

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1776, Washington County) 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

U.S. Fish & Wildlife Service (USFWS)
911 NE 11th Avenue
Portland, Oregon 97232
tim_mayer@fws.gov

Co-Lessor

Tualatin Valley Irrigation District (TVID)
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Forest Grove, Oregon 97116
joe.rutledge@tvid.org

Lessee

Clean Water Services (CWS)
2550 SW Hillsboro Hwy.
Hillsboro, Oregon 97123
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Co-Lessor

US Bureau of Reclamation (USBOR)
1150 N. Curtis Road Suite 100
Boise, Idaho 83706
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Findings of Fact

1. On November 20, 2019, USFWS, TVID, CWS and USBOR filed an application involving a portion of Certificates 14092, 14093 and 88122 for instream use. The Department assigned the application number IL-1776.

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

Certificate: 14092 in the name of A. F. Hayes & Blaine Brown (perfected under Permit S-8849)
Use: Irrigation of 497.3 acres
Priority Date: December 29, 1928
Quantity: **Rate:** 6.22 Cubic Foot per Second (CFS)
Volume: 1243.25 Acre-Feet (AF)

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.

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated.

Source: Tualatin River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twtp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	36	NW SW	NOT DESCRIBED ON CERTIFICATE

Authorized Place of Use:

Twtp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	4 W	WM	35	SE SE	1		7.1
1 S	4 W	WM	36	NE SW	3		7.9
1 S	4 W	WM	36	NE SW		48	22.6
1 S	4 W	WM	36	NW SW		48	1.2
1 S	4 W	WM	36	SW SW		48	0.4
1 S	4 W	WM	36	SW SW	7		35.4
1 S	4 W	WM	36	SE SW		48	0.6
1 S	4 W	WM	36	SE SW	6		39.2
1 S	4 W	WM	36	NW SE	4		2.6
1 S	4 W	WM	36	SW SE	5		10.4
2 S	4 W	WM	1	NW NE	12		18.0
2 S	4 W	WM	1	SW NE	11		17.4
2 S	4 W	WM	1	NE NW			40.8
2 S	4 W	WM	1	NW NW			41.1
2 S	4 W	WM	1	SW NW			38.7
2 S	4 W	WM	1	SE NW			12.9
2 S	4 W	WM	1	NE SW			40.0
2 S	4 W	WM	1	NW SW	7		32.8
2 S	4 W	WM	1	SW SW	8		17.4
2 S	4 W	WM	1	SE SW			40.0
2 S	4 W	WM	1	NW SE	10		26.8
2 S	4 W	WM	1	SW SE	9		44.0
Total							497.3

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

Certificate: 14093 in the name of A. F. Hayes & Blaine Brown (perfected under Permit S-8849)

Use: Irrigation of 160.6 ACRES

Priority Date: December 29, 1928

Quantity: **Rate:** 2.01 CUBIC FEET PER SECOND

Volume: 401.5 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, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated.

Source: Tualatin River, tributary to Willamette River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 W	WM	36	NW SW	NOT DESCRIBED ON CERTIFICATE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
2 S	4 W	WM	2	NE NE	9	12.0
2 S	4 W	WM	2	SE NE	8	1.4
2 S	4 W	WM	12	NE NE	8	8.3
2 S	4 W	WM	12	NW NE		40.0
2 S	4 W	WM	12	SW NE	9	31.2
2 S	4 W	WM	12	SE NE	8	24.2
2 S	4 W	WM	12	NE NW	11	22.5
2 S	4 W	WM	12	SE NW	10	2.0
2 S	4 W	WM	12	NE SE	7	15.4
2 S	4 W	WM	12	NW SE	7	3.6
Total						160.6

4. 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
1 S	4 W	WM	36	NW SW	RIVER MILE 61.66

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

Certificate: 88122 in the name of US Bureau of Reclamation (perfected under Permit S-35792)

Use: Supplemental Irrigation of 634.2 ACRES

Priority Date: February 20, 1963

Quantity: **Rate:** 5.22 CUBIC FEET PER SECOND

Volume: 1585.5 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 from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777 and as evidenced by Certificate 81149; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein. The right is further limited to the use of stored water only on the lands described as supplemental irrigation.

