

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

In the Matter of Instream Lease Application)
IL-1699, Umatilla County)
)
) DETERMINATION and
) 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

Pooled Instream Lease for several water right holders (described in Findings of Fact No. 2)

Co-Lessor

Hermiston Irrigation District (HID)
Annette Kirkpatrick, Manager
366 E. Hurlburt Avenue
Hermiston, Oregon 97838

Co-Lessor

U.S. Bureau of Reclamation (BOR)
32871 Diagonal Road
Hermiston, Oregon 97838

Findings of Fact

1. On June 14, 2018, HID and BOR, on behalf of several water right users, filed an application to lease a portion of Certificate 89006 for instream use. The Department assigned the application number IL-1699.
2. The portion of the right to be leased is as follows:

Certificate: 89006 in the name of United States Bureau of Reclamation, Pacific Northwest Region (confirmed by decree of the Circuit Court of the State of Oregon for Umatilla County, recorded in Volume 3, at Page 127, as modified in re: Waters of Umatilla River, 88 OR 376.)

Use: Irrigation of 333.26 acres, being 273.67 from the Maxwell Canal and 59.59 from the A Line Canal

Season of Use: March 1 through October 31

Priority Date: February 25, 1904 for acres through the Maxwell Canal (POD 1)
September 6, 1905 for acres through the A Line Canal (POD 2)

Quantity: **Volume / Limit:** 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

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.

limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 ACRE-FEET for each acre irrigated each year. 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 for each acre irrigated each year.

Source: Umatilla River and Cold Springs Reservoir, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4N	28E	WM	28	NW SW	POD 1 - MAXWELL CANAL
4N	29E	WM	3	SW NE	POD 2 - COLD SPRINGS DAM - "A" LINE CANAL - 1490 FEET SOUTH AND 2840 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION ACRES WITH A DUTY OF 6.0 ACRE FEET PER ACRE								
POD	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Right Holders
1	4 N	28 E	WM	3	SE NW	3.40	700	Andrew and Charlotte Englehart
1	4 N	28 E	WM	3	SE NW	4.00	704	
1	4 N	28 E	WM	4	NE SE	2.25	1901	Antonio Perez
1	4 N	28 E	WM	4	NE SE	1.30	1906	Soledad Frias
1	4 N	28 E	WM	4	SE SE	0.50	1201	H.A.R.E.C. (Oregon State University)
1	4 N	28 E	WM	9	NW SE	1.97	9402	First Church of the Nazarene
1	4 N	28 E	WM	9	SW NE	19.40	8701	U.S. Bureau of Reclamation
1	4 N	28 E	WM	9	SE NW	9.10	8701	
1	4 N	28 E	WM	9	NE SW	19.70	8701	
1	4 N	28 E	WM	9	NW SE	16.60	8701	
1	4 N	28 E	WM	9	SW NW	26.00	8000	
1	4 N	28 E	WM	9	NW SW	38.50	8000	
1	4 N	28 E	WM	10	NW NE	1.00	100	Hermiston School District - 8R
1	4 N	28 E	WM	10	SW NE	2.88	100	
1	4 N	28 E	WM	12	NE NW	10.00	302	
1	4 N	28 E	WM	12	NW NW	4.20	302	
1	4 N	28 E	WM	12	SW NW	8.80	302	
1	4 N	28 E	WM	15	SE NE	6.20	200	Jeff Newman
1	4 N	28 E	WM	16	NE SE	7.90	301	Edward and Debbie Pedro
1	4 N	28 E	WM	16	NW SE	10.20	301	
1	4 N	28 E	WM	16	SE SE	1.20	1900	Dustin Swales
1	4 N	28 E	WM	21	NW NW	2.96	801	Hoot Royer
1	5 N	28 E	WM	24	SE SE	2.03	400	Scott Fewel
1	5 N	29 E	WM	29	NE SE	2.15	500	Roberta Noland
1	5 N	29 E	WM	31	SW SE	1.70	2300	Damon and Dianna Ashbeck
Sub-Total for POD 1 acres						203.94		
2	4 N	28 E	WM	15	SE SE	3.30	1400	Ivan and Colleen Cook
2	4 N	28 E	WM	21	SW NW	0.74	1103	Vicki Cline
2	4 N	28 E	WM	21	SE NW	1.91	1103	
2	4 N	29 E	WM	6	NW NE	2.02	2400	Ronald and LeEtta Wineland
2	4 N	29 E	WM	7	NW NW	1.80	600	Linda Schultz
2	5 N	28 E	WM	34	SW NW	9.00	1000	Brian Lewis
2	5 N	29 E	WM	28	SW SW	4.40	1300	Marcie (Berry) Harley
2	5 N	29 E	WM	32	NE SW	2.00	601	Randy and Christy Cook

