

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-1259, Certificates 1343, 85367, 13575,) FINAL ORDER ON PROPOSED
 25907, 25435, 38665, 38880 and 47874,) INSTREAM LEASE
 Wasco and Wheeler Counties)

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department’s procedures and criteria for evaluating instream lease applications.

Lessor

BUREAU OF LAND MANAGEMENT
 PRINEVILLE DISTRICT
 3050 NE 3RD ST
 PRINEVILLE, OR 97754

Findings of Fact

1. On October 24, 2012, the Prineville District of the U. S. Bureau of Land Management (BLM) filed an application to lease the entirety of Certificates 1343 and 25907 and portions of Certificates 13570, 13575, 25435, 38665, 38880 and 47874 for instream use. The Department assigned the application number IL-1259.
2. Water Right Certificate 13570 has been superseded by Certificate 85367. Certificate 85367 evidences the remaining portion of Certificate 13570 following a partial cancellation order.
3. The entirety of the first right to be leased is as follows:

Certificate: 1343 in the name of PATRICK J. CAMPBELL (perfected under Permit S-1468)

Use: Irrigation of 6.0 acres

Priority Date: OCTOBER 23, 1912

Rate: 0.08 CUBIC FOOT PER SECOND (CFS)

Source: SOREFOOT CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	19	NE NE	6.0

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.

4. Certificate 1343 does not provided a description of the location of the point of diversion. Based on additional information provided by the applicant and Watermaster, for purposes of this instream lease, the point of diversion may be located as follows:

Twp	Rng	Mer	Sec	Q-Q	River Mile (RM)
7 S	19 E	WM	19	SW NE	APPROXIMATELY RM 0.45

5. Certificate 1343 does not describe the duty of the right or the irrigation season. However information is available from the decree (Circuit Court of the State of Oregon for Wheeler County; Volume 12 Page 388) indicating that the season is defined from March 1 to October 1 of each year. Furthermore, a limitation of 4.0 AF per acre per season is cited in the aforementioned decree.
6. The portion of the second right to be leased is as follows:

Certificate: 85367 in the name of L. L. JONES (confirmed by decree of the Circuit Court of the State of Oregon for Wheeler County; Volume 12, Page 388)

Use: Irrigation of 93.7 acres, being 91.3 acres under the 1889 priority date and 2.4 acres under the 1897 priority date

Priority Dates: 1889 for Tracts 1, 2, 4, 5, and 6 and 1897 for Tract 7

Rate: up to 2.34 CFS, being 2.28 CFS under the 1889 priority date and 0.06 CFS under the 1897 priority date

Limit: 1/40th CFS per acre irrigated before June 15 and 1/80th CFS per acre after June 15, during the irrigation season from March 1 to October 1 of each year.

Source: BRIDGE CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tract #	Acres
11 S	21 E	WM	26	NW SW	4	6.3
11 S	21 E	WM	26	NW SW	5	3.0
11 S	21 E	WM	26	NW SW	6	1.0
11 S	21 E	WM	26	SW SW	4	2.7
11 S	21 E	WM	26	SW SW	5	4.7
11 S	21 E	WM	26	SE SW	4	1.5
11 S	21 E	WM	26	SE SW	5	0.1
11 S	21 E	WM	27	NW NE	1	0.6
11 S	21 E	WM	27	SW NE	2	7.8
11 S	21 E	WM	27	SW NE	6	4.6
11 S	21 E	WM	27	SE NE	6	1.0
11 S	21 E	WM	27	NE NW	1	6.9
11 S	21 E	WM	27	NE NW	2	3.3
11 S	21 E	WM	27	NW NW	1	4.0
11 S	21 E	WM	27	NW NW	2	8.5
11 S	21 E	WM	27	NE SE	6	17.0
11 S	21 E	WM	27	NW SE	6	1.5
11 S	21 E	WM	27	SE SE	6	0.2
11 S	21 E	WM	28	NE NE	1	1.0
11 S	21 E	WM	28	NE NE	2	0.4
11 S	21 E	WM	35	SW NE	4	1.5

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tract #	Acres
11 S	21 E	WM	35	SW NE	6	1.4
11 S	21 E	WM	35	SW NE	7	2.4
11 S	21 E	WM	35	NE NW	4	1.7
11 S	21 E	WM	35	NE NW	5	1.6
11 S	21 E	WM	35	NE NW	6	4.3
11 S	21 E	WM	35	NW NW	5	0.3
11 S	21 E	WM	35	NW NW	6	1.3
11 S	21 E	WM	35	SE NW	4	2.9
11 S	21 E	WM	35	SE NW	6	0.2
Total:						93.7

7. Certificate 85367 does not provided a description of the location of the point of diversion. Based on additional information provided by the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	RM
11 S	21 E	WM	35	SW NE	17.4

8. Certificate 85367 does not describe the duty of the right. Nor does the decree for Bridge Creek. However, in consultation with the Watermaster, the duty for the area is 4.0 AF per acre.

