

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

In the Matter of Instream Lease Application     )  
IL-1814, Crook County                             )  
  )  
  )     PARTIAL TERMINATION ORDER AND  
  )     SUPERSEDING FINAL ORDER APPROVING  
  )     AN 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**

City of Prineville  
387 NE 3<sup>rd</sup> Street  
Prineville, OR 97754

**Co-Lessor**

Bureau of Reclamation  
1917 Marsh Road  
Yakima, WA 98901

**Co-Lessor**

Peoples Irrigation Company  
4923 Northwest O'Neil Highway  
Prineville, OR 97754

**Findings of Fact**

1. On May 29, 2020, the City of Prineville, Bureau of Reclamation, and Peoples Irrigation Company filed an application to lease a portion of Certificates 75485, 83850, 87546, 87547, 87548, 90380, 90382, 90383, and 90397 for instream use. The Department assigned the application number IL-1814.
2. The lease application requested to protect water instream for two years, terminating on December 1, 2021. A final order approving this lease was issued by the Department on August 27, 2020, as evidenced by Special Order Volume 117, Pages 393-401.
3. The final order contained a condition allowing the Lessor to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department.
4. On January 22, 2021, the Department received a request from Bruce Brody-Heine, GSI Water Solutions, Inc, the CWRE for the Lessor's to terminate 2.32 acres of Certificate 83850 prior to the 2021 instream use period.

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.

5. This order is being issued to remove 2.32 acres of Certificate 83850, and identify the remaining instream use being protected during the 2021 season.
6. The portion of the first right to be leased is as follows:

**Certificate:** 75485 in the name of People’s Irrigation Company (perfected under Permit S-11411)  
**Use:** Irrigation of 10.23 acres  
**Priority Date:** September 11, 1934  
**Quantity:** **Rate:** 0.13 Cubic Foot per Second (CFS)  
**Volume:** 40.92 Acre-Feet (AF)  
**Limit:** The right to use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.  
**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	26	SE SE	AT THE SE CORNER OF SECTION 26

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NW NW	1.17
14 S	15 E	WM	26	SW NW	4.36
14 S	15 E	WM	26	NW SW	4.70
Total Acres					10.23

7. Certificate does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	26	SE SE	DIRECT DIVERISON: 100 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 26 (DIRECT DIVERSION)

8. Certificate 75485 does not specify a rate and duty limit per acre. However, the Crooked River Decree specifies the rate limit as 1/80 cubic foot per second per acre and the duty limit as 4.0 acre feet per year.
9. Certificate 75485 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.
10. The portion of the second right to be leased is as follows:

**Certificate:** 83850 in the name of US Bureau of Reclamation (perfected under Permit S-25991)  
**Use:** Irrigation of **9.57** acres  
**Priority Date:** April 8, 1914  
**Quantity:** **Rate:** 0.24 Cubic Foot per Second (CFS)  
**Volume:** 38.28 Acre-Feet (AF)

**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 one-fortieth of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from Prineville Reservoir. Use of the water requires the existence of a current contract between the landowners and the United State Bureau of Reclamation.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	PEOPLES DITCH #13 AND DIRECT DIVERSION #13: 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	SE NW	4.00
14 S	15 E	WM	26	NE SW	5.40
14 S	15 E	WM	26	SW SW	0.17
Total Acres					9.57

11. Certificate 83850 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.
12. The portion of the third right to be leased is as follows:

**Certificate:** 87546 in the name of People's Irrigation Company (perfected under Permit S-11619)

**Use:** Irrigation of 3.94 acres

**Priority Date:** March 28, 1935

**Quantity:** **Rate:** 0.05 Cubic Foot per Second (CFS)  
**Volume:** 15.76 Acre-Feet (AF)

**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 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	35	NE NW	3.94

13. Certificate 87546 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

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

**Certificate:** 87547 in the name of People’s Irrigation Company (confirmed by decree of record at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 449)

**Use:** Irrigation of 16.64 acres

**Priority Date:** 1893

**Quantity:** **Rate:** 0.21 Cubic Foot per Second (CFS)  
**Volume:** 66.56 Acre-Feet (AF)  
**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 one-eightieth of one cubic foot per second (or its equivalent) and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	36	SE NW	3.70
14 S	15 E	WM	36	NE SW	12.94
Total Acres					16.64

15. Certificate 87547 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

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

**Certificate:** 87548 in the name of Bureau of Reclamation, United States of America, Acting Through the Regional Director and People’s Irrigation Company (perfected under Permit S-25991)