Source: Tualatin River, tributary to the Willamette River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	POD #	Latitude	Longitude
2 S	2 W	WM	11	NE SW	R-25.6	45°24'33.71"N	-122°54'06.61"W
2 S	2 W	WM	9	SW NE	R-29.5	45°24'46.61"N	-122°56'20.70"W
1 S	2 W	WM	28	NW NW	R-34.2	45°27'37.69"N	-122°56'42.1"W
1 S	2 W	WM	17	NE NE	R-38.5	45°29'23.91"N	-122°57'7.8"W
1 S	3 W	WM	11	NE SE	R-46.0	45°29'48.32"N	-123°00'57.68"W
1 S	3 W	WM	11	SE SW	R-46.9	45°29'31.67"N	-123°1'34.11"W
1 S	3 W	WM	10	SE SE	R-47.0	45°29'38.91"N	-123°1'59.29"W
1 S	3 W	WM	10	NE SE	R-47.3	45°29'41.78"N	-123°2'15.13"W
1 S	3 W	WM	10	NE SE	R-47.5	45°29'45.41"N	-123°2'14.69"W
1 S	3 W	WM	9	SE NE	R-51.8	45°29'55.05"N	-123°03'15.71"W
1 S	3 W	WM	8	SW SW	SHPP	45°29'32.73"N	-123°05'33.85"W
1 S	4 W	WM	25	SW NW	R-SC-0.5	45°27'26.74"N	-123°8'5.31"W
1 S	4 W	WM	27	SE NE	PVPP	45°27'30.67"N	-123°09'19.97"W

R=Tualatin River

SHPP=Springhill Pump Plant

PVPP=Patton Valley Pump Plant

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
1 S	4 W	WM	35	SE SE	1		7.2
1 S	4 W	WM	36	NE SW		48	21.5
1 S	4 W	WM	36	NE SW	3		1.2
1 S	4 W	WM	36	NW SW		48	0.6
1 S	4 W	WM	36	SW SW		48	0.2
1 S	4 W	WM	36	SW SW	7		33.2
1 S	4 W	WM	36	SE SW		48	0.6
1 S	4 W	WM	36	SE SW	6		33.4
1 S	4 W	WM	36	SW SE	5		4.4
2 S	4 W	WM	1	NW NE	12		10.6
2 S	4 W	WM	1	SW NE	11		14.0
2 S	4 W	WM	1	NE NW			38.7
2 S	4 W	WM	1	NW NW			40.0
2 S	4 W	WM	1	SW NW			37.6
2 S	4 W	WM	1	SE NW			27.1
2 S	4 W	WM	1	NE SW			39.5
2 S	4 W	WM	1	NW SW	7		35.5
2 S	4 W	WM	1	SW SW	8		19.2
2 S	4 W	WM	1	SE SW			38.7
2 S	4 W	WM	1	NW SE	10		26.1
2 S	4 W	WM	1	SW SE	9		38.4
2 S	4 W	WM	1	SE SE	4		3.2

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
2 S	4 W	WM	2	NE NE	1		11.1
2 S	4 W	WM	2	SE NE	2		3.3
2 S	4 W	WM	12	NE NE			11.7
2 S	4 W	WM	12	NW NE			39.3
2 S	4 W	WM	12	SW NE	4		35.6
2 S	4 W	WM	12	SE NE			17.1
2 S	4 W	WM	12	NE NW	1		25.1
2 S	4 W	WM	12	NE SE			14.1
2 S	4 W	WM	12	NW SE	3		6.0
Total							634.2

6. Certificates 14092 and 14093 do not specify duty limit per acre. However, the Tualatin River Decree specifies the duty limit as 2.5 acre-feet per acre during any one irrigation season.
7. Certificates 14092, 14093, and 88122 do not specify the irrigation season. However, the Tualatin River Decree establishes the irrigation season for the area as May 1 through September 30.
8. 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.
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Tualatin River, tributary to Willamette River

Instream Reach: From the POD's (as described in Findings of Fact No. 4 and 5) to the mouth of the Tualatin River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
14092	12/29/1928	4.10	1243.25	May 1 through September 30
14093	12/29/1928	1.32	401.50	
*88122	2/23/1963	5.22	1585.5	

*Supplemental will only be leased instream if the primary water source is not available

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. 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.
12. 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.
 13. 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.
 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, 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.
 16. 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.
 17. The Lessor's and Lessee have requested that the lease terminate on September 30, 2024. The lease may commence on the date this final order is signed.
 18. The Lessor's and Lessee have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

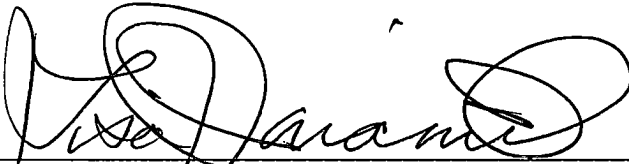
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.

2. During each year of 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 September 30, 2024. For multiyear leases, the lessor's and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (May1 through September 30) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day **MAY 06 2020** .



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

Mailing date: **MAY 07 2020**

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