

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1774, Baker County) 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

Idaho Power Company
PO Box 70
Boise, ID 83707

Findings of Fact

1. On October 29, 2019, Idaho Power Company filed an application to lease the entirety of Certificates 1874, 1907, 2750, 3340, 4004, 4607, 4628, 4665, 4712, 15177, 22668, 23035, 44245, 72611 and a portion of Certificates 4611, 72199, 81986 for instream use. The Department assigned the application number IL-1774.
2. During the month of November 2019, the application was amended to lease the entirety of Certificates 1907, 94746, 3340, 4004, 4607, 94748, 4712, 15177, 22668, 44245, 72611 and a portion of Certificates 94769, 72199, 81986 for instream use.
3. During the month of November 2019, the Department and the Lessor worked together to amend the application. These amendments included updating certificate numbers, withdrawing three certificates from the application because two were not subject to lease and one is still being used as irrigation.
4. The FIRST right to be leased is as follows:

Certificate: 1907 in the name of George W. Blank (perfected under Permit S-2966)
Use: Irrigation of 27.0 acres
Priority Date: June 10, 1916
Quantity: **Rate/Limit:** The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount

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.

actually beneficially used for said purposes, and shall not exceed 0.34 cubic foot per second (CFS), or the equivalent in case of rotation.

Source: Daily Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	46 E	WM	31	NW SE	27.0

5. Certificate 1907 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	46 E	WM	7	SW NE	S84° 38'E 965 FEET FROM THE SW CORNER OF THE NWNE OF SECTION 7

6. Certificate 1907 does not specify a rate and duty limit per acre. However, based upon additional information provided by Powder River Decree, other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate rate limit is 1/40 of one cfs per acre and duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

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

Certificate: 94746 in the name of Chas. H. Brooks and Thos Seigel (perfected under Permit S-2447)

Use: Supplemental Irrigation of 58.6 acres

Priority Date: April 21, 1915

Quantity: **Rate:** 0.73 Cubic Foot per Second (CFS)

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-fortieth of one cubic foot per second per acre, or its equivalent for each are irrigated.

Source: Squaw Gulch, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	46 E	WM	30	SE SW	18.6
9 S	46 E	WM	30	SW SW	0.7
9 S	46 E	WM	30	NW SE	5.4
9 S	46 E	WM	30	SW SE	24.9
9 S	46 E	WM	31	NW NE	9.0
Total Acres					58.6

8. Certificate 94746 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	45 E	WM	24	SW SE	LATITUDE: 44.7648357110 LONGITUDE: -117.1486972814

9. Certificate 94746 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.
10. The THIRD right to be leased is as follows:

Certificate: 3340 in the name of Meda M. Seigel (perfected under Permit S-2226)
Use: Irrigation of 13.0 acres
Priority Date: September 16, 1914
Quantity: **Rate/Limit:** The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.16 cubic foot per second (CFS), or the equivalent in case of rotation.
Source: Daily Creek, tributary to Powder River
Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	GovLot	Q-Q	Acres
9 S	46 E	WM	31		SWSE	7.0
10 S	46 E	WM	6	2		6.0
Total Acres						13.0

11. Certificate 3340 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	46 E	WM	7	SW NE	S33° 30' EAST 1740 FEET FROM THE NORTH 1/4 CORNER OF SECTION 7

12. Certificate 3340 does not specify a rate and duty limit per acre. However, based upon additional information provided by Powder River Decree, other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate rate limit is 1/40 of one cfs per acre and duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

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

Certificate: 4004 in the name of Clarence Bogart (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 10.0 acres

Priority Date: 1900

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Powder River, tributary to Snake River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	35	SW NE	4.0
9 S	45 E	WM	35	SE NE	6.0
Total Acres					10.0

14. Certificate 4004 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DITCH
9 S	45 E	WM	35	NE NW	BOGART DITCH

15. Certificate 4004 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

16. The FIFTH right to be leased is as follows:

Certificate: 4607 in the name of Clarence M. Bogart (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 6.0 acres

Priority Date: 1901

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Eagle Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	35	SW NE	6.0

