

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-486, Douglas 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

Douglas County Public Works Department
1036 SE Douglas, Room 306
Roseburg, OR 97470

Findings of Fact

1. On April 1, 2019, Douglas County Public Works Department filed an application to renew instream lease IL-486, involving the entirety of Certificates 75971, 75972, 75974, 75975, 75976 and 75977 for instream use.
2. The first right to be leased is as follows:

Certificate: 75971 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-35304)
Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING
Priority Date: JULY 2, 1970
Rate: 0.48 CUBIC FOOT PER SECOND
Quantity: The use of water is limited to the irrigation season of each year and shall not exceed 128.1 acre-feet
Source: TWO UNNAMED STREAMS AND COW CREEK, all tributaries of the SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

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

Certificate: 75972 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-8227)

Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING

Priority Date: NOVEMBER 2, 1927

Rate: 0.49 CUBIC FOOT PER SECOND

Quantity: The use of water is limited to the irrigation season of each year.

Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

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

Certificate: 75974 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-8227)

Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING

Priority Date: NOVEMBER 2, 1927

Rate: 0.19 CUBIC FOOT PER SECOND

Quantity: The use of water is limited to the irrigation season of each year.

Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

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

Certificate: 75975 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-36922)
Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING
Priority Date: MAY 18, 1972
Rate: 0.15 CUBIC FOOT PER SECOND
Quantity: The use of water is limited to the irrigation season of each year and shall not exceed 42.7 acre-feet
Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

6. The fifth right to be leased is as follows:

Certificate: 75976 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-44067)
Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING
Priority Date: MARCH 21, 1979
Rate: 0.37 CUBIC FOOT PER SECOND
Quantity: The use of water is limited to the irrigation season of each year and shall not exceed 89.6 acre-feet
Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

7. The sixth right to be leased is as follows:

Certificate: 75977 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY (perfected under Permit S-43360)
Use: ROAD CONSTRUCTION, ROCK CRUSHING AND CONCRETE MAKING
Priority Date: JUNE 19, 1978
Rate: 0.16 CUBIC FOOT PER SECOND
Quantity: The use of water is limited to the irrigation season of each year and shall not exceed 39.2 acre-feet
Source: COW CREEK, a tributary of SOUTH UMPQUA RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
31 S	4 W	WM	27	NW SW	1950 FEET NORTH AND 1040 FEET EAST FROM THE SW CORNER OF SECTION 27
31 S	4 W	WM	28	SE NE	3060 FEET NORTH AND 460 FEET WEST
31 S	4 W	WM	35	SW NW	1960 FEET SOUTH AND 720 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
31 S	4 W	WM	27	SW NE
31 S	4 W	WM	27	SE NE
31 S	4 W	WM	27	NE NW
31 S	4 W	WM	27	NW NW
31 S	4 W	WM	27	SE NW
31 S	4 W	WM	27	NE SE
31 S	4 W	WM	27	NW SE
31 S	4 W	WM	27	SE SE
31 S	4 W	WM	28	NE NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SW NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NE
31 S	4 W	WM	28	SE NW
31 S	4 W	WM	28	NE SW
31 S	4 W	WM	28	NE SE
31 S	4 W	WM	28	NW SE
31 S	4 W	WM	34	NE NE
31 S	4 W	WM	34	SE NE
31 S	4 W	WM	34	SE SE
31 S	4 W	WM	35	SW NW
31 S	4 W	WM	35	SE NW
31 S	4 W	WM	35	NE SW
31 S	4 W	WM	35	NW SW
31 S	4 W	WM	35	SW SW

8. Certificates 75971, 75972, 75974, 75975, 75976 and 75977 all specify that the rights shall only be used during the irrigation season of each year, however they do not specify the irrigation season. For the purposes of instream leasing, the Cow Creek Decree establishes the irrigation season for the area as April 1 to October 1, consistent with OAR 690-250-0070, however, to avoid injury or enlargement and to provide the greatest net benefit to fish and wildlife, the applicant has requested that the rights be protected instream as noted in Finding of Fact No. 10.
9. 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.
10. The instream use is as follows:
Cow Creek, tributary to South Umpqua River

Instream Reach: From Galesville Dam at RM 60 to RM 27.0 within Cow Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75971	July 2, 1970	0.48	128.1	May 21 through October 1
75972	November 2, 1927	0.49	98.25	June 23 through October 1
75974	November 2, 1927	0.19	37.25	June 24 through October 1
75975	May 18, 1972	0.15	42.7	May 8 through October 1
75976	March 21, 1979	0.37	89.6	June 2 through October 1
75977	June 19, 1978	0.16	39.2	May 29 through October 1
Total		1.84	435.1	

11. 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.

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
13. 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.

14. Instream water rights, with a senior priority date, created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights. There are three existing instream water rights within the same proposed reach. Certificates 59911 and 59912 with a March 26, 1974, priority date established under the minimum streamflow conversion process (ORS 537.346) and Certificate 73060 with an August 21, 1990, priority date established under the state agency instream water right application process (ORS 537.341).
15. The proposed instream lease includes priority dates of November 2, 1927, July 2, 1970 and May 18, 1972, which are senior to the existing instream water rights and may replace portions of the instream rights created under ORS 537.341 and 537.346.
16. The proposed instream lease also includes priority dates of June 19, 1978 and March 21, 1979, which are junior to Certificates 59911 and 59912. Certificates 73060 and 59912 have the same flow amounts during the proposed instream period for this instream lease. The Oregon Department of Fish and Wildlife stated that additional water within the proposed reach on Cow Creek, would be beneficial to aquatic life, and therefore may be additive to the instream rights created under ORS 537.341 and 537.346.
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. The Lessor has requested that the lease terminate on October 1, 2024. The lease may commence on April 1, 2020.

23. The Lessor has requested the option of terminating the lease early with written notice to the Department.

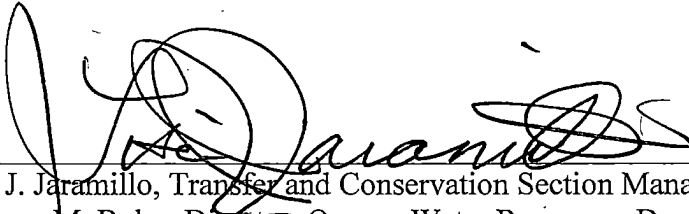
Conclusions of Law

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, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence on April 1, 2020 and terminate on October 1, 2024. 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 (April 1 through October 1) 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 MAY 02 2019



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAY 03 2019

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.