

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1971, Hood River 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

Pooled Instream Lease for several water right holders (described in Finding of Facts No. 3, 4, and 8)

Co-Lessor

Farmers Irrigation District
1985 Country Club Road
Hood River, OR 97031
les@fidhr.org
megan@fidhr.org

Findings of Fact

1. On May 10, 2023, Farmers Irrigation District, on behalf of several water right holders, filed an application to lease portions of Certificates 74312, 74367, 93490, 93492, and 95429 for instream use. The Department assigned the application number IL-1971.
2. The instream lease application included Certificate 94244 to be leased instream, however, ORS 537.348 and OAR 690.077 do not allow the leasing of groundwater rights instream, therefore, Certificate 94244 is being removed from the instream lease application.
3. The portion of the first right to be leased is as follows:

Certificate: 74312 in the name of Carmel M. Cervetto (perfected under Permit S-4591)
Use: Supplemental Irrigation of 4.15 acres
Priority Date: May 10, 1920
Quantity: **Rate:** 0.05 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre, not to exceed 3.0 AF per acre per year
Source: An Unnamed Spring Branch, tributary to the Columbia 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
3 N	10 E	WM	34	SE NE	2070 FEET SOUTH AND 1217 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
3 N	10 E	WM	34	SE NE	2400	4.15	Carmel M. Cervetto
TOTAL						4.15	

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

Certificate: 74367 in the name of Frederick & Joann Von Lubken (confirmed by decree of the Circuit Court of the State of Oregon for Hood River County. The decree is on record at Salem, in the Order Record of the Water Resources Director, in Volume 6, at Page 200)

Use: Supplemental Irrigation of 0.10 acres

Priority Date: 1900

Quantity: **Rate:** 0.001 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre, not to exceed 3.0 AF per acre per year

Source: A Spring and Seepage Water, tributary of Indian Creek

Authorized Point of Diversion (POD):

LOCATION ON CERTIFICATE
WOODWORTH PIPELINE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
2 N	10 E	WM	2	NE NE	200	0.10	TCLC Holdings
TOTAL						0.10	

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

Certificate: 93490 in the name of Farmer Irrigation District (perfected under Permit S-39822)

Use: Spray Water for Orchards on 3.30 acres

Season of Use: February 15 through approximately November 15

Priority Date: December 5, 1974

Quantity: **Rate:** 0.005 Cubic Foot per Second (CFS)

Source: Hood River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 E	WM	31	NW SW	2250 FEET NORTH AND 470 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
2 N	10 E	WM	2	SW SW	2700	0.10	Gretchen Von Lubken
3 N	10 E	WM	33	SW NE	2200	3.00	Mary Davidson, Robert Freeman
3 N	10 E	WM	34	SE SW	1300	0.20	Damon Clegg, Amy Klee
TOTAL						3.30	

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

Certificate: 93492 in the name of Farmers Irrigation District (perfected under Permit S-44002)
Use: Fertilization and Temperature Control (cooling) on 3.3 acres
Priority Date: July 28, 1977
Quantity: **Rate:** 0.023 Cubic Foot per Second (CFS)
Source: Hood River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 E	WM	31	NW SW	2250 FEET NORTH AND 470 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
2 N	10 E	WM	2	SW SW	2700	0.10	Gretchen Von Lubken
3 N	10 E	WM	33	SW NE	2200	3.00	Mary Davidson, Robert Freeman
3 N	10 E	WM	34	SE SW	1300	0.20	Damon Clegg, Amy Klee
TOTAL						3.30	

7. Certificate 93492 does not specify the period of allowed use. However, use of water for fertilization and temperature control are assumed to be year round uses unless otherwise specified in the certificate.

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

Certificate: 95429 in the name Farmers Irrigation District (confirmed by decree of the Circuit Court of the State of Oregon for Hood River County. The decree is on record at Salem, in the Order Record of the Water Resources Director, in Volume 17, at Page 333)
Use: Irrigation of 44.65 acres
Priority Date: May 7, 1906
Quantity: **Rate:** 0.558 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre, not to exceed 3.0 AF per acre per year
Source: Hood River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	10 E	WM	31	NW SW	2250 FEET NORTH AND 470 FEET EAST FROM THE SW CORNER OF SECTION 31