17. Certificate 4607 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
9 S	45 E	WM	10	SW SE	590 FEET NORTH AND 2720 FEET EAST FROM THE SW CORNER OF SECTION 10

18. Certificate 4607 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

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

Certificate: 94769 in the name of C.H. Brooks (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 22.0 acres

Priority Date: July 12, 1900

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Eagle Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	46 E	WM	30	SE SW	18.6
9 S	46 E	WM	30	SW SE	3.4
Total Acres					22.0

20. Certificate 94769 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SW SE	590 FEET NORTH AND 2720 FEET EAST FROM THE SW CORNER OF SECTION 10

21. Certificate 94769 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

22. The SEVENTH right to be leased is as follows:

Certificate: 94748 in the name of Charles Harvill (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 39.8 acres

Priority Date: 1897 for 3.5 acres; 1901 for 12.0 acres; 1909 for 24.3 acres

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Eagle Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	46 E	WM	29	NE NW	1.5
9 S	46 E	WM	29	NW NW	7.5
9 S	46 E	WM	29	SW NW	7.0
9 S	46 E	WM	29	SE NW	16.5
9 S	46 E	WM	30	SE NE	3.5
9 S	46 E	WM	30	NE SE	3.8
Total Acres					39.8

23. Certificate 94748 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	45 E	WM	33	SE NW	1950 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 33

24. Certificate 94748 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

25. The EIGHTH right to be leased is as follows:

Certificate: 4712 in the name of Bessie Palmer (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 10.0 acres

Priority Date: 1904

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Eagle Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	35	SE NE	10.0

26. Certificate 4712 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SW SE	590 FEET NORTH AND 2720 FEET EAST FROM THE SW CORNER OF SECTION 10

27. Certificate 4712 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

28. The NINTH right to be leased is as follows:

Certificate: 15177 in the name of John R. Schnau and John E. Sass (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 14, at page 384)

Use: Irrigation of 129.8 acres

Priority Date: 1908

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/20 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Daly Creek, tributary to Powder River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	GovLot	Q-Q	Acres
9 S	46 E	WM	31		SE NW	32.4
9 S	46 E	WM	31		NE SW	29.5
9 S	46 E	WM	31	3		5.2
9 S	46 E	WM	31	4		3.3
9 S	46 E	WM	31		SE SW	24.5
9 S	46 E	WM	31		SW SE	6.6
10 S	46 E	WM	6	3		18.7
10 S	46 E	WM	6	4		1.0
10 S	46 E	WM	6		SE NW	8.6
Total Acres						129.8

29. Certificate 15177 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
10 S	46 E	WM	7	NW NE	LATITUDE: 44.7147933700 LONGITUDE: -117.1278152597

30. Certificate 15177 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

31. The TENTH right to be leased is as follows:

Certificate: 22668 in the name of Anson E. Powell (perfected under Permit S-19338)

Use: Irrigation of 21.1 acres

Priority Date: October 18, 1949 for Squaw Creek
March 23, 1950 for Cherry Gulch

Quantity: **Rate:** 0.53 Cubic Foot per Second (CFS), being 0.44 cfs from creek, and 0.09 cfs from gulch

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to 1/40 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 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Squaw Creek and Cherry Gulch, tributary to Powder River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
9 S	45 E	WM	35	NE SE
9 S	45 E	WM	35	SE SE
10 S	45 E	WM	1	NW SW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	35	SW NE	7.0
9 S	45 E	WM	35	SE NE	13.6
9 S	45 E	WM	35	NW SE	0.5
Total Acres					21.1

32. Certificate 22668 does not provide measured distances of the points of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	35	NE SE	CHERRY SPRING CREEK LATITUDE: 44.7373393352 LONGITUDE: -117.1634479117
9 S	45 E	WM	35	SE SE	CHERRY SPRING CREEK LATITUDE: 44.7358598641 LONGITUDE: -117.1636168908
10 S	45 E	WM	1	NW SW	SQUAW CREEK LATITUDE: 44.7254501009 LONGITUDE: -117.1597652387

33. The ELEVENTH right to be leased is as follows:

Certificate: 44245 in the name of Paul Knoblauch (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 27.0 acres

Priority Date: 1900

Quantity: **Rate/Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 of one cubic foot per second per acre; and shall be subject to all other conditions and limitations contained in said decree.