IRRIGATION ACRES WITH A DUTY OF 6.0 ACRE FEET PER ACRE								
POD	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Right Holders
2	5 N	29 E	WM	32	SW SW	0.90	1700	H.A.R.E.C. (Oregon State University)
2	5 N	29 E	WM	32	NE SE	3.40	2302	John Harris
2	5 N	29 E	WM	33	SE NW	4.00	700	Matthew and Serenity Stull
2	5 N	29 E	WM	33	SE SW	1.50	2104	John and Julie Acord
2	5 N	29 E	WM	34	NW SW	4.00	3800	Cheri (McLeod) Bumpaous
Sub-Total for POD 2 acres						38.97		
Total Acres						242.91		

IRRIGATION ACRES WITH A DUTY OF DUTY 3.0 ACRE FEET PER ACRE								
POD	Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Water Right Holders
1	4 N	28 E	WM	10	SW SE	3.40	600	Hermiston School District – 8R
1	4 N	28 E	WM	10	SW SE	3.00	1500	
1	4 N	28 E	WM	15	SE NW	2.00	900	
1	4 N	28 E	WM	15	NE SW	15.11	100 (was 500)	Hermiston School District – 8R
1	4 N	28 E	WM	15	NE SW	9.09	1300 (was 500)	
1	4 N	28 E	WM	15	NW SE	4.90	100 (was 500)	
1	5 N	28 E	WM	15	SW NW	3.40	100	Anacapa Land Co.
1	5 N	28 E	WM	15	NW SW	18.80	100	
1	5 N	28 E	WM	15	SW NW	0.67	400	Donn's Places Inc.
1	5 N	28 E	WM	15	SE NW	0.57	606	
1	5 N	28 E	WM	15	SE NW	0.10	602	
1	5 N	28 E	WM	15	SE NW	0.50	600	
1	5 N	28 E	WM	15	SE NW	0.20	605	
1	5 N	28 E	WM	15	SE NW	3.00	609	
1	5 N	28 E	WM	15	SE NW	0.40	601	
1	5 N	28 E	WM	24	NE SE	4.59	400	
Sub-Total for POD 1 acres						69.73		
2	4 N	28 E	WM	14	SE NE	5.80	900	Elaina Graham
2	4 N	28 E	WM	15	SE SE	3.20	1400	Ivan and Colleen Cook
2	4 N	28 E	WM	23	NE NW	0.87	800	H.A.R.E.C. (Oregon State University)
2	4 N	28 E	WM	23	SE NW	3.05	800	
2	4 N	29 E	WM	7	NW NW	5.70	600	Linda Schultz
2	5 N	28 E	WM	28	SE NW	2.00	800	Thomas and Dana Wood
Sub-Total for POD 2 acres						20.62		
Total Acres						90.35		

3. 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.

4. The instream use has been modified to prevent injury and enlargement and protect the entirety of the season and is as follows:

Umatilla River and Cold Springs Reservoir, tributary to the Columbia River

Instream Point No. 1: At POD No. 1 (as described in Finding of Fact No. 2)

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
2/25/1904	0.430	209.19	March 1 through October 31
	0.127	61.86	
Totals	0.557	271.05	

Instream Point No. 2: At POD No. 2 (as described in Finding of Fact No. 2)

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
9/6/1905	2.518	1223.64	March 1 through October 31
	0.481	233.82	
Totals	2.999	1457.46	

5. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
6. The protection of flows at the authorized points of diversion are 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 point of the instream water right.
7. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
8. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.
9. 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.
10. 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.

11. 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.
12. The Lessors have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed.


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 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, 2018.

Dated at Salem, Oregon this day SEP 26 2018.



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

Mailing date: SEP 27 2018

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