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

Certificate: 13575 John Manning (confirmed by decree of the Circuit Court of the State of Oregon for Wheeler County; Volume 12, Page 388)

Use: Irrigation of 38.2 acres

Priority Date: 1882

Rate: 0.96 CFS, being approximately 0.4 CFS from POD #1 and 0.56 CFS from POD #2

Limit: 1/40th of one CFS per acre irrigated before June 15 and 1/80th of one CFS after June 15, during the irrigation season from March 1 to October 1 of each year.

Source: BRIDGE CREEK, tributary to the JOHN DAY RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	POD #
10 S	20 E	WM	14	SE SE	3.4	1
10 S	20 E	WM	23	NE NE	2.0	1
10 S	20 E	WM	23	SE NE	0.8	1
10 S	20 E	WM	24	NW NW	7.6	2
10 S	20 E	WM	24	SW NW	7.3	1
10 S	20 E	WM	24	SW NW	11.8	2
10 S	20 E	WM	24	NW SW	2.6	1
10 S	20 E	WM	24	NW SW	2.7	2
Total:						38.2

10. Certificate 13575 does not provided a description of the location of the points of diversion. Based on additional information provided by the applicant and information in the water right record (See Special Order Volume 9, Page 123 – 125), for purposes of this instream lease, the points of diversion may be more accurately located as follows:

Authorized Points of Diversion:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distance
1	10 S	20 E	WM	24	SW SW	1278 Feet North and 1063 Feet East from the SW Corner of Section 24
2	10 S	20 E	WM	24	NE SW	1797 Feet North and 1658 Feet east from the SW corner of Section 24

- The duty of this right is not specified on the certificate or within the aforementioned decree. However, in consultation with the Watermaster, the duty for the area is 4.0 AF per acre.
- The portion of the fourth right to be leased has been modified from the lease application to correctly describe the portion of the right to be leased and is as follows:

Certificate: 25435 in the name of the ESTATE OF FRANK A. KNOX by LELAND J. KNOX, Executor (confirmed by decree of the Circuit Court of the State of Oregon for Grant County; Volume 15 Page 461)

Use: Irrigation of 18.4 acres

Priority Date: 1898

Rate: 0.46 CFS

Duty: 92.0 AF

Limit: 1/40 CFS per acre irrigated from April 1 to Sept. 30th; further limited to one AF per acre per calendar month; total of five AF per acre for the season.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	19 E	WM	32	SW NW	9.4
6 S	19 E	WM	32	NW SW	7.3
6 S	19 E	WM	32	SW SW	1.7
Total:					18.4

- Certificate 25435 does not provided a description of the location of the point of diversion. Based on additional information provided by the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	RM
6 S	19 E	WM	32	SW SW	102.4

- The entirety of the fifth right to be leased is as follows:

Certificate: 25907 in the names of LAURENCE AND V. E. TILLOTSON (confirmed by decree of the Circuit Court of the State of Oregon for Grant County; Volume 15 Page 461)

Use: Irrigation of 0.9 acre

Priority Date: 1907

Rate: 0.23 CFS

Duty: 4.5 AF

Limit: 1/40th CFS per acre irrigated from April 1 to Sept. 30; further limited to one AF per acre per calendar month; total of five AF per acre for season.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	29	SE NW	0.1
7 S	19 E	WM	29	NE SW	0.8
Total:					0.9

15. Certificate 25907 does not provided a description of the location of the point of diversion. Based on additional information provided by the applicant, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	RM
6 S	19 E	WM	29	NE SW	108.3

16. The portion of the sixth right to be leased has been modified from the lease application to correctly describe to portion of the right that may be leased and is as follows:

Certificate: 38665 in the name of RODNEY P. ROLFE (perfected under Permit S-17507)

Use: Irrigation of 60.0 acres

Priority Date: February 11, 1947

Rate: 0.759 CFS

Duty: 300.0 AF

Limit: 1/40th CFS per acre irrigated from April 1 to Sept. 30; further limited to one AF per acre per calendar month; total of 5.0 AF per acre during the irrigation season from April 1st to September 30th of each year.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
7 S	19 E	WM	20	NE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	20	NE SW	1.0
7 S	19 E	WM	20	NW SW	3.6
7 S	19 E	WM	20	SW SW	22.5
7 S	19 E	WM	20	SE SW	20.3
7 S	19 E	WM	29	NE NW	4.5
7 S	19 E	WM	29	NW NW	0.6
7 S	19 E	WM	29	SE NW	4.4
7 S	19 E	WM	29	NE SW	3.1
Total:					60.0