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
2 N	10 E	WM	1	NW NE	300	2.00	Stephen Burkhart
2 N	10 E	WM	2	NE NE	200	0.10	TCLC Holdings
2 N	10 E	WM	2	NE SW	200	9.00	Phillip Richter
2 N	10 E	WM	2	SW SW	2700	0.10	Gretchen Von Lubken
2 N	10 E	WM	2	SE SW	1702	0.10	Ronald Haynes
2 N	10 E	WM	2	NE SE	301	0.35	Brian Graves
2 N	10 E	WM	2	SW SE	2400	0.25	Flagline LLC
2 N	10 E	WM	2	SE SE	200	0.05	Ronald & Charlotte Gilbert
2 N	10 E	WM	2	SE SE	300	0.35	Charlotte Johnson
2 N	10 E	WM	3	NW NE	1900	0.15	Franco Marchesi
2 N	10 E	WM	3	NE NW	300	0.25	Trevor Cooper
2 N	10 E	WM	3	NE SW	800	0.45	Alan & Brenda Schweller
2 N	10 E	WM	3	NW SW	2600	0.70	Kathleen Zorza
2 N	10 E	WM	3	NW SE	101	0.45	William & Jill Gray
2 N	10 E	WM	3	NW SE	300	0.10	Adrian Hawkins & Tacia Miller
2 N	10 E	WM	11	SW SW	1100	0.15	Steve Benton Holding LLC
2 N	10 E	WM	31	NE NW	800	1.05	Tim Heltzel
2 N	10 E	WM	31	SE NW	800	0.25	Tim Heltzel
2 N	10 E	WM	31	SE NW	800	0.05	Tim Heltzel
3 N	10 E	WM	33	SW NE	2200	3.00	Mary Davidson, Robert Freeman
3 N	10 E	WM	33	NE SE	400	0.30	Nathan A. Duckwall
3 N	10 E	WM	33	NE SE	800	0.25	Terrance & Melanie Finstad
3 N	10 E	WM	34	NE NE	200	1.85	Integrity Building & Construction
3 N	10 E	WM	34	NE NE	500	7.50	Heritage Homes
3 N	10 E	WM	34	NW NE	800	2.15	Wilbur O. Krutz
3 N	10 E	WM	34	NW NE	1602	0.20	Troyce Mack, Michael Kitts
3 N	10 E	WM	34	SE NE	2400	4.15	Carmel M. Cervetto
3 N	10 E	WM	34	SE NW	420	0.10	Dustin Lee
3 N	10 E	WM	34	SE NW	425	0.20	Kurt & Maureen Harter
3 N	10 E	WM	34	NE SW	400	0.25	Latsy & Clinton Walker
3 N	10 E	WM	34	SW SW	100	0.10	GL Forden LLC
3 N	10 E	WM	34	SW SW	511	0.20	Heather Gehring
3 N	10 E	WM	34	SE SW	1300	0.20	Damon Clegg, Amy Klee
3 N	10 E	WM	34	SE SE	2102	0.10	Martin & Stacy Claus
3 N	10 E	WM	34	SE SE	2103	0.90	Stephanie Adams
3 N	10 E	WM	34	SE SE	2300	0.30	Brian Johnston
3 N	10 E	WM	34	SE SE	2307	0.20	Elizabeth & Robert Kendall
3 N	10 E	WM	34	SE SE	2309	0.25	Chris & Keiko Borkenhagen

Twp	Rng	Mer	Sec	Q-Q	Additional Info from App – Taxlot	Acres	Water Right Holder
3 N	10 E	WM	34	SE SE	2310	0.25	Jennifer Hinman
3 N	10 E	WM	34	SE SE	2311	0.25	Charleen Wols, William Doty
3 N	10 E	WM	34	SE SE	2312	0.30	Ryan Kealy
3 N	10 E	WM	35	NE SW	202	0.90	Franco Marchesi
3 N	10 E	WM	35	NE SW	631	0.10	Patricia Moore
3 N	10 E	WM	35	NE SW	1400	0.40	Integrity Building & Construction
3 N	10 E	WM	35	NW SW	202	1.25	Franco Marchesi
3 N	10 E	WM	35	NW SW	500	0.60	Consolidated Land LLC
3 N	10 E	WM	35	SW SW	2200	0.90	Byron Roberts
3 N	10 E	WM	35	SE SW	911	0.10	Douglas Wetli
3 N	10 E	WM	35	SE SW	2200	0.20	Byron Roberts
3 N	10 E	WM	35	SW SE	2301	0.05	Elodia Lara, Cruz Chaparro-Rios
3 N	10 E	WM	35	SE SE	1004	1.20	HR Senior Center
3 N	10 E	WM	36	SE SW	1400	0.05	Amanda & Mitchell Evans
TOTAL						44.65	

9. Certificates 74312, 74367 and 95429 do not specify the irrigation season. However, the Hood River Decree describes the irrigation season as April 15 through October 1.
10. 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.
11. The instream use is as follows:

An Unnamed Spring Branch, a tributary to Columbia River

Instream Point No. 1: At the POD (as described in Finding of Fact No. 3)

Certificate	Use	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
74312	Supp	5/10/1920	0.052	12.45	June 2 through September 30

A Spring and Seepage Water, a tributary of Indian Creek

Instream Point No. 2: At the POD (as described in Finding of Fact No. 4)

Certificate	Use	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
74367	Supp	1900	0.001	0.30	June 2 through September 30

Hood River, a tributary to Columbia River

Instream Point No. 3: At the POD (as described in Finding of Fact No. 5)

Certificate	Use	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93490	Spray Water	12/5/1974	0.005	-----	June 2 through September 30

Hood River, tributary to Columbia River

Instream Point No. 4: At the POD (as described in Finding of Fact No. 6)

Certificate	Use	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93492	F/TC	7/28/1977	0.023	----	June 2 through September 30

Hood River, tributary to Columbia River

Instream Point No. 5: At the POD (as described in Finding of Fact No. 6)

Certificate	Use	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
95429	IR	5/7/1906	0.558	133.95	June 2 through September 30

12. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on the available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.
20. The Lessor has requested that the lease terminate on September 30, 2023. The lease may commence on the date this final order is signed.
21. The Lessor requested that there not be an option to terminate the lease.

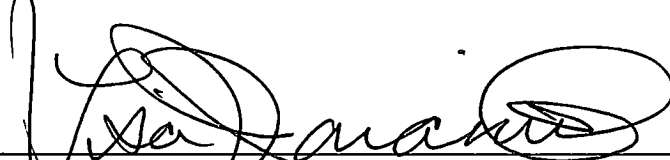
Conclusions of Law

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 issuance of this final order and terminate on September 30, 2023. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this day JUN 30 2023.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Mailing date: JUL 03 2023

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.