Source: Powder River, tributary to Snake River

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	35	NE NE	20.0
9 S	45 E	WM	35	NW NE	7.0
Total Acres					27.0

34. Certificate 44245 does not provide a description of the location of the point of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DITCH
9 S	45 E	WM	35	NE NW	BOGART DITCH

35. Certificate 44245 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

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

Certificate: 72199 in the name of Daly Creek Pastoral Co. (confirmed by decree of the Circuit Court of the State of Oregon for Baker County, and said decree entered of record at Salem, in Volume 6, at page 291)

Use: Irrigation of 198.6 acres

Priority Date: July 12, 1901

Quantity: **Rate:** 1.23 Cubic Foot per Second

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40 of one cubic foot per second for each acre irrigated during the irrigation season of each year.

Source: Eagle Creek and Daly Creek, tributary to Powder River

Authorized Point of Diversion (POD):

HOWELL DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	36	NW NE	5.1
9 S	45 E	WM	36	SE NE	30.0
9 S	45 E	WM	36	NE NW	16.5
9 S	45 E	WM	36	NW NW	10.0
9 S	45 E	WM	36	SW NW	36.5
9 S	45 E	WM	36	SE NW	25.5
9 S	45 E	WM	36	NW SW	4.5
9 S	46 E	WM	30	NW SE	6.3
9 S	46 E	WM	30	SW SE	8.2
9 S	46 E	WM	31	NW NE	9.0
9 S	46 E	WM	31	NE NW	19.0
9 S	46 E	WM	31	NW NW	28.0
Total Acres					198.6

37. Certificate 72199 does not provide a description of the location of the points of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	10	SW SE	EAGLE CREEK 590 FEET NORTH AND 2720 FEET EAST FROM THE SW CORNER OF SECTION 10
10 S	46 E	WM	7	NW NE	DALY CREEK LATITUDE: 44.7147938079 LONGITUDE: -117.1278138055

38. Certificate 72199 does not specify a duty limit per acre. However, based upon additional information provided by other water uses in the general area of the place of use and the application, for purposes of this instream lease, an appropriate duty limit is 3.0 acre-feet per acre considering the quantity of water that could be used beneficially and without waste.

39. The THIRTEENTH right to be leased is as follows:

Certificate: 72611 in the name of Idaho Power Company (perfected under Permit S-17779)

Use: Irrigation of 51.5 acres

Priority Date: May 31, 1947

Quantity: **Rate:** 1.29 Cubic Foot per Second (CFS)

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/40 of one cubic foot per second (or its equivalent) for each acre irrigation shall be further limited to a diversion of not to exceed 3.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Powder River, tributary to Snake River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
9 S	45 E	WM	25	SW SE
9 S	45 E	WM	36	NW NW

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	36	NE NE	17.0
9 S	45 E	WM	36	NW NE	7.8
9 S	45 E	WM	36	NE NW	16.5
9 S	45 E	WM	36	NW NW	10.2
Total Acres					51.5

40. Certificate 72611 does not provide measured distances of the points of diversion. Based upon additional information provided by Department documents, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	25	SW SE	198 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 25
9 S	45 E	WM	36	NW NW	396 FEET SOUTH OF THE NW CORNER SECTION 36

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

Certificate: 81986 in the name of Idaho Power Company, c/o Gil Green, Real Estate Specialist (perfected under Permit S-43213)

Use: Primary Irrigation of 9.5 acres and Supplemental Irrigation of 276.8 acres

Priority Date: May 25, 1978

Quantity: **Rate:** 0.07 Cubic Foot per Second (CFS) for Primary Irrigation and 1.99 CFS for Supplemental Irrigation
Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to 1/40 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 3.5 acre-feet for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land.

