

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-119, Wasco County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

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Lessee

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Findings of Fact

1. On June 29, 2018, Louis Vannata, LV Farms and TFT filed an application to renew instream lease IL-119, involving the entirety of Certificates 44663 and 44664, and portions of Certificates 64319, and 76595 for instream use.
2. During the review process, the Department identified that the instream volume and instream period, identified in the Final Order approving IL-119, evidenced by Special Order Volume 64, Pages 567-569, requires modification. Therefore, the Department has assigned the application a new lease number, IL-1705, to differentiate it from the original lease.
3. The first right to be leased is as follows:

Certificate: 44663 in the name of The Miller Ranch Company (perfected under Permit S-33539)
Use: Irrigation of 40.8 ACRES
Priority Date: APRIL 25, 1968
Quantity: **Rate:** 0.51 Cubic Foot per Second (CFS)
Volume: 122.4 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 from direct flow and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the

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.

irrigation season of each year from direct flow and storage from reservoir constructed under Permit No. R-5299.

Source: EIGHTMILE CREEK and Reservoir constructed under Application R-44825, Permit R-5299, tributary to FIFTEENMILE CREEK

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	11 E	WM	8	NW SW	CREEK - 1400 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 8
1 S	12 E	WM	25	SE SE	RESERVOIR - 800 FEET NORTH AND 280 FEET WEST FROM THE SE CORNER OF SECTION 25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	30	NW SW	0.4
1 S	13 E	WM	30	SW SW	40.4
Total					40.8

4. Certificate 44663 does identify a duty; however it is subject to the conditions of the Fifteen Mile Creek Decree which limits the flow to one acre foot for any 30 day period up to July 1st of each year and thereafter to ¾ acre-foot per acre during any 30 day period; provided, that the total quality of water diverted during the irrigation season shall not exceed 3 acre-feet per acre; provided further, that the rate of flow shall not exceed one-fortieth of a second foot per acre after July 1st, except in case of rotation.
5. Certificate 44663 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
6. The second right to be leased is as follows:

Certificate: 44664 in the name of The Miller Ranch Company (perfected under Permit R-5299)
Use: STORAGE of 3.4 acre feet for the purpose of IRRIGATION
Priority Date: APRIL 25, 1968
Rate: 3.4 ACRE-FEET
Source: EIGHTMILE CREEK through the Wolf Run Ditch, tributary to the FIFTEENMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	12 E	WM	25	SE SE	WOLF RUN DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
1 S	12 E	WM	25	SE SE

7. Certificate 44664 is a Reservoir right for the purpose of irrigation, storage for the Reservoir typically occurs February 1 through May 1.

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

Certificate: 64319 in the name of Miller Ranch Company (perfected under Permit S-38157)
Use: IRRIGATION of 25.9 ACRES
Priority Date: MAY 24, 1973
Rate: 0.32 CUBIC FEET PER SECOND (CFS)
Volume: 77.7 Acre-Feet (AF)
Limit/Duty: 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-EIGHTH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage.
Source: EIGHTMILE CREEK and Reservoir constructed under Permit R-5299, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	12 E	WM	25	SE SE	RESERVOIR- 800 FEET NORTH AND 280 FEET WEST FROM THE SE CORNER OF SECTION 25
2 S	11 E	WM	8	NW SW	1400 FEET NORTH AND 650 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	12 E	WM	25	SW SE	7.3
1 S	12 E	WM	25	SE SE	13.9
1 S	12 E	WM	29	NW SE	2.0
1 S	12 E	WM	30	SE NE	0.1
1 S	12 E	WM	30	NE SE	2.3
1 S	12 E	WM	30	NW SE	0.3
Total:					25.9

9. Certificate 64319 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

10. Certificate 64319 does identify a duty; however it is subject to the conditions of the Fifteen Mile Creek Decree which limits the flow to one acre foot for any 30 day period up to July 1st of each year and thereafter to 3/4 acre-foot per acre during any 30 day period; provided, that the total quantity of water diverted during the irrigation season shall not exceed 3 acre-feet per acre; provided further, that the rate of flow shall not exceed one-fortieth of a second foot per acre after July 1st, except in case of rotation.

11. The fourth right to be leased is as follows:

Certificate: 76595 in the name of Wolf Run Water Users Association (perfected under Permits S-92 and S-93)
Use: IRRIGATION of 15.0 ACRES
Priority Date: MAY 3, 1909

Rate: 0.187 CUBIC FEET PER SECOND (CFS)
Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per or its equivalent for each acre irrigated during the irrigation season of each year.
Source: EIGHTMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	12 E	WM	25	SE SE	WOLF RUN DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	12 E	WM	25	SE SE	10.0
1 S	12 E	WM	25	SW SE	5.0
Total					15.0

12. Certificate 76595 does not specify a duty limit per acre. However, based upon additional information provided by the Department records, an appropriate duty limit per acre, for purposes of this instream lease, is 3.0 acre-feet per acre.
13. Certificates 64319 and 76595 refer to Eightmile Creek tributary to the Columbia River, which should be Eightmile Creek tributary to Fifteemile Creek.
14. 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.
15. The instream use has been modified from the previous order to avoid enlargement of the rights, and is as follows:
Eightmile Creek, tributary to Fifteemile Creek

Instream Reach: From the POD's (as described in Findings of Fact Nos. 3, 6, 8, and 11) to the mouth of Eightmile Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
44663	April 25, 1968	0.51	122.4	July 1 through October 29
44664	April 25, 1968	0.20	3.4	February 1 through April 26
64319	May 24, 1973	0.32	77.7	July 1 through October 29
76595	May 3, 1909	0.187	45.0	July 1 through October 29
Totals		1.217	248.5	

16. 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.

17. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
18. The protection of flows within the proposed reach is 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 reach of the instream water right.
19. 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.
20. 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.
21. 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.
22. 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.
23. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under 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.
24. The Lessor and Lessee have requested that the lease terminate on October 31, 2018. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on the date this final order is signed.
25. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

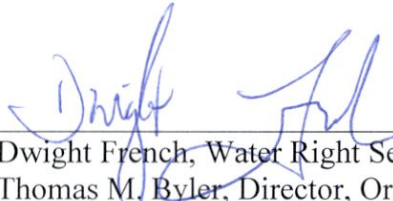
Conclusions of Law

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.

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 October 31, 2018. The applicant has requested the option of terminating the lease early; however, if the termination request is received less than 30-days prior to the instream use period (July 1 through October 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day **AUG 13** 2018 .



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

*This document was prepared by
J. Smith if you have questions;
call 503-986-0892.*

Mailing date: **AUG 21** 2018