

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1263, Certificates 29915, 22505, 22468, ) FINAL ORDER ON PROPOSED  
Washington 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 #1**

Joint Water Commission  
150 E Main St.  
Hillsboro, OR 97123  
Niki.Iverson@hillsboro-oregon.gov

**Findings of Fact**

1. On February 21, 2013, the Joint Water Commission filed an application to lease a portion of Certificate 29915 and the entirety of Certificates 22505 and 22468 for instream use. The Department assigned the application number IL-1263.
2. The portion of the first right to be leased is as follows:

**Certificate:** 29915 in the name of George J. Zurcher (perfected under Permit S-18292)

**Use:** Irrigation of 213.6 acres

**Priority Date:** October 30, 1947

**Quantity:** **Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

**Source:** Tualatin River, tributary to Willamette River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q
1 S	4 W	WM	24	NE SW

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 W	WM	23	NE SE	4.1
1 S	4 W	WM	24	SW NW	29.4
1 S	4 W	WM	24	SE NW	26.4
1 S	4 W	WM	24	NE SW	34.5
1 S	4 W	WM	24	NW SW	39.7
1 S	4 W	WM	24	SW SW	40.0

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.

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 W	WM	24	SE SW	39.5
Total:					213.6

- Certificate 29915 does not specify the irrigation season. However, the irrigation season identified in the Tualatin River decree is May 1 through September 30 of each year.
- Certificate 22915 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Lat/long
1 S	4 W	WM	13	SW SE	42	Latitude 45.46688843 Longitude -123.12500763

- Certificate 29915 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #2), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #2), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion shall be reduced, if this instream lease is approved.

Rate	Duty Limit
1.65 CFS	534.0 AF

- The entirety of the second right to be leased is as follows:

**Certificate:** 22505 in the name of M. P. Daughters and Erma R. Daughters (perfected under Permit S-20099)

**Use:** Irrigation of 8.9 acres

**Priority Date:** February 6, 1951

**Quantity:** **Rate:** 0.11 Cubic Foot per Second (CFS)

**Duty:** 22.25 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

**Source:** Tualatin River, tributary to Willamette River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	4 W	WM	13	SW SE	R. F. Tupper DLC 42

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	13	SE SW	R. F. Tupper DLC #42	2.1
1 S	4 W	WM	13	SW SE	R. F. Tupper DLC #42	2.0
1 S	4 W	WM	24	NW NE	R. F. Tupper DLC #42	1.1
1 S	4 W	WM	24	NE NW	R. F. Tupper DLC #42	3.7
Total:						8.9

7. Certificate 22505 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Lat/long
1 S	4 W	WM	13	SW SE	42	Latitude 45.47633362 Longitude -123.12419891

8. Certificate 22505 does not specify the irrigation season. However, the irrigation season identified in the Tualatin River decree is May 1 through September 30 of each year.

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

**Certificate:** 22468 in the name of M. P. Daughters and Erma R. Daughters (perfected under Permit S-18722)

**Use:** Irrigation of 18.0 acres

**Priority Date:** April 14, 1949

**Quantity:** **Rate:** 0.23 Cubic Foot per Second (CFS)

**Duty:** 45.0 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

**Source:** Tualatin River, tributary to Willamette River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC
1 S	4 W	WM	13	SW SE	Tupper DLC #42

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	4 W	WM	13	SE SW	R. F. Tupper DLC #42	3.4
1 S	4 W	WM	13	SW SE	R. F. Tupper DLC #42	14.6
Total:						18.0

10. Certificate 22468 does not specify the irrigation season. However, the irrigation season identified in the Tualatin River decree is May 1 through September 30 of each year.

11. Certificate 22468 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Lat/long
1 S	4 W	WM	13	SW SE	42	Latitude 45.47809219 Longitude -123.12142181

12. The lease application includes the information required under OAR 690-077-0076(3). On February 26, 2013, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.

13. Each of the certificates involved in this lease requires modification to avoid enlargement. If the certificates were leased as proposed in the lease application either the volumetric

limitation or the instantaneous rate would be exceeded. These modifications are further described in Finding of Fact #13 below.

14. The instream use has been modified from the application to avoid injury and enlargement and is as follows:

Tualatin River, tributary to the Willamette River

**Instream Reach created as a result of Certificate 29915:** From the POD (as described in Finding of Fact #4) to the mouth of the Tualatin River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
29915	10/30/1947	1.65	500.73	May 1 – September 30

**Instream Reach created as a result of Certificate 22505:** From the POD (as described in Finding of Fact #7) to the mouth of the Tualatin River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
22505	2/6/1951	0.11	22.25	June 21 - September 30

**Instream Reach created as a result of Certificate 22468:** From the POD (as described in Finding of Fact #11) to the mouth of the Tualatin River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
22468	4/14/1949	0.23	45.0	June 22 – September 30

15. There may be a supplemental water use permit, Permit S-35792, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this water use permit will also be suspended.
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, 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. 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 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.
19. The Lessor has requested that the lease terminate on September 30, 2017. The lease may commence on the date this final order is signed.

20. 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. During each year of the term of the lease, 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.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2017. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (up to May 1 through September 30) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 17 day of June, 2013.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Susan Douthit and if you have any questions, please call 503-986-0858.*

Mailing date: JUN 18 2013