

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

In the Matter of Instream Lease Renewal) DETERMINATION and
IL-870, Certificate 29186, Washington) FINAL ORDER ON PROPOSED
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

U.S. Fish and Wildlife Service
Attn: Tim Mayer
911 NE 11th Ave
Portland, OR. 97232
Tim_mayer@fws.gov

Findings of Fact

1. On November 15, 2012, U.S. Fish and Wildlife Service filed an application to renew instream lease IL-870, involving all of Certificate 29186.
2. Based upon continued review of the lease application, the Department has identified that the points of diversion and location of the instream use were not clearly described in the original order approving IL-870, as evidenced by Special Order Volume 73, Page 494. This renewal order clarifies the location of the points of diversion associated with Certificate 29186 and location of the instream use.

3. The right to be leased is as follows:

Certificate: 29186 in the name of Davis and Gerda Cereghino (confirmed by Tualatin River decree in Volume 16 at Page 419)
Use: Irrigation of 27.0 acres
Priority Date: 1890
Quantity: Rate: 0.2688 Cubic Foot per Second (CFS) for Tract 1 and 0.0688 (CFS) for Tract 2

Source: UNNAMED DITCHES, tributary to ROCK CREEK, for Tract 2 and
ROCK CREEK, tributary to the TUALATIN RIVER, for Tract 1

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 Point of Diversion: Not Described on Certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	1 W	WM	28	NW NW	2.50
2 S	1 W	WM	28	NW NW	5.50
2 S	1 W	WM	29	NE NE	15.50
2 S	1 W	WM	29	SE NE	3.50
Total					28.0

4. Certificate 29186 does not provide a description of either of the two Points of Diversion. However, on May 29, and May 30, 2013, the Watermaster provided GPS coordinates for the Points of Diversion as follows:

Point of diversion on Rock Creek (POD #1)

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	1 W	WM	29	NE NE	Latitude 45.37294388 Longitude -122.82775116

Point of Diversion on Unnamed Ditches (POD #2)

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 S	1 W	WM	28	NW NW	Latitude 45.37340927 Longitude -122.82551575

5. Certificate 29186 does not specify a limit or duty. However, the Tualatin River Decree is specific that the duty is not to exceed 2.5 acre-feet per acre and not to exceed one-eightieth of one cubic foot per second irrigated where the total area irrigated by any claimant exceeds ten acres.
6. Certificate 29186 does not specify the irrigation season. However, the Tualatin River Decree defines the irrigation season as May 1 through September 30.
7. 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) on November 20, 2012. No comments were received.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Rock Creek tributary to the Tualatin River

Instream Point: At the POD #1 (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
29186	1890	0.2688	53.75	June 23 through September 30

Unnamed Ditches, tributary to Rock Creek

Instream Point: At the POD #2 (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
29186	1890	0.0688	13.75	June 23 through September 30

9. 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.
10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on October 1, 2017, however the last day of the irrigation season is September 30. The lease will terminate on September 30, 2017. The lease may commence on the date this final order is signed.
13. 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 day 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 (June 23 through September 30) or after the period of allowed use has begun for the water right being leased, water shall not be used under the right leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 20 day of June, 2013.


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

*This document was prepared by Joan
Smith and if you have any questions,
please call 503-986-0898*

Mailing date: JUN 25 2013