

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1570, 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**

Michael McCarthy  
China Hill Farm LLC, Manager  
8405 Clear Creek Rd.  
Mount Hood Parkdale, OR 97041

**Co-Lessor**

Middle Fork Irrigation District  
Craig Dehart, Manager  
P.O. Box 291  
Parkdale, OR 97041

**Findings of Fact**

1. On July 22, 2021, Middle Fork Irrigation District, on behalf of China Hill Farm LLC, filed an application to renew instream lease IL-1570, involving portions of Certificates 46268, 74265, and 89317 for instream use.

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

**Certificate:** 46268 in the name of Middle Fork Irrigation District (perfected under S-34104)

**Use:** Irrigation of 5.5 acres

**Priority Date:** January 22, 1969

**Quantity:** **Rate:** 0.07 Cubic Foot per Second (CFS), Being 0:06 CFS from Clear Creek and 0.01 CFS from Eliot Creek

**Volume:** 16.5 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year.

**Source:** Clear Creek and Eliot Creek, tributary to Middle Fork Hood 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
1 S	9 E	WM	27	NW NE	Clear Creek: 520 feet South and 2500 feet West from the NE corner of Section 27
1 S	9 E	WM	26	SW NE	Eliot Creek: 2400 feet South and 125 feet East from the N ¼ corner of Section 26

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	10 E	WM	30	NE NW	0.1
1 S	10 E	WM	30	NW NW	5.4
Total Acres					5.5

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

**Certificate:** 74265 in the name of Middle Fork Irrigation District (perfected under S-36065)

**Use:** Irrigation of 4.4 acres

**Priority Date:** April 9, 1971

**Quantity:** **Rate:** 0.06 Cubic Foot per Second (CFS), Being 0.05 CFS from Clear Creek and 0.01 CFS from Eliot Creek

**Volume:** 13.2 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year.

**Source:** Clear Creek and Eliot Creek, tributary to Middle Fork Hood River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	9 E	WM	27	NW NE	Clear Creek: 520 feet South and 2500 feet West from the NE corner of Section 27
1 S	9 E	WM	26	SW NE	Eliot Creek: 2450 feet South and 2280 feet West from the NE corner of Section 26

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	10 E	WM	19	SW SE	700	0.4
1 S	10 E	WM	19	SW SE	800	4.0
Total Acres						4.4

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

**Certificate:** 89317 in the name of Middle Fork Irrigation District (perfected under S-27788)

**Use:** Irrigation of 2.28 acres

**Priority Date:** January 2, 1962

**Quantity:** **Rate:** 0.03 CFS  
**Volume:** 9.12 AF

**Limit:** One-eightieth CFS per acre (or its equivalent) for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 AF per acre during the irrigation season of each year.

**Source:** Clear Creek, tributary to Middle Fork Hood River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	9 E	WM	27	NW NE	Clear Creek: 520 feet South and 2500 feet West from the NE corner of Section 27

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
1 S	10 E	WM	30	NE NW	701	1.48
1 S	10 E	WM	30	NW NW	800	0.3
1 S	10 E	WM	30	SW NW	800	0.5
Total Acres						2.28

5. Certificates 46268, 74265, and 89317 does not specify the irrigation season. However, the Hood River Decree establishes the irrigation season for the area as April 1 through October 1.
6. There are supplemental irrigation water rights, Certificate 89317, 89320 and 89321, appurtenant to all or a portion of the lands described in Finding of Fact Nos. 2 through 4. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
7. 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.
8. At the full instream rate and volume requested, water may only be protected instream for approximately 122 days. The full instream period requested by the Lessor and Lessee, April 15 through September 30, is 169 days. To prevent enlargement of the right, the requested instream use requires modification. The Watermaster has recommended that the instream use period be modified to June 1 through September 30, a 122-day period to prevent enlargement and maximize the instream use

9. The instream use is as follows:  
Eliot Creek, tributary to Middle Fork Hood River

**Instream Reach No. 1:** From the Eliot Creek POD (as described in Finding of Fact No. 2-3) to the confluence with Middle Fork Hood River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
46268	January 22, 1969	0.01	3.3	June 1 through September 30
74265	April 9, 1971	0.01	2.2	
Total			5.5	

Clear Creek, tributary to Middle Fork Hood River

**Instream Reach No. 2:** From the Clear Creek POD (as described in Finding of Fact No. 2-4) to the confluence with Eliot Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
46268	January 22, 1969	0.05	13.2	June 1 through September 30
74265	April 9, 1971	0.05	11.0	
89371	January 2, 1962	0.04	9.1	
Total			33.32	

10. 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 calculated based on 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.

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
12. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - 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.
13. 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.

14. 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.
15. 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.
16. 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.
17. 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.
18. The Lessor and Lessee have requested that the lease terminate October 2026. The lease may commence on April 1, 2022, being the first day of the irrigation season and terminate on October 1, 2026.
19. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

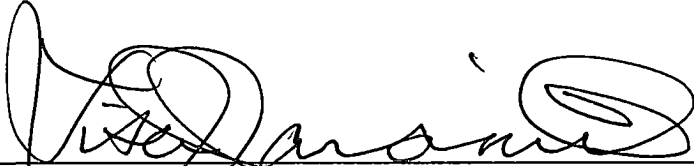
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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 on April 1, 2022 and terminate on October 1, 2026. The lessors *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 (June 1 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 SEP 27 2021.



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

Mailing date: SEP 28 2021

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