BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Instream Lease Application IL-1391, Clatsop County	)))	DETERMINATION and 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
Ed Johnson, Operations Manager
Knappa Water Association
92755 Allen Rd.
Astoria, OR 97103

Findings of Fact

1. On April 11, 2014, Knappa Water Association filed an application to lease the entirety of Certificates 33899, 68351, and 68352 for instream use. The Department assigned the application number IL-1391.

2. The first right to be leased is as follows:

Certificate: 33899 in the name of Knappa Water Association (perfected under Permit S-7003)
Use: Domestic
Priority Date: July 8, 1924
Quantity: **Rate:** 0.50 Cubic Foot per Second (CFS)
Source: Mill Creek, tributary to Big Creek (Columbia River)
Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 N	7 W	WM	32	SE NW	4224.08 FEET SOUTH AND 1558.45 FEET EAST FROM THE ¼ CORNER BETWEEN SECTIONS 29 AND 30

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
8 N	7 W	WM	17	NW NW

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.

3. Certificate 33899 does not specify an annual volume limit. Nor does it specify a period of use. The use of water for Domestic purposes is generally year round use unless otherwise specified by the certificate. In addition, based upon the face value of the water right, it appears that up to 361.98 Acre-Feet (AF) may be beneficially used annually.

4. The second right to be leased is as follows:

Certificate: 68351 in the name of Knappa Water Association (perfected under Permit S-32022)
Use: Domestic Water Purposes
Priority Date: September 23, 1966
Quantity: **Rate:** 0.75 CFS
Source: Mill Creek, tributary to Big Creek
Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 N	7 W	WM	32	SE NW	4224.08 FEET SOUTH AND 1558.45 FEET EAST FROM THE ¼ CORNER BETWEEN SECTIONS 29 AND 30

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
8 N	7 W	WM	8	SW SW
8 N	7 W	WM	16	SW ¼
8 N	7 W	WM	17	W ½
8 N	7 W	WM	17	SE ¼
8 N	7 W	WM	17	W ½ NE ¼
8 N	7 W	WM	19	ALL
8 N	7 W	WM	20	ALL
8 N	7 W	WM	21	NW ¼
8 N	7 W	WM	24	NE NE
8 N	7 W	WM	24	SE NE
8 N	7 W	WM	29	W ½
8 N	7 W	WM	30	NE ¼

5. Certificate 68351 does not specify an annual volume limit. Nor does it specify a period of use. The use of water for Domestic Water Purposes is generally year round use unless otherwise specified by the certificate. In addition, based upon the face value of the water right, it appears that up to 542.98 AF may be beneficially used annually.

6. The third right to be leased is as follows

Certificate: 68352 in the name of Knappa Water Association (perfected under Permit S-34049)
Use: Quasi-Municipal (KNAPPA AND BROWNSMEAD COMMUNITIES)
Priority Date: December 18, 1968
Quantity: **Rate:** 0.78 CFS
Source: Mill Creek, tributary to Big Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 N	7 W	WM	32	SE NW	4224.08 FEET SOUTH AND 1558.45 FEET EAST FROM THE ¼ CORNER BETWEEN SECTIONS 29 AND 30

Authorized Place of Use:

THE AREA LOCATED WITHIN THE SERVICE BOUNDARY FOR KNAPPA WATER ASSOCIATION

7. Certificate 68352 does not specify an annual volume limit. Nor does it specify a period of use. The use of water for Domestic Water Purposes is generally year round use unless otherwise specified by the certificate. In addition, based upon the face value of the water right, it appears that up to 564.69 AF may be beneficially used annually.

8. 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.

9. The instream use is as follows:

   Mill Creek, tributary to Big Creek

   Instream Reach No. 1: From the POD (as described in Findings of Fact No. 2, 4, and 6) to the mouth of Mill Creek at the confluence with Big Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
33899	7/8/1924	0.50	361.98	January 1 through December 31
68351	9/23/1966	0.75	542.98	
68352	12/18/1968	0.78	564.69	
	Total Instream	**2.03**	**1469.65**	

   Instream Reach No. 2: In Big Creek from the confluence with Mill Creek to the culvert under Big Creek Mainline Road adjacent to the Oregon Department of Fish and Wildlife Big Creek Hatchery (located in the SE SW, Section 29, T8N, R7W, WM)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
33899	7/8/1924	0.50	361.98	January 1 through December 31
68351	9/23/1966	0.75	542.98	
68352	12/18/1968	0.78	564.69	
	Total Instream	**2.03**	**1469.65**	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

11. 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.

12. 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.

13. The total monthly quantities of water to be protected instream in Big Creek under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.

14. There is no information in the record that would demonstrate the quantities proposed to be leased instream will exceed the estimated average natural flows.

15. 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.

16. 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.

17. 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.

18. The Lessor has requested that the lease commence in September, 2015, and terminate in September 2020. The first and last days of the term of an instream lease is generally also the first and last days of the period of allowed use. The term of an instream lease may also be for up to five calendar years.

19. The water rights proposed to be leased allow use January 1 through December 31 (year round). All three rights are also currently being protected instream under Time-Limited Instream Transfer T-7328. Transfer T-7328 expires on September 19, 2015.

20. Therefore, the lease may commence on January 1, 2016, and terminate on December 31, 2020.

21. 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.

Now, therefore it is ORDERED:

1. 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.

3. The term of the lease will commence on January 1, 2016, and terminate on December 31, 2020. For multiyear leases, the Lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (January 1 through December 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 23 day of February, 2015.

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

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: FEB 24 2015