

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1206, Certificates 52976 and 64414) FINAL ORDER ON PROPOSED
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 #1

Clayton and Myrna Judd
4181 Hubbard Creek Road
Umpqua, Oregon 97486

Lessor #2

Richard and Angela Tustin
538 North View Drive
Winchester, OR 97495

Findings of Fact

1. On March 21, 2012 Clayton and Myrna Judd and Richard and Angela Tustin filed an application to lease all of Certificates 52976 and 64414 for instream use. The Department assigned the application number IL-1206.

2. The first right to be leased is as follows:

Certificate: 52976 in the name of LAFE JUDD (perfected under Permit S-28852)
Use: Irrigation of 16.4 Acres
Priority Date: May 28, 1963
Quantity: **Rate:** 0.205 Cubic Foot per Second (CFS)
Volume: 41.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year
Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	7 W	WM	22	NW SW	5	840 FEET NORTH AND 560 EAST FROM THE SW CORNER OF THE NW SW OF SECTION 22

Approximately RM 99.0

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:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	7 W	WM	21	SW NE	2	4.0
25 S	7 W	WM	21	SE NE	1	4.4
25 S	7 W	WM	21	NE SE	1	8.0
TOTAL:						16.4

3. The second right to be leased is as follows:

Certificate: 64414 in the name of DALE E. and MILDRED M JUDD; (perfected under Permit S-28852).

Use: IRRIGATION of 2.5 ACRES

Priority Date: May 28, 1963

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

Volume: 6.25 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source: UMPQUA RIVER, tributary to the PACIFIC OCEAN

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	7 W	WM	22	NW SW	5	840 FEET NORTH AND 560 FEET EAST FROM THE SW CORNER OF THE NW SW OF SECTION 22

Approximately RM 99.2

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	7 W	WM	22	NW SW	5	2.5

4. Certificates 52976 and 64414 do not specify the irrigation season. However, to provide the greatest benefit to the aquatic environment and to avoid injury and enlargement, the Applicants requested the rights described by Certificate 52976 only be protected instream from July 24 to October 31 and the rights described by Certificate 64414 only be protected instream June 5 to October 31.
5. 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.
6. The instream use is as follows:
UMPQUA RIVER, tributary to the PACIFIC OCEAN

Instream Reach: From the respective PODs described in Findings of Fact #2 and #3, to River Mile 28

Certificate	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
52976	MAY 28, 1963	0.20 CFS	41.0 AF	July 24 to October 31
64414	MAY 28, 1963	0.02 CFS	6.25 AF	June 5 to October 31

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. If approved, this instream lease is not reasonably expected to affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
9. 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.
10. 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.
11. The Lessor requested that the lease terminate on October 31, 2016.
12. The Lessor 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 lease will terminate on October 31, 2016. The Lessors *shall* have the option of terminating the lease by submitting a written request to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (May 5) or after the period of allowed use has begun for the water right(s) being leased, 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 Instream Lease shall expire on October 31, 2016.

Dated at Salem, Oregon this 16 day of August, 2012.



Dwight French, Water Right Services Administrator, for
PHILIP C. WARD, DIRECTOR

Mailing date: AUG 20 2012

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@wrdd.state.or.us.