

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1326, Klamath 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

John and Amber Jacobson
17284 Rustic LN
Brookings, OR 97415
jojoscar@frontier.com

Findings of Fact

1. On September 18, 2017, John and Amber Jacobson filed an application to renew instream lease IL-1326, involving a portion of Certificate 42756.

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

Certificate: 42756 in the name of JOSEPH AND FRANCES A. CABRAL AND RICHARD CABRAL (perfected under Permit S-37147)

Use: IRRIGATION of 108.8 ACRES

Priority Date: NOVEMBER 23, 1973

Quantity: **Rate:** 2.72 CUBIC FEET PER SECOND (CFS)

Duty: 326.4 Acre-Feet (AF)

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3 acre-feet for each acre irrigated during the irrigation season of each year

Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	4	SW NW	1990 FEET SOUTH AND 600 FEET EAST FROM THE NW CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q		Acres
35 S	10 E	WM	32	SE SW		29.5
36 S	10 E	WM	4	NE NW	3	31.9
36 S	10 E	WM	5	NE NE	1	2.4
36 S	10 E	WM	5	NW NE	2	23.7
36 S	10 E	WM	5	NE NW	3	21.3
Total Acres						108.8

3. Certificate 42756 does not specify the irrigation season. However, the recent Order of Determination for the Klamath Basin Adjudication identifies the irrigation season for the area of the place of use as April 1 through October 31.
4. 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.
5. The instream use is as follows:
Sprague River, tributary to the Williamson River

Instream Reach: From the POD (as described in Finding of Fact No. 2) to the mouth of the Sprague River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
42756	11/23/1973	1.09	326.4	May 3 through September 30

6. At the maximum rate and volume requested, water may only be protected instream for a period of 60 days. However, the lease application also requests to protect water instream from May 3 through September 30, a 151 day period. To protect water instream over the full period requested in the lease application, the instream rate has been reduced.
7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. The Lessor has requested that the lease terminate on October 31, 2022. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2018, being the first day of the irrigation season.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

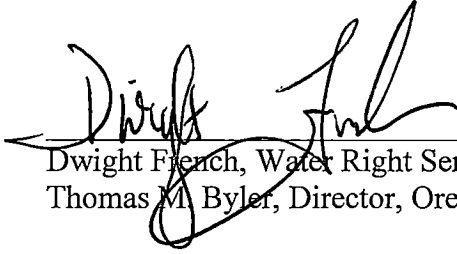
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 on April 1, 2018 and terminate on October 31, 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 (May 3 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 12th day of January, 2018.



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

Mailing date: JAN 12 2018

This document was prepared by Chris Kowitz and if you have any questions, please call 503-986-0883.