Source: Powder River, tributary to Snake River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	45 E	WM	35	NE NW	850 FEET SOUTH AND 3150 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 35
9 S	45 E	WM	36	NW NW	380 FEET SOUTH OF THE NORTHWEST CORNER OF SECTION 36

Authorized Place of Use:

Primary Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	36	NW SW	1.0
9 S	46 E	WM	31	SW NW	6.0
9 S	46 E	WM	31	NW SW	2.5
Total Acres					9.5

Supplemental Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	36	NW NE	0.2
9 S	45 E	WM	36	SW NE	13.0
9 S	45 E	WM	36	SE NE	28.5
9 S	45 E	WM	36	SW NW	10.0
9 S	45 E	WM	36	SE NW	17.3

Supplemental Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	45 E	WM	36	NE SW	1.0
9 S	45 E	WM	36	NW SW	4.5
9 S	46 E	WM	30	SW SW	0.7
9 S	46 E	WM	30	SE SW	14.3
9 S	46 E	WM	30	NW SE	3.4
9 S	46 E	WM	30	SW SE	15.2
9 S	46 E	WM	31	NW NE	9.0
9 S	46 E	WM	31	NE NW	23.8
9 S	46 E	WM	31	NW NW	30.0
9 S	46 E	WM	31	SW NW	25.6
9 S	46 E	WM	31	SE NW	16.5
9 S	46 E	WM	31	NE SW	7.6
9 S	46 E	WM	31	NW SW	19.5
9 S	46 E	WM	31	SE SW	13.1
9 S	46 E	WM	31	NW SE	13.8
9 S	46 E	WM	31	SW SE	9.8
Total Acres					276.8

42. Certificates 1907, 94746, 3340, 4004, 4607, 94769, 94748, 4712, 15177, 22668, 44245, 72199, 72611, and 81986 do not specify the period of allowed use and the Powder River Decree defines the season as “when necessary for beneficial use”, therefore for the purposes of instream leasing, an irrigation season March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

43. 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.

44. The instream use is as follows:

Daily Creek, tributary to Powder River

Instream Reach No. 1: From the POD’s (as described in Findings of Fact No. 5, 11, and 29) to the mouth of Daily Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
1907	June 10, 1916	0.17	81.0	March 1 through October 31
3340	September 16, 1914	0.08	39.0	
15177	1908	0.80	389.4	

Squaw Gulch, tributary to Powder River

Instream Reach No. 2: From the POD (as described in Finding of Fact No. 8) to the mouth of Squaw Gulch

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94746	April 21, 1915	0.36	175.8	March 1 through October 31

*Supplemental water right

Squaw Creek and Cherry Gulch, tributary to Powder River

Instream Reach No. 3: From the POD's (as described in Finding of Fact No. 32) to the mouth of Squaw Creek and Cherry Gulch

Certificate	Stream	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
22668	Squaw Creek	October 18, 1949	0.13	61.6	March 1 through October 31
	Cherry Gulch	March 23, 1950	0.03	12.25	

Eagle Creek and Daly Creek, tributary to Powder River

Instream Reach No. 4: From the POD (as described in Finding of Fact No. 37) to the mouth of Eagle Creek and Daly Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72199	July 12, 1901	1.23	595.8	March 1 through October 31

Eagle Creek, tributary to Powder River

Instream Reach No. 5: From the POD's (as described in Findings of Fact No. 17, 20, 23, and 26) to the mouth of Eagle Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
4607	1901	0.04	18.0	March 1 through October 31
94769	July 12, 1900	0.14	66.0	
94748	1901	0.07	36.0	
94748	1909	0.15	72.9	
94748	1897	0.02	10.5	
4712	1904	0.06	30.0	

Powder River, tributary to Snake River

Instream Reach No. 6: From the POD's (as described in Findings of Fact No. 14, 34, 40, and 41) to the mouth of Powder River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
4004	1900	0.06	30.00	March 1 through October 31
44245	1900	0.17	81.00	
72611	May 31, 1947	0.37	180.25	
81986	May 25, 1978	0.07	33.25	
81986*	May 25, 1978	1.99	968.80	

*Supplemental water right

45. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
46. 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.
47. 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.
48. 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.
49. 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.
50. 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.
51. 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.
52. The Lessor has requested that the lease terminate on October 31, 2024. The lease may commence on the date this final order is signed.
53. 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 October 31, 2024. 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 (March 1 through October 31) 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 APR 23 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: APR 24 2020

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.