

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1692, 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

Jeff Cruickshank
11400 SE Stockhoff Road
Dayton, Oregon 97114
cruickshankfarms@gmail.com

Findings of Fact

1. On April 9, 2018, Jeff Cruickshank, filed an application to renew instream lease IL-213, involving the entirety of Certificates 19906, 22036, 31313, and 33664.
2. During the evaluation of the instream lease application, Department staff identified a number of changes that needed to be made; a portion of Certificate 19906 now has structures and driveways that will not be able to be leased; to prevent enlargement of the rights, the instream period should be 101 days rather than 183 days, for this reason, the leased period will be June 22 through September 30. This lease is being assigned a new lease number to differentiate it from the original lease application. This lease application has been re-assigned lease number IL-1692.
3. On May 16, 2018, the Department notified the applicant about portions of Certificate 19906 that cannot be leased, the applicant did not respond. The Department is continuing the processing of the renewal application with the changes.
4. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 19906 in the name of Elmer B. Dillon (perfected under Permit S-19063)
Use: Irrigation of 13.9 acres
Priority Date: December 6, 1949
Quantity: **Rate:** 0.174 Cubic Foot per Second (CFS)
Volume: 34.75 Acre-Feet (AF)

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.

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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Yamhill River, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	4 W	WM	27	SW SE	AS PROJECTED IN THE RICHARD BOOTH DLC #57

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	27	SE SW	57	1.6
4 S	4 W	WM	27	SW SE	57	3.3
4 S	4 W	WM	34	NW NE	57	2.9
4 S	4 W	WM	34	NE NW	57	4.8
Total Acres						12.6

5. Certificate 19906 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	4 W	WM	27	SW SE	LATITUDE: 45.1879800248 LONGITUDE: 123.1657730005

6. Certificate 19906 does not specify the irrigation season. However, the Yamhill River Decree established the irrigation season for the area as April 1 through September 30.

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

Certificate: 22036 in the name of Elmer G. & Marian C. Olson (perfected under Permit S-20325)

Use: Irrigation of 16.0 acres

Priority Date: May 7, 1951

Quantity: **Rate:** 0.20 Cubic Foot per Second (CFS)

Volume: 40.0 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Yamhill River, tributary to Yamhill River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	4 W	WM	26	SW SW	AS PROJECTED WITHIN JOHN DLC #81

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	26	SW SW	57	10.0
4 S	4 W	WM	27	NE SE	81	1.9
4 S	4 W	WM	27	SE SE	81	1.3
4 S	4 W	WM	27	SE SE	57	0.4
4 S	4 W	WM	35	NW NW	57	2.4
Total Acres						16.0

8. Certificate 22036 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	4 W	WM	26	SW SW	1188 FEET NORTH AND 363 FEET EAST FROM THE COMMON CORNER OF SECTIONS 26, 27, 34, AND 35

9. Certificate 22036 does not specify the irrigation season. However, the Yamhill River Decree established the irrigation season for the area as April 1 through September 30.

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

Certificate: 31313 in the name of Russell L. Olson (perfected under Permit S-27346)
Use: Irrigation of 21.0 acres
Priority Date: April 19, 1961
Quantity: **Rate:** 0.26 Cubic Foot per Second (CFS)
Volume: 52.5 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: South Yamhill River, tributary to Yamhill and Willamette Rivers

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	4 W	WM	26	SW SW	AS PROJECTED WITHIN ISAIAH M. JOHN DLC NO. 81

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	4 W	WM	26	SW SW	57	3.4
4 S	4 W	WM	27	SE SE	57	6.6
4 S	4 W	WM	34	NE NE	57	5.4
4 S	4 W	WM	35	NW NW	57	5.6
Total Acres						21.0

11. Certificate 31313 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 S	4 W	WM	26	SW SW	1188 FEET NORTH AND 363 FEET EAST FROM THE COMMON CORNER OF SECTIONS 26, 27, 34 AND 35

12. Certificate 31313 does not specify the irrigation season. However, the Yamhill River Decree established the irrigation season for the area as April 1 through September 30.

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

Certificate: 33664 in the name of Russell L. Olson (perfected under Permit S-29698)

Use: Irrigation of 28.8 acres

Priority Date: May 27, 1964

Quantity: **Rate:** 0.36 Cubic Foot per Second (CFS)

Volume: 72.0 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Yamhill River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	4 W	WM	26	SW SW	220 FEET SOUTH AND 3320 FEET EAST FROM THE SW CORNER OF DLC 81

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	4 W	WM	27	SW SE	8.2
4 S	4 W	WM	27	SE SE	8.6
4 S	4 W	WM	34	NE NE	4.0
4 S	4 W	WM	34	NW NE	8.0
Total Acres					28.8

14. Certificate 33664 does not specify the irrigation season. However, the Yamhill River Decree established the irrigation season for the area as April 1 through September 30.

15. 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.

16. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

South Yamhill, tributary to Willamette River

Instream Reach: From the POD's (as described in Finding of Fact No's. 5, 8, 11, and 13) to the McMinnville bypass at Hwy 18

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
19906	12/6/1949	0.157	31.5	June 22 through September 30
22036	5/7/1951	0.200	40.0	
31313	4/19/1961	0.260	52.5	
33664	5/27/1964	0.359	72.0	
Totals		0.976	196.0	

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

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. The Lessor has requested that the lease terminate in June of 2023; however, the last day of the irrigation season is September 30 and an instream lease can only be active in five years increments. The lease will terminate on September 30, 2022. The lease may commence on the date this final order is signed.
25. The Lessor has requested the option of terminating the lease early with written notice to the Department.

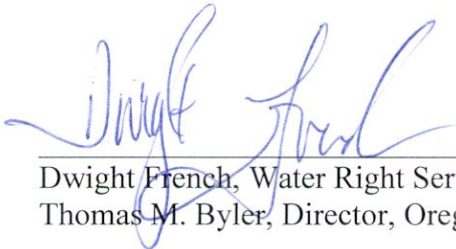
Conclusions of Law

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 upon approval of the instream lease and terminate on September 30, 2022. 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 22 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 day **MAY 24 2018** .



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

Mailing date: **MAY 24 2018**

This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0890.