17. Certificate 38665 does not provide measured distances for the POD location. However, additional information provided with the lease application identified the POD location as follows:

Twp	Rng	Mer	Sec	Q-Q	RM
7 S	19 E	WM	20	NE SW	108.4

18. The portion of the seventh right to be leased has been modified from the lease application to correctly describe to portion of the right that may be leased and is as follows:

Certificate: 38880 in the name of RODNEY P. ROLFE (perfected under Permit S-30334)

Use: Irrigation of 64.2 acres

Priority Date: April 5, 1965

Rate: 0.94 CFS

Duty: 321.0 AF

Limit: 1/40th CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 AF per acre for each acre irrigated during the irrigation season of each year.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
7 S	19 E	WM	20	SW NW	3530 feet North and 880 feet East from the SW corner of Section 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	19	SW NE	0.1
7 S	19 E	WM	19	SE NE	24.3
7 S	19 E	WM	19	NE SE	22.0
7 S	19 E	WM	20	NW NW	1.6
7 S	19 E	WM	20	SW NW	10.0
7 S	19 E	WM	20	NE SW	0.1
7 S	19 E	WM	20	NW SW	6.1
Total:					64.2

19. Certificate 38880 does not specify the irrigation season. However, the season established by decree is April 1 through September 30.

20. The portion of the eighth right to be leased is as follows:

Certificate: 47874 in the name of STEIWER RANCHES, INC. (perfected under Permit S-40055)

Use: Irrigation of 20.9 acres

Priority Date: August 7, 1975

Rate: 0.52 CFS

Duty: 104.5 AF

Limit: 1/40th CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 5.0 AF per acre for each acre irrigated during the irrigation season of each year.

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
6 S	19 E	WM	32	SW SW	320 feet North and 360 feet East from the SW corner of Section 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	19 E	WM	31	NE NE	1.0
6 S	19 E	WM	31	SE NE	12.7
6 S	19 E	WM	31	NE SE	2.1
6 S	19 E	WM	32	NW NW	1.1
6 S	19 E	WM	32	SW NW	0.3
6 S	19 E	WM	32	NW SW	1.7
6 S	19 E	WM	32	SW SW	1.0
7 S	19 E	WM	5	NW NW	1.0
Total:					20.9

21. Certificate 47874 does not specify the irrigation season. However the season established by decree is April 1 to September 30 of each year.
22. The lease application includes the information required under OAR 690-077-0076(3). On October 30, 2012, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received in response to the notice.
23. The lease application related to Certificate 1343 requests to protect water instream from Sorefoot Creek into the John Day River and under Certificates 85367 and 13575 from Bridge Creek and into the John Day River. An instream reach is generally from the point of diversion to the mouth of the source stream (Sorefoot Creek and Bridge Creek) but may be protected further if measurable in the receiving stream (the John Day River) (OAR 690-077-0015 (8)). The Department has determined that the quantities that may be leased instream from Sorefoot Creek and Bridge Creek are not measurable into the John Day River. Therefore, this portion of the lease will only be protected in the source stream.
24. A portion of the water diverted at the points of diversion return to the source stream below the PODs and may be available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantities of water that may be protected instream requires a reduction of 50% to account for the return flows and are described in the tables below.
25. Stream flows are lost within the proposed reaches due to evaporation. Reductions of 1% per mile in the quantities that may be protected instream are necessary to prevent injury to downstream water users and enlargement of the rights.
26. The quantity of water that may be protected instream is limited to estimated average natural flows unless criteria is met for exceeding the average flows. Under Certificate 1343, 0.08 CFS is proposed to be protected instream at the point of diversion. During the months of August and September, average flows would be exceeded. The criteria for exceeding the average flows are not met in August and September and, therefore, the instream use on Sorefoot Creek must be limited to the average flows during these months.
27. As proposed, the quantities of water requested to be protected instream would result in enlargement of the rights. Therefore, the Department has modified the quantities protected instream and/or the time period in which the quantities can be protected instream for the rights involved in this lease. The necessary modifications are illustrated in the tables below.

