

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1880, Josephine 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

Siskiyou Field Institute
P.O. Box 207
Selma, Oregon 97538
director@thesfi.org

Lessee

Trout Unlimited (TU)
633 Iowa Street
Ashland, Oregon 97520
chrysten.rivard@tu.org

Findings of Fact

1. On June 18, 2021, Siskiyou Field Institute and TU filed an application to lease the entirety of Certificate 95694 and a portion of Certificates 95470 and 95471 for instream use. The Department assigned the application number IL-1880.

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

Certificate: 95470 in the name of Siskiyou Field Institute (perfected under Permit S-17867)

Use: Irrigation of 14.6 acres

Season of Use: April 1 to November 1

Priority Date: August 15, 1947

Quantity: **Rate:** 0.29 Cubic Foot per Second (CFS)

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-FIFTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigation throughout the irrigation season; provided further that the amount of water allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed the limitations allowed herein, and shall be subject to such reasonable rotation system as may be ordered by the proper state office.

Source: Deer Creek, tributary to Illinois 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
38 S	8 W	WM	10	SE SE	830 FEET NORTH AND 1140 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	SE SW	2.4
38 S	8 W	WM	10	NE SE	2.1
38 S	8 W	WM	10	NW SE	4.2
38 S	8 W	WM	11	NW SW	5.9
Total Acres					14.6

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

Certificate: 95471 in the name of Siskiyou Field Institute (perfected under Permit S-4255)

Use: Irrigation of 82.6 acres

Priority Date: April 8, 1919

Quantity: **Rate:** 1.03 Cubic Foot per Second (CFS)

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 in case of rotation.

Source: Deer Creek, tributary to Illinois River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	8 W	WM	10	SE SE	830 FEET NORTH AND 1140 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SW	38.5
38 S	8 W	WM	10	NW SW	28.5
38 S	8 W	WM	10	SE SW	15.6
Total Acres					82.6

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

Certificate: 95694 in the name of Siskiyou Field Institute (confirmed by decree of the Circuit Court of the State of Oregon for Josephine County)

Use: Irrigation of 54.7 acres

Season of Use: April 1 to November 1

Priority Date: 1885 and July 7, 1932

Quantity: **Rate:** 1.09 Cubic Foot per Second (CFS) for priority date 1885 and 0.57 CFS for priority date July 7, 1932

Limit: The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for

said purposes, and shall not exceed one cubic foot per second for each 50 acres of land irrigated during the irrigation season of each year.

Source: Deer Creek, tributary to Illinois River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	8 W	WM	10	SE SE	830 FEET NORTH AND 1140 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	8 W	WM	10	NE SE	25.4
38 S	8 W	WM	10	NW SE	29.3
Total Acres					54.7

5. There are supplemental irrigation water rights and another primary irrigation water right, appurtenant to all or a portion of the lands described in Findings of Fact No. 2, 3, and 4. The Lessor and Lessee have requested that these water rights not be included as part of this lease application. During the term of the lease, water use under these rights will also be suspended.
6. 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.
7. The full instream period requested by the Lessor and Lessee, April 1 to November 1, is 215 days. To prevent enlargement of the right, the requested instream use requires modification. To maximize the instream use, the Department has reduced the instream rate to protect water instream over the full irrigation season as requested.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deer Creek, tributary to Illinois River

Instream Reach: From the POD (as described in Findings of Fact No. 2, 3, and 4) to the mouth of Deer Creek

Certificate	Priority Date	Instream Rate (CFS)	Period Protected Instream
95470	8/15/1947	0.12	April 1 to November 1
95471	4/8/1919	0.68	
95694	1885	0.45	
95694	7/7/1932	0.45	

9. Other conditions to prevent injury and enlargement are:

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.

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 and Lessee have requested that the lease terminate on October 31, 2026. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2022, being the first day of the irrigation season.
18. 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 31, 2026. For multiyear leases, the lessor and/or 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 (April 1 to November 1) 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.

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