

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1792, Yamhill 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

City of Newberg
Attn: David Clyne
414 E. First Street
Newberg, Oregon 97132

Co-Lessor

Chehalem Springs Water Association
Alan Akins, President
P.O. Box 444
Newberg, Oregon 97132

Findings of Fact

1. On March 9, 2020, the City of Newberg and Chehalem Springs Water Association filed an application involving the entirety of Certificate 94545 for instream use. The Department assigned the application number IL-1792.

2. The right to be leased is as follows:

Certificate: 94545 in the name of City of Newberg (perfected under Permit S-5977)
Use: Municipal Use, including Domestic, Fire Protection and Manufacturing purposes
Priority Date: June 24, 1919
Quantity: **Rate:** 1.93 Cubic Foot per Second (CFS)
Volume: 1397.26 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 in case of rotation.
Source: Skelton Springs, tributary to Chehalem Creek
Authorized Point of Diversion (POD): Not described on certificate

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 Place of Use:

MUNICIPAL, INCLUDING DOMESTIC, FIRE PROTECTION AND MANUFACTURING PURPOSES				
Twp	Rng	Mer	Sec	Q-Q
3 S	2 W	WM	20	SW SW

3. Certificate 94545 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Department's records and the Lessor's, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 W	WM	31	SW SW	1265 FEET NORTH AND 310 FEET EAST FROM THE SW CORNER OF SECTION 31

4. Certificate 94545 does not specify the period of allowed use. However, use of water for Municipal, domestic, fire protection and manufacturing uses are assumed to be year-round uses unless otherwise specified in the certificate.
5. 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.
6. The quantity of water flowing from Skelton Spring into Chehalem Creek is unknown and may not flow into Chehalem Creek year-round; therefore, the Watermaster has requested that the instream lease be protected at the point of diversion only to prevent injury to other water rights.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Skelton Spring, tributary to Chehalem Creek

Instream Point: At the POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94545	June 24, 1919	1.93	1397.26	January 1 through December 31

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. The protection of flows at the authorized point of diversion 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

- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
10. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
11. There is no information in the record that would demonstrate the quantities proposed to be leased instream would exceed the estimated average flows.
12. 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.
13. 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.
14. 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.
15. The Lessors have requested that the lease terminate on December 31, 2024. The lease may commence on the date this final order is signed.
16. The Lessors have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

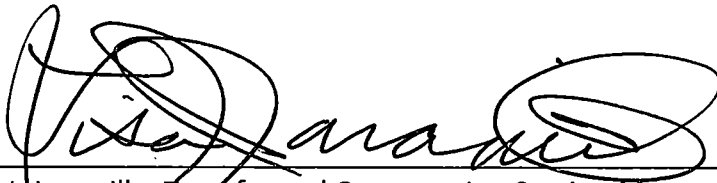
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 December 31, 2024. For multiyear leases, 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 (January 1 through December 31) 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 14 2020** .



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

Mailing date: **MAY 15 2020**

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