

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1430, Grant County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Robert Brunoe, Natural Resources General Manager
Confederated Tribes of Warm Springs
320 W. Main Street
John Day, OR 97845

Findings of Fact

1. On June 19, 2014, the Confederated Tribes of Warm Springs filed an application to renew instream lease IL-912, involving the entirety of Certificates 25093 and 3945, and a portion of Certificates 25088 and 25260.
2. During the review process, the Department identified that Certificate 3945 appears to be a junior layered water right and only a portion of the right may be available to be leased instream, specifically that portion layered with Certificate 25088. Additional information to clarify the lease of Certificate 3945 was requested by the Department on August 18, 2014, and a response was requested by August 29, 2014. On August 27, 2014, the Lessor requested to exclude Certificate 3945 from this instream lease.
3. Upon further review, the Department also identified that use of water under Certificate 25088 for irrigation may not be suspended. Based upon review of information provided by the Watermaster, this water right does not appear have a designated delivery system and irrigation occurs naturally, including from sub irrigation, from the Middle Fork John Day River and Big Butte Creek. Since the use of water may not be suspended, this right may not be leased without enlargement.
4. The Department has also identified that modifications to the instream use established from Certificate 25260 are necessary to prevent injury to downstream water rights. The Watermaster has identified that there are return flows associated with the irrigation use under this right. By rule, the Department is required to account for any return flows.

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.

5. Therefore, based upon Findings of Fact No. 2 through 4, the Department has assigned the lease a new number, IL-1430, to differentiate it from the original lease.
6. The first right to be leased is as follows:

Certificate: 25093 in the name of W.A. Dewitt (perfected under the John Day River Decree, of record at Salem, in the Order Record of the State Engineer, in Volume 15, at page 461)

Use: Irrigation of 13.2 acres

Season of Use: April 1 to September 30

Priority Date: 1902

Quantity: **Rate:** 0.33 Cubic Foot per Second (CFS) to June 1 and 0.17 CFS thereafter
Volume: 52.8 Acre-Feet (AF)
Limit: One-fortieth CFS per acre irrigated to June 1 and one-eightieth CFS per acre thereafter; further limited to one AF per calendar month to June 1 and four AF per acre during season April 1 to September 30, measured at point of diversion

Source: Beaver Creek, tributary to the Middle Fork John Day River

Authorized Point of Diversion (POD): Not Described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	33 E	WM	36	SE NE	3.2
10 S	33 E	WM	36	NE SE	10.0
Total Acres					13.2

7. Certificate 25093 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster and the Lessor, for purposes of this instream lease, the point of diversion is described as follows:.

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
10 S	34 E	WM	31	NW SW	Latitude 44 39.226 / Longitude -118 40.544

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

Certificate: 25260 in the name of the Estate of J.S. Guttridge (perfected under the John Day River Decree, of record at Salem, in the Order Record of the State Engineer, in Volume 15, at page 461)

Use: Irrigation of 4.33 acres

Season of Use: April 1 to September 30

Priority Date: 1890

Quantity: **Rate:** 0.108 CFS to June 1 and 0.054 CFS thereafter
Volume: 17.3 AF
Limit: One-fortieth CFS per acre irrigated to June 1 and one-eightieth CFS per acre thereafter; further limited to one AF per calendar month to June 1 and four AF per acre during season April 1 to September 30, measured at point of diversion

Source: Granite Boulder Creek, tributary to the Middle Fork John Day River

Authorized Point of Diversion (POD): Not Described on Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
11 S	34 E	WM	5	SW NW	0.43
11 S	34 E	WM	5	SE NW	2.50
11 S	34 E	WM	5	NE SW	1.40
Total Acres					4.33

9. Certificate 25260 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster and the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Latitude / Longitude
10 S	34 E	WM	32	SW NE	Latitude 44 39.458 / Longitude -118 38.74

10. 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.
11. The Lessor and Lessee have requested to protect water instream under Certificate 25260 from the POD described in Finding of Fact No. 7 to the mouth of Granite Boulder Creek. A portion of the water diverted at the POD returns to Granite Boulder Creek within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for immediately below the POD.
12. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:

Beaver Creek, tributary to the Middle Fork John Day River

Instream Reach: From the POD for Certificate 25093 (as described in Finding of Fact No. 5) to the mouth of Beaver Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
25093	1902	0.165	52.8	April 23 through September 30

Granite Boulder Creek, tributary to the Middle Fork John Day River

Instream Point No. 1: At the POD for Certificate 25260 (as described in Finding of Fact No. 7)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
25260	1890	0.054	17.3	April 23 through September 30

Instream Reach No. 2: From immediately below the POD for Certificate 25260 to the mouth of Granite Boulder Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
25260	1890	0.033	10.57	April 23 through September 30

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

14. 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. Return flows resulting from the exercise of Certificate 25260 would re-enter Granite Boulder Creek within the reach of the instream water right below the POD. The quantity of water to be protected instream has been reduced below the POD to account for return flows. Any return flows resulting from the exercise of Certificates 25093 and 25088 would re-enter the stream sources downstream of the reach and point of the instream water rights.
15. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reaches will provide for a beneficial purpose.
16. There is no information in the record that would demonstrate the quantities proposed to be leased instream will exceed the estimated average natural flows.
17. 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.
18. 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.
19. 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.
20. The Lessor has requested that the lease terminate in September 2019. The term of an instream lease may be for up to five years. The Lessor has also requested that this lease begin in 2014. The term of the lease may extend through 2018, a five year term. Therefore, the lease may commence on the date this final order is signed and terminate on September 30, 2018.
21. The Lessor did not clearly identify an option for early termination of the instream lease. However, the Lessor may have the option of terminating the lease early with written notice to the Department.

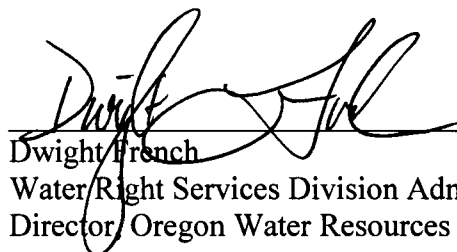
Conclusions of Law

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 (including Certificate 3945), 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 September 30, 2018. 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 23 through September 30) 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 2 day of September 2014.


Dwight French
Water Right Services Division Administrator, for
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: SEP 04 2014