

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

In the Matter of the Proposed Lease of            )     DETERMINATION and  
Existing Water Rights for Instream Use,         )     FINAL ORDER ON PROPOSED  
Umatilla Decree Volume 3, Page 127,           )     INSTREAM LEASE  
Umatilla County                                     )

**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**

Bureau of Reclamation  
Umatilla Field Office  
32871 Diagonal Road  
Hermiston, Oregon 97838

**Lessor #2**

Hermiston Irrigation District  
366 East Hurlburt  
Hermiston, Oregon 97838

**Findings of Fact**

1. The Bureau of Reclamation and Hermiston Irrigation District filed an application to lease a portion of the water right described in Umatilla Decree Volume 3, Page 127, for instream use. The Department assigned the application number IL-894.
2. On August 5, 2008 the Bureau of Reclamation requested that Department to modify the proposed instream use to protect the water at the point of diversion instead of through a reach.
3. The first portion of the right to be leased is as follows:

**Water Right:** Umatilla River Decree Volume 3, Page 127

**Use:** IRRIGATION of 59.4 ACRES

**Priority Date:** February 25, 1904

**Quantity:**     Rate:     1.49 CUBIC FEET PER SECOND (cfs)  
                  Duty:     356.4 AF. For those lands comprised of coarse sand or loose gravel subsoil or loose coarse texture soil the amount of water diverted for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 6.0 acre-feet per acre during the irrigation season of each year.

**Source:** NORTH HERMISTON DRAIN, tributary to UMATILLA RIVER

**Authorized Point of Diversion:** Maxwell Main

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: (As described in the application)**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	28 E	WM	9	NW NE	1.6
4 N	28 E	WM	9	SW NE	24.8
4 N	28 E	WM	9	SE NW	6.8
4 N	28 E	WM	9	NE SW	14.8
4 N	28 E	WM	9	NW SE	11.4
<b>TOTAL:</b>					<b>59.4</b>

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

**Water Right:** Umatilla River Decree Volume 3, Page 127

**Use:** IRRIGATION of 6.4 ACRES

**Priority Date:** February 25, 1904

**Quantity:** Rate: 0.16 cfs April through May, limited to 0.08 cfs thereafter.  
 Duty: 19.2 AF. For those lands comprised of loam or fine sand or fine textured soil the amount of water diverted for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH cfs per acre during the months of April and May, not to exceed ONE-EIGHTIETH cfs thereafter and 3.0 acre-feet per acre during the irrigation season of each year.

**Source:** NORTH HERMISTON DRAIN, tributary to UMATILLA RIVER

**Authorized Point of Diversion:** Maxwell Main

**Authorized Place of Use: (As described in the application)**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	28 E	WM	9	NE SW	2.9
4 N	28 E	WM	9	NW SE	3.5
<b>TOTAL:</b>					<b>6.4</b>

5. The Umatilla River Decree describes the location of the point of diversion, for the water rights described in Findings of Fact #3 and #4, as the Maxwell Main; however, the applicant provided information which more accurately describes the point of diversion for the purposes of this lease as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 N	28 E	WM	9	SW NE	POD #3: 2600 FEET SOUTH AND 600 FEET EAST FROM THE N¼ CORNER OF SECTION 9

6. 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.

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

NORTH HERMISTON DRAIN, tributary to UMATILLA RIVER

**Instream Point #1:** Measured at POD #3, as described in Finding of Fact #2.

Water Right	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
Umatilla River Decree Vol. 3, pg 127	2/25/1904	0.78 cfs	375.6 AF	March 1 <sup>st</sup> through October 28 <sup>th</sup>

8. Other conditions to prevent injury or enlargement:

The lessor will install a measurement device at the point of diversion to insure the full rate of water is delivered instream. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The lessor shall maintain and operate the measuring device as required by the Department.

9. Supplemental water right Certificate 76761 is appurtenant to all or a portion of the lands described in Finding of Fact #2. The Lessors have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will be suspended.
10. 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.
11. 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.
12. 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.
13. The lease will terminate on December 1, 2012.
14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### CONCLUSIONS OF LAW

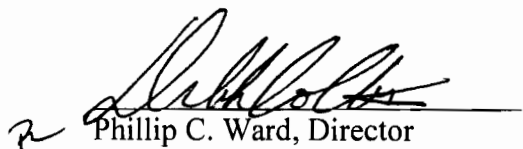
The Department concludes that the lease will not result in injury or enlargement under OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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 December 1, 2012.

Dated at Salem, Oregon this 6<sup>th</sup> day of August 2008.

  
Phillip C. Ward, Director

Mailing date: AUG 07 2008