be leased instream under Certificate 35232 for supplemental instream use.

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.

4. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 35226 in the name of James F. and Lurline R. Coonan (perfected under permit R-1716)
Use: Storage of water in Wade Reservoir
Priority Date: May 31, 1955
Quantity: **Volume:** 180.9 AF
Source: Salt Creek and Yew Creek, tributary to Little Butte Creek

Reservoir Location:

Twp	Rng	Mer	Sec	Q-Q
36 S	2 E	WM	10	W ½ SE ¼

5. The portion of the second right to be leased has been modified from the lease application and is as follows:

Certificate: 35228 in the name of James F. and Lurline R. Coonan (perfected under permit R-2042)
Use: Storage of water in Wade Reservoir
Priority Date: July 10, 1957
Quantity: **Volume:** 30.3 AF
Source: Salt Creek and Yew Creek, tributary to Little Butte Creek

Reservoir Location:

Twp	Rng	Mer	Sec	Q-Q
36 S	2 E	WM	10	W ½ SE ¼

6. The portion of the third right to be leased has been modified from the lease application and is as follows:

Certificate: 35232 in the name of James F. and Lurline R. Coonan (perfected under permit R-2706)
Use: Supplemental Storage of water in Wade Reservoir
Priority Date: November 21, 1961
Quantity: **Volume:** 150.0 AF
Source: Maple Creek, tributary to Salt Creek

Reservoir Location:

Twp	Rng	Mer	Sec	Q-Q
36 S	2 E	WM	10	W ½ SE ¼

7. Certificates 35226, 35228, and 35232 do not specify a storage season; nor is a storage season specified by the Basin Program. For the purposes of instream leasing, since the water rights do not specify a period of allowed use for diversion of water for storage, these are considered year-round rights.
8. Certificates 35226 and 35228 do not provide a description of the location of the points of diversion on Salt Creek and Yew Creek. Certificate 35232 also does not provide a description of the location of the point of diversion on Maple Creek. Based upon review of Department records, specifically the Final Proof map for these storage rights, for purposes of this instream lease, the points of diversion are described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	11	NW NE	SALT CREEK: 710 FEET SOUTH AND 850 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 11
36 S	2 E	WM	11	NW NE	YEW CREEK: 1100 FEET SOUTH AND 790 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 11
36 S	2 E	WM	11	NW NE	MAPLE CREEK: 480 FEET SOUTH AND 410 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 11

9. There is an additional supplemental storage right (for additional sources) and an additional source right for Wade Reservoir, being Certificates 35230 (100 AF) and 90965 (547.44 AF) respectively. The Lessor and Lessee have requested that these water rights not be included as part of this lease application. Water will continue to be stored in Wade Reservoir, up to 547.95 AF annually, and may be from a combination of the portion of Certificates 35226 (464.1 AF) and 35228 (83.85 AF) not leased, Certificate 35230 (supplemental storage from additional sources) and Certificate 90965 (additional sources).
10. 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.
11. The instream use has been modified from the lease application and is as follows:

Primary Instream Use

Salt Creek, tributary to Little Butte Creek

Instream Reach: From the POD on Salt Creek (as described in Finding of Fact No. 7) to the mouth of Salt Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
35226	5/31/1955	0.50	180.9	April 1 through September 30
35228	7/10/1957	0.08	30.3	
Total Instream		0.58	211.2	

Supplemental Instream Use

Maple Creek, tributary to Salt Creek

Instream Reach: From the POD on Maple Creek (as described in Finding of Fact No. 7) to the mouth of Maple Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
35232	11/21/1961	0.41	150.0	April 1 through September 30

12. Other conditions to prevent injury and enlargement are:

No more than 547.95 AF may be stored in Wade Reservoir annually under Certificates 35226, 35228, 35230, and 90965. No more than 464.1 AF is available for storage under

Certificate 35226 and no more than 83.85 AF is available for storage under Certificate 35228.

The instream use established by the lease of Certificate 35232 may only be protected instream when 150.0 AF of the water protected instream from Certificates 35226 and 35228 are not available.

13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
14. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded points of diversion;
 - b. The location of confluences with other streams downstream of the points of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d. Any return flows resulting from the exercise of the existing water rights would re-enter the river downstream of the reach of the instream water right.
15. The total monthly quantities of water to be protected under any existing instream water rights and the proposed instream right in the reach will provide for a beneficial purpose.
16. There is no information in the record that would demonstrate the quantities proposed to be leased instream will exceed the estimated average natural flows.
17. 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.
18. 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 rights.
19. 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.
20. The Lessor and Lessee have requested that the lease terminate on December 31, 2020. The lease may commence on the date this final order is signed.
21. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

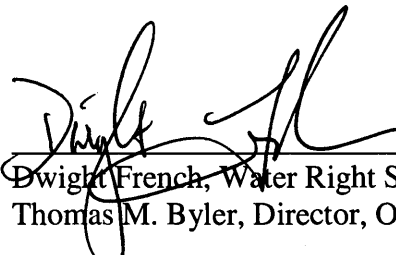
Conclusions of Law

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 no longer receive water from the portion of Certificates 35226, 35228, and 35232 leased to instream use. Water may still be stored in Wade Reservoir, up to 547.95 AF annually under the portions of Certificates 35226 (464.1 AF) and 35228 (83.85 AF) not leased, and Certificates 35230 and 90965, consistent with their terms and conditions.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2020. 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 (April 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 17 day of October, 2016.



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

Mailing date: OCT 18 2016

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