

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

In the Matter of Instream Lease Renewal) DETERMINATION and
IL-486, Certificates 75971, 75972, 75974,) FINAL ORDER ON PROPOSED
75975, 75976 and 75977, Douglas County) 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

Douglas County Natural Resources Division
1036 SE Douglas, Room 306
Roseburg, OR 97470

Findings of Fact

1. On May 24, 2010 the Natural Resource Division of Douglas County filed an application to renew instream lease L-486. The Department assigned the lease number IL-486.
2. The first right to be leased is as follows:

Certificate: 75971 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY
Use: ROAD CONSTRUCTION, ROCK CRUSHING and CONCRETE MAKING
Priority Date: July 2, 1970
Quantity: **Rate:** 0.48 Cubic Foot per Second (CFS)
Duty: 128.1 Acre-Feet (AF)
Source: TWO UNNAMED STREAMS AND COW CREEK, all tributaries of the SOUTH UMPQUA

Authorized Point(s) 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

Use: ROAD CONSTRUCTION, ROCK CRUSHING and CONCRETE MAKING

Season of Use: IRRIGATION SEASON

Priority Date: NOVEMBER 2, 1927

Rate: 0.49 Cubic Foot per Second (CFS)

Source: COW CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point(s) 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 FROM THE SE CORNER OF SECTION 28
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

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

Certificate: 75974 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY
Use: ROAD CONSTRUCTION, ROCK CRUSHING and CONCRETE MAKING
Season of Use: Irrigation Season
Priority Date: NOVEMBER 2, 1927
Rate: 0.19 Cubic Foot per Second (CFS)
Source: COW CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point(s) 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 FROM SE CORNER OF SECTION 28
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

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

Certificate: 75975 in the name of DOUGLAS COUNTY WATER RESOURCES SURVEY
Use: ROAD CONSTRUCTION, ROCK CRUSHING and CONCRETE MAKING
Season of Use: Irrigation Season
Priority Date: MAY 18, 1972
Quantity: **Rate:** 0.15 Cubic Foot per Second (CFS)
Duty: 42.7 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: COW CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point(s) 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

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
Season of Use: Irrigation Season
Priority Date: MARCH 21, 1979
Quantity: **Rate:** 0.37 Cubic Foot per Second (CFS)
Duty: 89.6 Acre-Feet (AF)
Source: COW CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point(s) 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

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
Season of Use: Irrigation Season
Priority Date: JUNE 19, 1978
Quantity: **Rate:** 0.160 CUBIC FOOT PER SECOND
Source: COW CREEK, tributary to the SOUTH UMPQUA RIVER

Authorized Point(s) 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 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. All of the water right certificates to be leased herein specify that the rights shall only be used during the irrigation season of each year. The irrigation season established by OAR 690-250-0070 is March 1 to October 31. However, to avoid injury or enlargement and to provide the greatest net benefit to fish and wildlife, the Applicant requested that rights be protected instream as noted in Finding of Fact #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 in response to that notice.
10. The instream use is as follows:

COW CREEK, tributary to the SOUTH UMPQUA RIVER

Instream Reach: From Galesville Dam at RM 60.0 to RM 27.0

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75971	July 2, 1970	0.48	128.10	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	42.70	May 8 through October 1
75976	March 21, 1974	0.37	89.60	June 2 through October 1
75977	June 19, 1978	0.16	39.20	May 29 through October 1
TOTAL:		1.84	435.10	

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. 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. This finding is made through an abbreviated review recognizing that the 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 or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
15. The Lessor has requested that the lease terminate on October 1, 2014.
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.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.

3. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is not received prior to May 8, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. The lease will terminate on October 1, 2014.

Dated at Salem, Oregon this 30th day of June 2010.



Phillip C. Ward, Director

Mailing date: JUL 06 2010

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or Kody.J.Thurgood@wrdd.state.or.us