

**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
Certificates 57994, 27061, 12243, 13463,) INSTREAM LEASE
and 26055, Marion 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

Manton Carl, LLC
PO Box 149
Hubbard, OR 97032

Findings of Fact

1. On June 26, 2008, Manton Carl, LLC, filed an application to lease all of Certificates 57994, 27061, 12243, 13463, and 26055 to instream use. The Department assigned the application number IL-947.

2. The first right to be leased is as follows:

Certificate: 57994
Use: Irrigation
Acres: 65.2 acres
Priority Date: May 16, 1977
Quantity: Rate: 0.82 Cubic Foot per Second (CFS)
Duty: 163.0 Acre-Feet (AF)

Source: Pudding River, tributary to the Willamette River

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 W	WM	2	SW SW	80 FEET NORTH AND 700 FEET EAST FROM THE SE CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	3	NW NE	39	33.5
5 S	1 W	WM	3	SW NE	39	2.5
5 S	1 W	WM	3	SW NE	60	22.5
5 S	1 W	WM	3	NE NW	39	6.2

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.

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	3	SE NW	39	0.5

3. The second right to be leased is as follows:

Certificate: 12243
Use: Irrigation
Acres: 100.0 acres
Priority Date: June 16, 1933
Quantity: Rate: 1.25 CFS
Source: Pudding River, tributary to the Willamette River
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 W	WM	2	SW SW	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
5 S	1 W	WM	2	NE SW		13.0
5 S	1 W	WM	2	NW SW		18.1
5 S	1 W	WM	2	SW SW		32.7
5 S	1 W	WM	2	SE SW		10.0
5 S	1 W	WM	3	SE SE	3	19.2
5 S	1 W	WM	10	NE NE		3.0
5 S	1 W	WM	11	NW NW		4.0

4. The third right to be leased is as follows:

Certificate: 27061
Use: Irrigation
Acres: 80.3 acres
Priority Date: March 22, 1954
Quantity: Rate: 1.0 CFS
Duty: 200.75 AF
Source: Pudding River, tributary to the Willamette River
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
5 S	1 W	WM	2	SW SW	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
5 S	1 W	WM	2	SW NW	5	0.8
5 S	1 W	WM	2	NW SW		14.4
5 S	1 W	WM	3	NE SE	2	6.9
5 S	1 W	WM	3	SW SE	4	19.7
5 S	1 W	WM	3	SE SE	3	18.7
5 S	1 W	WM	10	NE NE		10.2
5 S	1 W	WM	10	NW NE		8.6
5 S	1 W	WM	11	NW NW		1.0

5. The fourth right to be leased is as follows:

Certificate: 13463
Use: Irrigation

Acres: 35.3 acres
Priority Date: August 30, 1935
Quantity: Rate: 0.45 CFS
 Duty: 88.25 AF
Source: Unnamed Stream, tributary to the Pudding River

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Survey Coordinates
5 S	1 W	WM	3	NE SE	2	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
5 S	1 W	WM	2	SW NW		59	14.5
5 S	1 W	WM	3	SSE NE		59	4.0
5 S	1 W	WM	2	SW NW	5		1.4
5 S	1 W	WM	2	NW SW			4.4
5 S	1 W	WM	3	SE NE	1		0.4
5 S	1 W	WM	3	NE SE	2		10.6

6. The fifth right to be leased is as follows:

Certificate: 26055
Use: Irrigation
Acres: 56.5 acres
Priority Date: October 23, 1950
Quantity: Rate: 0.71 CFS
 Duty: 141.25 AF
Source: Unnamed drainage ditch and reservoir, constructed under Permit R-1584, tributary to the Pudding River

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Survey Coordinates
5 S	1 W	WM	3	NE SE	2	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
5 S	1 W	WM	3	SW NE		60	4.6
5 S	1 W	WM	3	SE NE		60	13.0
5 S	1 W	WM	3	SE NE		59	14.9
5 S	1 W	WM	3	SE NE	1		2.9
5 S	1 W	WM	3	NE SE	2		1.5
5 S	1 W	WM	3	NE SE		60	5.2
5 S	1 W	WM	3	NW SE		60	12.3
5 S	1 W	WM	3	SW SE		60	1.2
5 S	1 W	WM	3	SE SE		60	0.9

7. Certificate 26055 includes the diversion of water from an unnamed reservoir. In Section 1.5 of the lease application, the source of water for the proposed lease is described as only being from the unnamed drainage ditch. The lease of water under certificate 26055 shall be limited to live flow from the unnamed drainage ditch.

8. The irrigation season is not identified on any of the certificates requested to be leased instream. The irrigation season for the Pudding River is March 1 through October 31.

9. The POD for Certificates 27061 and 12243 appears to be the same as that of Certificate 57994, as described in Finding of Fact #2. For purposes of this lease, the POD described in Finding of Fact #2 shall be used as the starting point for the instream use associated with these certificates.
10. The POD for Certificate 13463 and 26055 is located near where Carl Road crosses the unnamed stream. For purposes of this lease, where the road crosses the unnamed stream shall be used as the starting point of the instream use associated with these Certificates.
11. 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.
12. The Lessor has requested to limit the amount of water protected instream under Certificate 26055 to 129.8 AF. The full duty allowed under this right is 141.25 AF (2.5 acre-feet per acre during the irrigation season). The requested limitation is to account for stored water that may also be used under this right but is not being leased instream.
13. The instream use is as follows:

Unnamed Stream, tributary to the Pudding River

Instream Reach #1: From where Carl Road crosses the unnamed stream to the confluence with the Pudding River

Certificate	Priority Date	Instream Rate	Instream Volume	Instream Period
13463	August 30, 1935	0.45 CFS	88.25 AF	June 1 through Sept 8
26055	October 23, 1950	0.71 CFS	129.8 AF	June 9 through Sept 8
	Total	1.16 CFS	218.05 AF	

Pudding River, tributary to the Willamette River

Instream Reach #2: From the POD (as described in Finding of Fact 2) to the Aurora Gage, located approximately River Mile 8.11

Certificate	Priority Date	Instream Rate	Instream Volume	Instream Period
12243	June 16, 1933	1.25 CFS	250.0 AF	June 1 through Sept 8
27061	March 22, 1954	1.0 CFS	200.75 AF	June 1 through Sept 8
57994	May 16, 1977	0.82 CFS	163.0 AF	June 1 through Sept 8
	Total	3.07 CFS	613.75 AF	

14. 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.
15. 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.

16. 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.

17. The Lessor has requested that this lease terminate on October 31, 2008.

CONCLUSIONS OF LAW

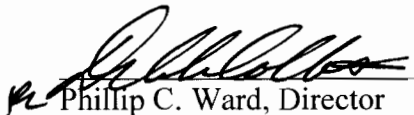
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 October 31, 2008.

Dated at Salem, Oregon this 2nd day of September 2008.


Phillip C. Ward, Director

Mailing date: SEP 04 2008