

**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 39246, Douglas 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(s)**

Howard, Gary and Michael Brownson  
7081 South Myrtle Road  
Myrtle Creek, OR 97457

**Findings of Fact**

1. On July 30, 2008 Howard, Gary and Michael Brownson filed an application to renew instream lease L-274 involving a portion of Certificate 39246 for instream use. The Department assigned the application number IL-274.

2. The portion of the right to be leased is as follows:

**Certificate:** 39246 in the name of MRS. F. A. MOAN  
**Use:** IRRIGATION of 19.1 ACRES AND DOMESTIC  
**Priority Date:** DECEMBER 29, 1924  
**Quantity: Rate:** 0.24 CUBIC FOOT PER SECOND (cfs)  
**Duty:** 47.75 ACRE FEET (AF)  
**Limit:** ONE-EIGHTIETH cfs per acre  
**Source:** LOUIS CREEK, tributary to SOUTH UMPQUA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	4 W	WM	23	NW NW	830 FEET SOUTH AND 1250 FEET EAST FROM THE NW CORNER OF SECTION 23

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
29 S	4 W	WM	23	NE NW	14.1
29 S	4 W	WM	23	SE NW	5.0
TOTAL:					19.1

3. Water Right Certificate 39246 states that Louis Creek is a tributary to the South Umpqua River. However, the Department has information which more accurately describes Louis Creek as a tributary to South Myrtle Creek. South Myrtle Creek is a tributary to Myrtle Creek, which is a tributary to the South Umpqua River.
4. 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.
5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

LOUIS CREEK, tributary to SOUTH MYRTLE CREEK

**Instream Reach #1:** From POD (as described in Finding of Fact #2) to the mouth of Louis Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
39246	December 29, 1924	0.24 CFS	47.75 AF	July 24 through October 31

**Instream Reach #2:** From the confluence of Louis Creek and South Myrtle Creek to a point two miles downstream at approximately river mile 8 of South Myrtle Creek.

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
39246	December 29, 1924	0.24 CFS	47.75 AF	July 24 through October 31

6. The lease application requests to protect water instream from Louis Creek into South Myrtle Creek. An instream reach is generally from the point of diversion to the mouth of the source stream, Louis Creek, but may be protected further if measurable in the receiving stream, South Myrtle Creek. See OAR 690-077-0015 (8). The quantity that may be leased instream from Louis Creek is measurable into South Myrtle Creek and may be protected instream for a distance of two miles below the confluence of the two streams.
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 lessor has requested that the lease will terminate on October 31, 2012.
11. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### CONCLUSIONS OF LAW

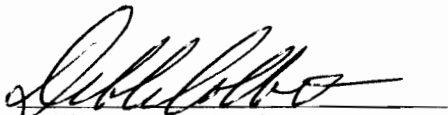
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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 October 31, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by February 1, of each year and before any water use has occurred on the property.

Dated at Salem, Oregon this 29<sup>th</sup> day of September 2008.

  
Phillip C. Ward, Director

Mailing date: OCT 01 2008