

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1206, Douglas 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

Clayton and Myrna Judd
4181 Hubbar4d Creek Road
Umpqua, Oregon 97486

Lessor

Richard and Angela Tustin
4345 Hubbard Creek Road
Umpqua, Oregon 97486

Findings of Fact

1. On October 31, 2016, Clayton and Myrna Judd and Richard and Angela Tustin filed an application to renew instream lease IL-1206, involving the entirety of Certificate 52976 and a portion of Certificate 64414.

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

Certificate: 52976 in the name of Lafe Judd (perfected under Permit S-28852)
Use: Irrigation of 16.4 acres
Priority Date: May 28, 1963
Quantity: **Rate:** 0.205 Cubic Foot per Second (CFS)
Limit: One-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2 1/2 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the flow of the Umpqua River is more than 525 cfs at tidewater.

Source: UMPQUA RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot
25 S	7 W	WM	21	SE NE	1

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:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	7 W	WM	21	SW NE	2	4.0
25 S	7 W	WM	21	SE NE	1	4.4
25 S	7 W	WM	21	NE SE	1	8.0
Total Acres						16.4

3. Certificate 52976 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Lessor and the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	7 W	WM	21	SE NE	1	2760 FEET NORTH AND 500 FEET WEST FROM THE SE CORNER OF SECTION 21

*Approximately River Mile(RM) 99

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

Certificate: 64414 in the name of Dale E. and Mildred M. Judd (perfected under Permit S-28852)

Use: Irrigation of 2.5 acres

Priority Date: May 28, 1963

Quantity: **Rate:** 0.205 Cubic Foot per Second (CFS)

Limit: One-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2 1/2 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to use of water is limited to the period when the flow of the Umpqua River is more than 525 cfs at tidewater.

Source: UMPQUA RIVER, tributary of PACIFIC OCEAN

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	7 W	WM	22	NW SW	5	840 FEET NORTH AND 560 FEET EAST FROM THE SW CORNER OF THE NWSW OF SECTION 22

*Approximately RM 99.2

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	7 W	WM	22	NW SW	5	3.6

5. Certificates 52976 and 64414 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
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 instream use is as follows:
UMPQUA RIVER, tributary to the PACIFIC OCEAN

Instream Reach: From the POD's (as described in Finding of Fact No's. 3 and 4) to RM 28

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
52976	May 28, 1963	0.20	41.0	July 24 through October 31
64414	May 28, 1963	0.02	6.25	June 5 through October 31

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. 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.
10. Instream water rights, with a senior priority date, created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion (ORS 536.346) or the state agency application process (ORS 537.341) to establish new instream water rights. In addition, instream lease are generally additive to other instream rights established by instream lease, instream transfer, and allocation of conserved water.
11. There are several instream rights on the Umpqua River with priority dates ranging from 1962 to 1991 established by instream lease. There are also three existing instream water rights within the proposed reach established under ORS 537.341 and ORS 537.346. Certificate 59965, with a priority date of March 26, 1974 and Certificate 59801, with a priority date of October 24, 1958, established under ORS 537.346, and Certificate 81501, with a priority date of April 12, 1993, established under ORS 537.341. All of these rights protect water instream for fish and other aquatic life.
12. The proposed instream lease is junior to Certificate 59801 and senior to Certificates 59965 and 81501. Instream flows under Certificate 81501 are higher than those for Certificates 59801 and 59965 during the proposed instream period.
13. During the term of this lease, this lease will be additive to the flows protected instream under Certificate 59801 and replace a portion of the flows protected instream under Certificates 59965 and 81501 with a senior priority date, unless otherwise specified in an order approving a new instream water right.
14. The instream use created by this instream lease will be additive to other instream rights within the proposed reach. By adding to this existing instream water right within the same

reach, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow.

15. The Oregon Department of Fish and Wildlife stated that additional water within the proposed reach on Umpqua River, especially in dry years, would be beneficial to aquatic life, and therefore may be additive to the instream rights created under ORS 537.341.
16. 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.
17. 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.
18. Based upon review of the application, comments received, 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.
19. 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.
20. The Lessors have 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.
21. The Lessors have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

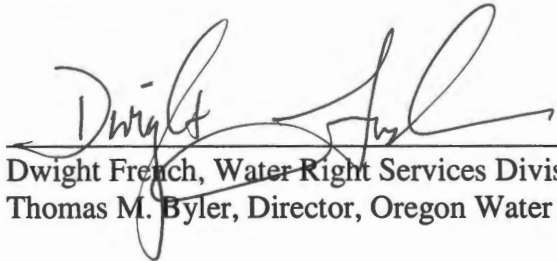
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 on March 1, 2017 and terminate on October 31, 2021. 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 (June 5 through October 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 23 day of January, 2017.


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

Mailing date: JAN 24 2017

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*