

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

In the Matter of Instream Lease Application) CORRECTING AND SUPERSEDING
IL-1568, Lane 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

PeaceHealth
123 International Way
Springfield, OR 97477

Findings of Fact

1. On June 22, 2016, PeaceHealth filed an application to renew instream lease IL-780, involving the entirety of Certificates 57814, 64074 and 64075.
2. During the review process, the Department identified that the instream reach, identified in the Final Order approving IL-780, evidenced by Special Order Volume 88, Pages 278-282, requires modification. Therefore, the Department has assigned the application a new lease number, IL-1568, to differentiate it from the original lease.
3. On October 17, 2016, the Department issued a Final Order approving IL-1568, evidenced by Special Order Volume 103, Pages 93-97. The order incorrectly identified the volume protected in the Instream Reach No. 3 as 119.75 acre feet; the volume should have been 199.75 acre-feet. This order is being issued to correctly identify the volume protected instream, and supersedes the previous final order.
4. The first right to be leased is as follows:

Certificate: 57814 in the name of HARRY A. PURVINE (perfected under Permit S-41975)
Use: IRRIGATION of 13.70 ACRES
Priority Date: MARCH 24, 1977

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.

Quantity: **Rate:** 0.17 CUBIC FEET PER SECOND (CFS)
Volume: 34.25 Acre-Feet (AF)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
17 S	3 W	WM	23	SW NW	46	2000 FEET SOUTH & 660 FEET EAST FROM THE NE CORNER, STEVENS DLC 46

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	22	NE NE	46	1.1
17 S	3 W	WM	22	SE NE	46	2.1
17 S	3 W	WM	23	NW NW	46	8.0
17 S	3 W	WM	23	SW NW	46	2.5

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

Certificate: 64074 in the name of DURWARD L BOYLES (perfected under Permit S-48422)
Use: IRRIGATION of 32.70 ACRES
Priority Date: OCTOBER 14, 1983
Quantity: **Rate:** 0.41 CFS
Volume: 81.75 AF
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
17 S	3 W	WM	23	NE NW	5	890 FEET SOUTH & 2140 FEET EAST FROM NORTHERLY NE CORNER, DLC 46

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	3 W	WM	14	SW SW	8	15.0
17 S	3 W	WM	14	SE SW	5	2.0
17 S	3 W	WM	23	NE NW	5	7.4
17 S	3 W	WM	23	NW NW	11	8.3

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

Certificate: 64075 in the name of DURWARD L BOYLES (perfected under Permit S-48454)

Use: IRRIGATION of 33.50 ACRES

Priority Date: OCTOBER 14, 1983

Quantity: **Rate:** 0.42 CFS

Volume: 83.75 AF

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
17 S	3 W	WM	23	SW NW	46	2320 FEET SOUTH & 430 FEET EAST FROM NORTHERLY NE CORNER, DLC 46

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	22	NE NE	46	3.6
17 S	3 W	WM	22	NW NE	46	0.6
17 S	3 W	WM	22	SW NE	46	2.0
17 S	3 W	WM	22	SE NE	46	26.0
17 S	3 W	WM	23	SW NW	46	1.3

7. Certificates 57814, 64074, 64075 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. However, the Willamette Basin Program OAR 690-502-0020 establishes the irrigation season of March 1 through October 31.
8. There appears to be groundwater registrations, GR-1406, GR-2054, and GR-3930, appurtenant to all or a portion of the lands described in Findings of Fact No. 4, 5, and 6. During the term of the lease, water use under the portions of these groundwater registrations that are layered with Certificates 57814, 64074, and 64075, will also be suspended.
9. 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.
10. The original lease application requested that the instream reach extend from the POD to the Mouth of the McKenzie River. Previous orders determined that the reach should extend from below the intersection of the McKenzie River and Interstate Highway 5 (approximately RM 7.3) to the mouth of the McKenzie River. Based on continued review, the Department has determined that the reach can be modified to reflect the original reach requested by the applicant.

11. The instream use has been clarified from the previous approval order and is as follows:
MCKENZIE RIVER tributary to WILLAMETTE RIVER

Instream Reach No. 1: From the POD for Certificate 64075 (as described in Finding of Fact No. 6) to the POD for Certificate 57814 (as described in Finding of Fact No. 4)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
64075	October 14, 1983	0.34	83.75	June 1 through October 1

Instream Reach No. 2: From the POD for Certificate 57814 to the POD for Certificate 64074 (as described in Finding of Fact No. 5)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
57814	March 24, 1977	0.48	118.0	June 1 through October 1

Instream Reach No. 3: From the POD for Certificate 64074 (as described in Finding of Fact No. 5) to the Mouth of McKenzie River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
64074	October 14, 1983	0.82	199.75	June 1 through October 1

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
13. The protection of flows within the proposed reach, as modified, 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.
14. There is one existing instream right within the proposed instream reach, Certificate 59757, which is an instream water right established under ORS 537.346 (minimum flow conversion). Generally, instream rights established by instream lease add to other instream rights established by instream lease, instream transfer, and allocation of conserved water. Instream rights established by instream lease also generally replace portions of instream rights established under the state agency application process and minimum flow conversion with earlier priority dates.
15. The rights proposed to be leased instream are junior to Instream Water Right Certificate 59757, which is “to be maintained in the McKenzie River and its tributaries above the intersection of the McKenzie River and Interstate Highway 5, measured at said intersection.” Certificate 59757 has a priority date of May 24, 1962, and is limited to “not more than 1025 CFS throughout the year.”

16. In consultation with Oregon Department of Fish and Wildlife, the Department has determined that there is beneficial use to add to the 1025 cfs of water protected instream by Certificate 59757. Therefore, this instream lease may be additive to instream rights established under ORS 537.346 and any instream rights established under ORS 537.348 (instream transfer and instream lease) and ORS 537.470 (allocation of conserved water) unless otherwise specified in an order approving a new instream water right under these statutes.
17. 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.
18. 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.
19. 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.
20. 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.
21. The Lessor has requested that the lease terminate on October 31, 2021. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on March 1, 2017, being the first day of the irrigation season.
22. The Lessor has 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. This correcting order supersedes Special Order Volume 103, Pages 93-97.

3. 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.
4. The term of the lease will commence on March 1, 2017 and terminate on October 31, 2021. For multiyear leases, the lessor *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 October 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 **OCT 22 2018** .



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: **OCT 23 2018**

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