

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

In the Matter of Instream Lease Application )	RESCINDING ORDER RECORDED IN
IL-791, Marion County )	SPECIAL ORDER VOLUME 77,
)	PAGES 802 – 803, TERMINATING
)	INSTREAM LEASE APPLICATION
)	IL-791

**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**

Department of Corrections (DOC)  
Douglas E. Young, New Construction  
Administrator  
3601 State Street  
Salem, OR 97301

**Co-Lessor**

Santiam Water Control District (SWCD)  
284 East Water Street  
Stayton, OR 97383

**Findings of Fact**

1. On November 15, 2006, the Department of Corrections and SWCD filed an application to lease a portion of Certificate 68665 for instream use. The Department assigned the application number IL-791.
2. An order was issued by the Department approving Instream Lease Application IL-791 on December 15, 2006, recorded in Special Order Volume 70, Pages 726 through 728. The term of the lease was to commence on May 1, 2007, and extend through September 30, 2011.
3. On May 13, 2009, the Department received a request from SWCD to terminate Instream Lease IL-791. The written termination request from SWCD stated that they received a request to terminate this lease from the Department of Administrative Services.
4. On May 19, 2009, the Department issued an order terminating Instream Lease IL-791 as evidenced by Special Order Volume 77, Pages 802 through 803. The lease was terminated prior to any water being protected instream in 2009 and only extended through the 2007 and 2008 irrigation seasons.
5. On April 1, 2016, the Department received a request from DOC to rescind the order terminating Instream Lease IL-791. Department of Corrections asserted that ownership of the property associated with Instream Lease IL-791 has been held by DOC since the original

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.

lease application was filed with the Department. The correspondence also indicated that DOC had not requested termination of Instream Lease IL-791. The request to terminate the lease made by SWCD on behalf of Department of Administrative Services was submitted in error.

6. Concurrence with this request was received from Santiam Water Control District on April 1, 2016.
7. Under administrative rule, the parties to an instream lease application include the holder of the water right as the lessor and in cases where water is delivered by an irrigation district, the Irrigation District as co-lessor (OAR 690-077-0076(2)). If the lease applicant is not the deeded landowner of the land to which the water right is appurtenant, the lease applicant is required to submit additional information demonstrating that they have authority to pursue the lease absent the landowner being a party to the lease application (OAR 690-077-0077(2)(i)).
8. Based upon review of information provided by DOC and Marion County ownership records, DOC appears to be the owner of the property involved in Instream Lease IL-791. The Department of Administrative Services does not appear qualify as a lessor or other party to Instream Lease IL-791.
9. The Department has determined that the termination request submitted by SWCD on behalf of DOC was in error and that the order terminating Instream Lease IL-791 should be rescinded.

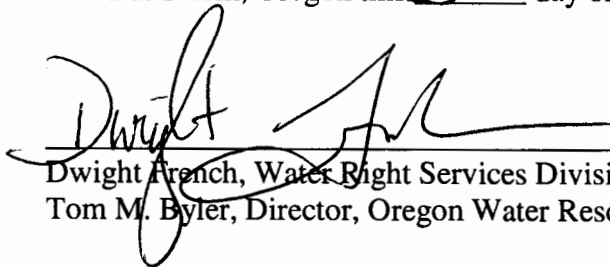
### Conclusions of Law

The Department concludes that rescinding Special Order Volume 77, Pages 803 through 803, terminating Instream Lease IL-791, will not result in injury or enlargement, OAR 690-077-0077.

### Now, therefore it is ORDERED:

1. The Final Order terminating Instream Lease IL-791, entered at Special Order Volume 77, Pages 802 through 803, is rescinded.
2. The term for Instream Lease IL-791 was May 1, 2007, through September 30, 2011.

Dated at Salem, Oregon this 5 day of April, 2016.



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

Mailing date: APR 13 2016

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