

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1414, Hood River 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

Pooled Instream Lease for several water right holders (described in Findings of Fact No. 5, 7, 9 and 11)

Co-Lessor

East Fork Irrigation District (EFID)
P.O. Box 162
Odell, OR 97044
cindyefid@hoodriverelectric.net

Findings of Fact

1. On May 28, 2014, EFID, on behalf of several water right holders, filed an application to lease a portion of Certificates 81340, 80929, and 84803 for instream use. The Department assigned the application number IL-1414.
2. During the review process, Department staff determined that additional information was needed to complete the evaluation. On June 27, 2014, the Department requested the application amended. On July 8, 2014, OWRD received the requested information from EFID.
3. On July 22, 2014, the Department identified to the Lessor that a portion of 1.24 acres of irrigation proposed to be leased under Certificate 81340 was actually under Certificate 88094. On August 13, 2014, the Department received additional information from the applicant further amending the application and requesting Certificate 88094 be included as part of Instream Lease Application IL-1414.
4. The first right to be leased has been modified from the lease application and is as follows:
Certificate: 81340 in the name of East Fork Irrigation District (confirmed by the Hood River Decree Volume 17, at page 333)
Use: Irrigation of 22.55 acres
Priority Date: November 25, 1895
Quantity: **Rate:** 0.28 Cubic Foot per Second (CFS)

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.

Volume: 67.65 Acre-Feet (AF)

Limit: to an amount actually beneficially used and shall not exceed 106.55 CFS or the equivalent in case of rotation, measured at the point of diversion from the source.

Source: East Fork Hood River, tributary to Hood River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	LOT	Measured Distances
1 S	10 E	WM	4	NW SW	1	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	*Tax Lot	Acres	Lessor
2 N	10 E	WM	13	SW SE	1203	1.80	Dominguez Family Enterprise
2 N	10 E	WM	13	SW SE	1401		
2 N	10 E	WM	21	NW NE	500	9.85	Marie Danies
2 N	10 E	WM	21	NW NE	501		
2 N	10 E	WM	21	NW NE	502		
2 N	10 E	WM	21	NW NE	900		
2 N	10 E	WM	22	SE NE	500	1.70	Carl E. Hughes
2 N	10 E	WM	27	NW NW	4200	9.00	Shirley Chrisman
2 N	10 E	WM	36	NE NE	200	0.20	Luis B. Dominguez
* Tax-lot information provided by the applicant for the purpose of this lease and does not appear on the water right of record.					Total	22.55	

- Certificate 81340 does not specify a rate and duty limit per acre. However, the Hood River Decree limits the water right to 3 AF per acre and one-eightieth CFS per acre. The maximum rate and volume that may be diverted based on the rate and duty limit per acre are identified in the finding above.
- The portion of the second right to be leased has is as follows:

Certificate: 88094 in the name of East Fork Irrigation District (confirmed by Hood River Decree Volume 17, page 333)

Use: Irrigation of 1.24 acres

Priority Date: November 25, 1895

Quantity: **Rate:** 0.02 Cubic Foot per Second (CFS)

Volume: 3.72 Acre-Feet (AF)

Limit: to an amount actually beneficially used and shall not exceed 0.11 CFS or the equivalent in case of rotation, measured at the point of diversion from the source.

Source: East Fork Hood River, tributary to Hood River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 E	WM	4	NW SW	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Tax Lot	Acres	Lessor
1 N	10 E	WM	22	SW NE	7	407	1.24	John E. McCormack, Trustee for Nancy

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Tax Lot	Acres	Lessor
								McCormack Family Trust

7. Certificate 88094 does not specify a rate and duty limit per acre. However, the Hood River Decree limits the water right to 3 AF per acre and one-eightieth CFS per acre. The maximum rate and volume that may be diverted based on the rate and duty limit per acre are identified in the finding above.

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

Certificate: 80929 in the name of East Fork Irrigation District (perfected under Permit S-29617)

Use: Irrigation of 2.8 acres

Priority Date: March 13, 1964

Quantity: **Rate:** 0.04 Cubic Foot per Second (CFS)

Volume: 8.40 Acre-Feet (AF)

Limit: One-eightieth of one CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year.

Source: East Fork Hood River, tributary to Hood River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 E	WM	4	NW SW	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water User
1 N	10 E	WM	22	SW NE	407	0.20	John E. McCormack, Trustee for Nancy McCormack Family Trust
1 N	10 E	WM	34	SW SW	600	2.60	Luis B. Dominguez
Total						2.80	

9. The portion of the fourth right to be leased has been clarified from the lease application and is as follows:

Certificate: 84803 in the name of East Fork Irrigation District (perfected under Permit S-43395)

Use: Irrigation of 2.95 acres

Priority Date: August 8, 1977 and August 3, 1978 for 0.004 Cubic Foot per Second

Quantity: **Rate:** 0.037 Cubic Foot per Second (CFS), being 0.033 cfs under the August 8, 1977 priority date and 0.004 CFS under the August 3, 1978 priority date (proportioned between each priority date)

Volume: 8.85 Acre-Feet (AF)

Limit: One-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year.

Source: East Fork Hood River, tributary to Hood River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 E	WM	4	NW SW	3750 FEET SOUTH AND 430 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax	Acres	Water User
2 N	11 E	WM	6	SW NW	1800	0.15	Ed Ing, on behalf of Muriel Ing
				SE NW	1800	2.80	
Total						2.95	

10. The Certificates identified in this instream lease application do not specify the irrigation season. However, the Hood River Decree describes the irrigation season as April 1 through September 30.
11. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application on June 3, 2014, pursuant to OAR 690-077-0077(1). No comments were received.
12. Due to the inclusion of Certificate 88094 to Instream Lease Application IL-1414, the Department re-noticed the application in the Departments weekly notice on August 12, 2014 pursuant to OAR 690-077-0077(1). No comments were received.
13. The instream use is as follows:
East Fork Hood River, tributary to Hood River

Instream Reach: From the common POD (as described above) to the mouth of East Fork Hood River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81340	11/25/1895	0.280	67.65	June 1 through September 30
88094	11/25/1895	0.02	3.72	
80929	3/13/1964	0.040	8.40	
84803	8/8/1977	0.033	7.78	
	8/3/1978	0.004	1.07	
Totals		0.377	88.62	

14. 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.

15. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
16. 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.
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 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.
 22. The Lessors have requested that the lease terminate on September 30, 2016. The lease may commence on the date this final order is signed.
 23. The Lessors have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

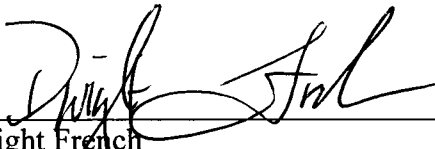
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 upon approval of the instream lease and terminate on September 30, 2016. For multiyear leases, the lessors *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 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 3 day of September, 2014.



Dwight French
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

*This document was prepared by Joan
Smith and if you have any questions,
please call 503-986-0892.*

Mailing date: SEP 04 2014