28. The instream quantities for the specific reaches created by each certificate are as follows:

SOREFOOT CREEK, tributary to the JOHN DAY RIVER

Instream Use and Reach Created by Certificate 1343: From the point of diversion (POD), as described in Finding of Fact #4, at approximately (~) RM 0.45, to the mouth of Sorefoot Creek:

Priority Date	At POD		Below POD		At mouth of Sorefoot Cr		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
October 23, 1912	0.08	20.95	0.04	10.47	0.036	9.29	March 22 – July 31
	0.03	1.84	0.015	0.92	0.011	0.65	Aug. 1 – Aug. 31
	0.02	1.19	0.01	0.60	0.006	0.33	Sept. 1 – Sept. 30

BRIDGE CREEK, tributary to the JOHN DAY RIVER

Instream Use Created by Certificate 85367:

Instream Reach #1: From the POD, as described in Finding of Fact #7, at ~ RM 17.4, to the confluence with the John Day River:

Priority Date	At POD		Below POD		At mouth of Bridge Creek	
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)
Instream Period: May 20 through June 14						
1889	2.28	117.58	1.14	54.27	0.94	48.56
1897	0.06	3.09	0.03	1.43	0.02	1.28
Instream Period: June 15 through September 30						
1889	1.14	244.20	0.57	122.1	0.47	100.86
1897	0.03	6.43	0.015	3.21	0.012	2.65

Instream Use Created by Certificate 13575:

Instream Reach #1: From POD #2, as described in Finding of Fact #10, to POD #1, at ~ RM 5.0:

Priority Date	At POD #2		Below POD #2	
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)
May 20 through June 14				
1882	0.55	28.36	0.275	14.18
June 14 through September 30				
1882	0.28	59.98	0.14	29.99

Instream Reach #2: From POD #1, at ~ RM 5.0, to the confluence with the John Day River:

Priority Date	At POD #1		Below POD #1		At mouth of Bridge Creek	
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)
May 20 through June 14						
1882	0.675	34.81	0.427	24.49	0.41	20.92
June 14 through September 30						
1882	0.34	72.83	0.24	51.41	0.23	48.84

JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Instream Use Created by 25435: From the POD, as described in Finding of Fact #13, at ~RM 102.4, to USGS Gage #14048000 at McDonald's Ferry), at ~ RM 20.9:

Priority Date	At POD		Below POD		At USGS Gage 14048000 at McDonald Ferry		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
1898	0.3	91.6	0.15	45.82	0.03	8.48	April 30 – Sept 30

Instream Use Created by Certificate 25907: From the POD, as described in Finding of Fact #15, at ~RM 108.3, to USGS #14048000 at McDonald's Ferry at ~RM 20.9:

Priority Date	At POD		Below POD		At USGS Gage 14048000 at McDonald Ferry		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
1907	0.015	4.5	0.008	2.41	0.001	0.30	May 2 – Sept 30

Instream Use Created by Certificate 38665: From the POD, as described in Finding of Fact #17, at ~RM 108.4, to USGS #14048000 at McDonald's Ferry at ~RM 20.9:

Priority Date	At POD		Below POD		At USGS Gage 14048000 at McDonald Ferry		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
2/11/1947	0.759	274.0	0.38	137.93	0.048	17.24	April 1 – Sept 30

Instream Use Created by Certificate 38880: From the POD, as described in Finding of Fact #18, at ~RM 106.2, to USGS #14048000 at McDonald's Ferry at ~RM 20.9:

Priority Date	At POD		Below POD		At USGS Gage 14048000 at McDonald Ferry		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
4/5/1965	0.945	321.0	0.473	160.43	0.06	20.37	April 13 – Sept 30

Instream Use Created by 47874: From the POD, as described in Finding of Fact #21, at ~RM 102.4, to USGS #14048000 at McDonald's Ferry at ~RM 20.9:

Priority Date	At POD		Below POD		At USGS Gage 14048000 at McDonald Ferry		Instream Period
	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	Instream Rate (CFS)	Instream Volume (AF)	
8/7/1975	0.52	104.5	0.26	51.57	0.048	9.54	June 23 – Sept 30

29. Other conditions to prevent injury and enlargement:

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 and gains 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.

30. 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.

31. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that, as conditioned, the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.

32. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.

33. The Lessor has requested that the lease terminate on September 30, 2017. The lease may commence on the date this final order is signed.

34. The Lessor 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.

ORDER

Therefore, it is ORDERED:

1. That the Instream 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 1, 2017. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (see Finding of Fact #28 for multiple instream protection period dates) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 12 day of June, 2013.


Dwight French, Water Rights Services Administrator for
Phillip C. Ward, Director

Mailing date: **JUN 13 2013**

The order approving this was prepared by Susan Douthit. If you have any questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrdd.state.or.us