**Use:** Irrigation of 11.04 acres

**Priority Date:** April 8, 1914

**Quantity:** **Rate:** 0.28 Cubic Foot per Second (CFS)  
**Volume:** 44.16 Acre-Feet (AF)  
**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 one-fortieth 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 4.0 acre-feet per acre for each acre irrigation during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	PEOPLE'S DITCH – 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NW NW	6.11
14 S	15 E	WM	26	SW NW	2.38
14 S	15 E	WM	35	NE NW	0.89
14 S	15 E	WM	35	NW NE	1.66
Total Acres					11.04

17. Certificate 87548 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.
18. The lease application requests to protect water right Certificate 87548 instream during the period June 1 through November 9, a 162-day period. At the proposed instream rate of 0.28 cfs, this amount of water may not be protected over this full time period without enlargement of the rights. The water right is a 1/40<sup>th</sup> cfs per acre and at 162-day period would equate to 0.14 cfs protected instream and will be modified from the lease application to prevent enlargement.
19. The portion of the sixth right to be leased is as follows:

**Certificate:** 90380 in the name of People's Irrigation Company LTD (perfected under Permit S-11619)

**Use:** Irrigation of 7.81 acres

**Priority Date:** March 28, 1935

**Quantity:** **Rate:** 0.10 Cubic Foot per Second (CFS)

**Volume:** 31.24 Acre-Feet (AF)

**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 one-eightieth of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	35	NW NE	7.81

20. Certificate 90380 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

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

**Certificate:** 90382 in the name of U.S. Bureau of Reclamation and People’s Irrigation Company (perfected under Permit S-25991)

**Use:** Irrigation of 0.5 acres

**Priority Date:** April 8, 1914

**Quantity:** **Rate:** 0.01 Cubic Foot per Second (CFS)

**Volume:** 2.0 Acre-Feet (AF)

**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 one-fortieth 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	PEOPLE’S DITCH – 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	35	NW NE	0.5

22. Certificate 90382 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

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

**Certificate:** 90383 in the name of People’s Irrigation Company, LTD (confirmed by decree of record at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 449)

**Use:** Irrigation of 1.45 acres

**Priority Date:** 1895

**Quantity:** **Rate:** 0.02 Cubic Foot per Second (CFS)

**Volume:** 5.8 Acre-Feet (AF)

**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 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	SW SE	1.45

24. Certificate 90383 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

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

**Certificate:** 90397 in the name of Peoples Irrigation Company (confirmed by decree of record at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 449)

**Use:** Irrigation of 3.56 acres

**Priority Date:** 1895

**Quantity:** **Rate:** 0.04 Cubic Foot per Second (CFS)

**Volume:** 14.24 Acre-Feet (AF)

**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 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 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** Crooked River, tributary to the Deschutes River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	SE SW	3.56

26. Certificate 90397 does not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.

27. There are supplemental irrigation water rights, Certificate 33012, 83850, 87548, and 90382, appurtenant to all or a portion of the lands described in Finding of Facts No. 6 through 25. The Lessors have requested that these portions of water rights not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.

28. 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.

**29. The instream use for the 2021 season is as follows:**

Crooked River, tributary to Deschutes River

**Instream Reach No. 1:** From the POD (as described in Finding of Fact No. 10) to River Mile 28

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
83850	4/8/1914	0.24	38.28	June 1 through August 20
87546	3/28/1935	0.05	15.76	June 1 through November 9
87547	1893	0.21	66.56	June 1 through November 9
87548	4/8/1914	0.14	44.16	June 1 through November 9
90380	3/28/1935	0.10	31.24	June 1 through November 9
90382	4/8/1914	0.01	2.00	June 1 through August 20
90383	1895	0.02	5.80	June 1 through November 9
90397	1895	0.04	14.24	June 1 through November 9
Totals		0.81	218.04	

**30. Instream Reach No. 2:** From the POD (as described in Finding of Fact No. 7) to River Mile 28

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
75485	9/11/1934	0.13	40.92	June 1 through November 9

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

32. 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.

33. 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.

34. 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.



35. 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.
36. 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.
37. 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.
38. The Lessors have requested that the lease terminate on December 1, 2021. The lease may re-commence on the date this final order is signed.

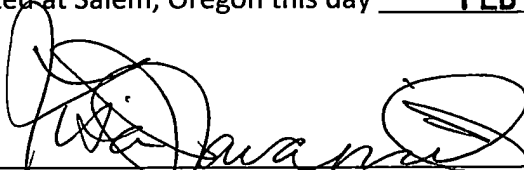
#### Conclusions of Law

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. Special Order Volume 117, Pages 393-401 is now superseded and no longer valid.
3. 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.
4. The term of the lease will commence upon approval of the instream lease and terminate on December 1, 2021.

Dated at Salem, Oregon this day FEB 11 2021.

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

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

Mailing date: FEB 12 2021