

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1099, Certificates 13570, 13592, 25435,)	FINAL ORDER ON PROPOSED
38865, 38666, 38880, 47874, 75800)	INSTREAM LEASE
Wasco and Wasco Counties)	

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

Bureau of Land Management
Prineville District
3050 NE 3rd ST
Prineville OR 97754

Findings of Fact

1. On November 2010 the Prineville District of the Bureau of Land Management (BLM) filed an application to lease portions of Certificates 13570, 13592, 25435, 38865, 38666, 38880, 47874 and 75800 for instream use. The Department assigned the application number IL-1099.
2. Water Right Certificate 13570 can not be leased herein because it was cancelled as part of a Settlement Agreement recorded in Special Order Volume 80 at page 41.
3. On March 23, 2011 the BLM requested the Department to amend Instream Lease Application IL-1099 by removing Water Right Certificates 13592 and 75800, both of which had been cancelled by prior transactions.
4. Water Right Certificate 38666 can not be leased herein because it was the subject of Transfer T-7963 as recorded by Special Order Volume 52 at page 696.
5. On September 29, 2011 the BLM submitted new maps which more accurately describe the rights of record.

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.

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

Certificate: 25435 in the name of FRANK A KNOX; ESTATE OF; BY LELAND J KNOX, EXECUTOR (confirmed by John Day River (F))
Use: IRRIGATION of 19.1 ACRES
Season of Use: April 1 to September 30
Priority Date: 1898
Quantity: **Rate:** 0.48 Cubic Foot per Second (CFS)
Duty: 95.5 Acre-Feet (AF)
Limit: ONE-FORTIETH CFS per acre, further limited to one acre-foot per month; total of 5.0 AF per acre per season, measured at the point of diversion.
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	19 E	WM	32	SW SW	NOT SPECIFIED

*Approximately River Mile 2 0.9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	19 E	WM	32	SW NW	9.4
6 S	19 E	WM	32	NW SW	7.5
6 S	19 E	WM	32	SW SW	2.2
TOTAL:					19.1

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

Certificate: 38665 in the name of RODNEY P ROLFE (perfected under Permit S-17507)
Use: IRRIGATION on 66.3 ACRES
Season of Use: April to September 30
Priority Date: FEBRUARY 11, 1947
Quantity: **Rate:** 0.838 Cubic Foot per Second (CFS)
Duty: 331.5 Acre-Feet (AF)
Limit: ONE-FORTIETH CFS per acre, further limited to one acre-foot per month; total of 5.0 AF per acre per season, measured at the point of diversion.
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	19 E	WM	29	NE SW	NONE GIVEN

*Approximately River Mile 108.4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	20	NE SW	1.0
7 S	19 E	WM	20	NW SW	3.6
7 S	19 E	WM	20	SW SW	22.5
7 S	19 E	WM	20	SE SW	20.3
7 S	19 E	WM	29	NE NW	3.8
7 S	19 E	WM	29	NW NW	0.6
7 S	19 E	WM	29	SE NW	4.9
7 S	19 E	WM	29	NE SW	9.6
TOTAL:					66.3

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

Certificate: 38880 in the name of RODNEY P ROLFE (perfected under Permit S-30334)
Use: IRRIGATION on 75.4 ACRES
Season of Use: April to September 30
Priority Date: APRIL 5, 1965
Quantity: **Rate:** 1.11 Cubic Foot per Second (CFS)
Duty: 377.0 Acre-Feet (AF)
Limit: ONE-FORTIETH CFS per acre, not to exceed 5.0 AF per acre per year
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	19 E	WM	20	SW NW	3530 FEET NORTH AND 880 FEET EAST FROM THE SW CORNER OF SECTION 20

*Approximately River Mile 106.2

Authorized Place of Use:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	19	SW NE	0.1
7 S	19 E	WM	19	SE NE	22.6
7 S	19 E	WM	19	NE SE	21.0
7 S	19 E	WM	20	NW NW	0.1
7 S	19 E	WM	20	SW NW	13.4
7 S	19 E	WM	20	NE SW	0.1
7 S	19 E	WM	20	NW SW	18.1
TOTAL:					75.4

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

Certificate: 47874 in the name of STEIWER RANCHES INC. (perfected under Permit S-40055)
Use: IRRIGATION on 20.9 ACRES
Season of Use: April to September 30
Priority Date: AUGUST 7, 1975
Quantity: **Rate:** 0.52 Cubic Foot per Second (CFS)
Duty: 104.5 Acre-Feet (AF)
Limit: ONE-FORTIETH CFS per acre, not to exceed 5.0 AF per acre per year
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	19 E	WM	32	SW SW	320 FEET NORTH AND 360 FEET EAST FROM THE SOUTHWEST CORNER OF SECTION 32

*Approximately River Mile 102.4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	19 E	WM	31	NE NE	1.0
6 S	19 E	WM	31	SE NE	12.7
6 S	19 E	WM	31	NE SE	2.1
6 S	19 E	WM	32	NW NW	1.1
6 S	19 E	WM	32	SW NW	0.3
6 S	19 E	WM	32	NW SW	1.7
6 S	19 E	WM	32	SW SW	1.0
7 S	19 E	WM	5	NW NW	1.0
TOTAL:					20.9

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 in response to that notice.

11. The instream rates have been modified to prevent enlargement and are as follows:

JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Instream Reach # 1: From the POD, as described in Finding of Fact #6, to USGS Gauge #14048000 at McDonald's Ferry (approximately RM 20.9):

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
25435	1898	0.263	95.5	April 1 to September 30

Instream Reach # 2: From the POD, as described in Finding of Fact #7, to USGS Gauge #14048000 at McDonald's Ferry (approximately RM 20.9)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
38665	2/11/1947	0.838	331.5	April 1 to September 30

Instream Reach # 3: From the POD, as described in Finding of Fact #8, to USGS Gauge #14048000 at McDonald's Ferry (approximately RM 20.9)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
38880	4/5/1965	1.04	377.0	April 1 to September 30

Instream Reach # 4: From the POD, as described in Finding of Fact #9, to USGS Gauge #14048000 at McDonald's Ferry (approximately RM 20.9)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
47874	8/7/1975	0.288	104.5	April 1 to September 30

12. The Applicant's have requested the following conditions to prevent injury and enlargement:
 - A) The quantity of water protected instream shall be reduced by 50% below the points of diversion to account for return flows.
 - B) After the J. McDonald Ferry Guage, the rights protected herein shall be reduced by 1.0% per mile to account for evapotranspiration losses.
13. 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.
14. 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.
15. 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.
16. The Lessor has requested that the lease terminate on October 31, 2015.

CONCLUSIONS OF LAW

The Department concludes that the lease will not result in injury or enlargement pursuant to 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 lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream

use (July 22) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

4. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is not received prior to June 24, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
5. The lease will terminate on October 31, 2015.

Dated at Salem, Oregon this 26 day of October 2011.



Dwight French, Water Rights Services Administrator *for*
Phillip C. Ward, Director

Mailing date: OCT 31 2011

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrđ.state.or.us