

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1711, 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

Union Pacific Railroad Company
Ryan Simpson (Acquisitions Manager)
1400 Douglas Street, Stop 1690
Omaha, NE 68179
rcsimpson@up.com

Findings of Fact

1. On December 3, 2018, Union Pacific Railroad Company filed an application to lease the entirety of Certificate 64084 for instream use. The Department assigned the application number IL-1711.

2. The right to be leased is as follows:

Certificate: 64084 in the name of Phil D. Moore (perfected under Permit S-49914)
Use: Irrigation of 14.4 acres
Priority Date: December 19, 1986
Quantity: **Rate:** 0.18 Cubic Foot per Second (CFS)
Volume: 36.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: Tooley Lake, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	13 E	WM	8	SW SW	180 FEET NORTH AND 960 FEET EAST FROM THE SW CORNER OF SECTION 8, AS PROJECTED WITHIN DLC 42

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	Acres
2 N	13 E	WM	7	SE SE	0.8
2 N	13 E	WM	8	SW SW	7.4
2 N	13 E	WM	8	SE SW	6.2
Total Acres					14.4

3. Certificate 64084 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.
4. 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.
5. The instream use requested by the Lessor requires modification to prevent any injury to other water rights and enlargement. The Lessor requests to protect water instream from March 1 through October 31, a 245 day period. At the requested rate (0.18 CFS), water may not be protected instream for the full 245 days without exceeding the 36.0 AF volume limit. The instream period protected will be limited to protect water instream for 103 days and to protect the full volume instream.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Tooley Lake, tributary to the Columbia River

Instream Reach: At the POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
64084	12/19/1986	0.18	36.0	June 1 through September 11

7. 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.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. The protection of flows at the authorized point of diversion 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 point of the instream water right.
10. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
 11. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
 12. 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.
 13. Based upon review of the application, comments received, 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.
 14. 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.
 15. The Lessor has requested that the lease terminate on October 31, 2023. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on March 1, 2019, being the first day of the irrigation season.
 16. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

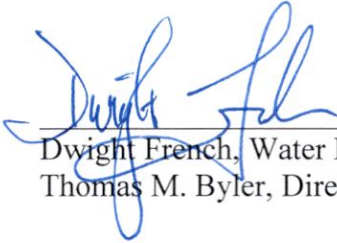
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 March 1, 2019 and terminate on October 31, 2023. 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 (June 1 through September 11) 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 JAN 10 2019.



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

Mailing date: JAN 11 2019

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