

Authorized Point of Diversion (POD): Not described

Authorized Place of Use (POU):

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	32 E	WM	19	NE SW	2.0
2 N	32 E	WM	19	SE SW	16.0
2 N	32 E	WM	19	SW SE	18.5
2 N	32 E	WM	30	NE NE	15.0
2 N	32 E	WM	30	NW NE	8.5
Total:					60.0

4. Certificate 75656 does not provided the location of the point of diversion. The Watermaster identified that the POD description provided by the applicant was incorrect so, for the purpose of this instream lease, the point of diversion is located at approximately:

Twp	Rng	Mer	Sec	Q-Q	River Mile
2 N	32 E	WM	30	SE NE	Peterson Dam, approximately 2.46 RM from the mouth of Birch Creek

5. Certificate 75656 does not specify the irrigation season. The Umatilla Decree establishes an irrigation season of March 1 through October 31 of each year.
6. Certificate 75656 does not specify the rate and duty for the portion of lands described in Finding of Fact No. 3. The Umatilla River Decree, however, in Paragraph 33 establishes that lands characterized as class 2 (reclaimed lands of loam, or fine sand, or fine soil texture) will be limited to a rate of one-eightieth CFS per acre (up to 0.75 CFS) and duty of 3 acre feet (AF) per acre (up to 180 AF).
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). No comments were received.
8. At the full instream rate and volume requested, water may only be protected instream over a 121 day period. The original lease application requested to protect water instream over the full irrigation season (March 1 through October 31). The Watermaster recommended the instream period be limited, as to not exceed the total duty allowed (180 AF). For the purpose of this instream lease water shall be protected instream from June 1 to October 31, when instream flows are most needed.
9. The lease application requests the Department to protect water instream from Birch Creek into the Umatilla River. An instream reach is generally from the point of diversion to the mouth of the source stream (Birch Creek) but may be protected further if measurable in the receiving stream (the Umatilla River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Birch Creek is not measurable into the Umatilla River and cannot be protected instream in the Umatilla River.
10. Streamflows are lost within the proposed reach due to channel losses. Quantities protected instream have been reduced by 3% at Instream Point No. 2 (Finding of Fact No. 11) to account for streamflow loss within the channel, as well as, prevent injury and enlargement.

11. The instream use has been modified from the lease application to prevent injury and enlargement and is as follow:

BIRCH CREEK, tributary to the UMATILLA RIVER

Instream Reach: From the POD (Finding of Fact No. 4) to the mouth of Birch Creek

Instream Point No. 1: At the POD

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75656	1880	0.59	180.0	June 1 through October 31

Instream Point No. 2: At the mouth of Birch Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75656	1880	0.57	173.7	June 1 through October 31

12. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

Regulation upstream will not occur if the rate of the leased portion is available at either proposed POD or historical POD.

13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
14. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion. The rate and volume of water protected instream has been reduced 3% at Instream Point No. 2; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach/point of the instream water right.
15. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
16. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
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. 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.
19. 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.
20. The Lessor and Lessee have requested that the lease terminate on October 31, 2014. The lease may commence on the date this final order is signed.

CONCLUSIONS OF LAW

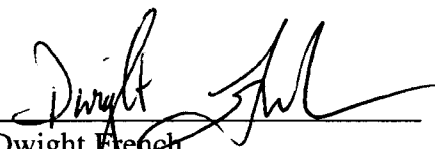
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During 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 October 31, 2014.

Dated at Salem, Oregon this ¹⁶ day, of July 2014.


Dwight French,
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

Mailing date: JUL 17 2014