

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1422, Yamhill County) 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

Christensen Farms LLC
Don & Laura Christensen
17215 SW Christensen Rd.
McMinnville, OR 97128

Findings of Fact

1. On November 28, 2016, Don & Laura Christensen, Christensen Farms, LLC, filed an application to renew instream lease IL-1422. The lease involves portions of Certificates 49960 and 50648.
2. On September 27, 2012, transfer application T-14478 was filed involving Certificates 49960 and 50648. On March 30, 2015, the Department approved Transfer T-14478 as evidenced in Special Order Volume 95, at Page 332; this order approved additional points of diversion and cancelled Certificates 49960 and 50648.
3. On November 21, 2016, a final order was issued as evidenced in Special Order Volume 103, Page 460, this order reverted the previously approved additional points of diversion as evidenced in Special Order Volume 103, Page 147 (Transfer T-14478); as a result, new Certificates were issued to replace the previously cancelled Certificates 49960 and 50648, the new replacing Certificates are 91914 and 91915.
4. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on December 27, 2016, pursuant to OAR 690-077-0077(1). No comments were received.
5. The portion of the first right to be leased is as follows:

Certificate: 91914 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-40859)

Use: IRRIGATION of 2.0 ACRES

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.

Priority Date: JULY 6, 1976

Quantity: **Rate:** 0.03 Cubic Foot per Second (CFS)

Volume: 5.0 Acre-Feet (AF)

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
5 S	5 W	WM	26	NE SW	5	1340 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	26	NW SW	73	2.0

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

Certificate: 91915 in the name of CRIMSON WEST FARMS, INC. (perfected under Permit S-42508)

Use: IRRIGATION of 9.0 ACRES

Priority Date: MAY 4, 1977

Quantity: **Rate:** 0.11 CFS

Volume: 22.5 AF

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversions:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
5 S	5 W	WM	26	NE SW	5		POD 1: 1340 FEET NORTH AND 1540 FEET EAST FROM THE SW CORNER OF SECTION 26
5 S	5 W	WM	35	NW NW		71	POD 2: 330 FEET SOUTH AND 1160 FEET EAST FROM THE SW CORNER OF SECTION 26

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	26	SW NW	73	7.0
5 S	5 W	WM	26	NW SW	73	2.0

7. Certificates 91914 and 91915 do not specify the irrigation season. However, the Yamhill River Decree identifies the irrigation season as April 1 through September 30.
8. The instream use is as follows:
South Yamhill River, tributary to Yamhill River

Instream Point No. 1: At POD No. 1 (as described in Finding of Fact No. 5 & 6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
91915	5/4/1977	0.11	22.5	June 23 through September 30
91914	7/6/1976	0.03	5.0	June 23 through September 30

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
10. The protection of flows at the authorized points of diversion are 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; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the points of the instream water right.
11. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.
12. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.
13. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
14. 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.
15. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.

17. The Lessors have requested that the lease terminate on September 30, 2022. The lease may commence on the date this final order is signed.

18. The Lessors have requested the option of terminating the lease early but only with consent of all parties to the lease.

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 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 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, 2021.

Dated at Salem, Oregon this 8 day of February 2017.



Dwight French, Water Right Services Division Administrator, for
THOMAS M. BYLER Director,
Oregon Water Resources Department

Mailing date: FEB 13 2017

This document was prepared by Joan Smith if you have any questions; please call 503-986-0892.