

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1634, Umatilla 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

Confederated Tribes of the Umatilla Indian Reservation
46411 Timine Way
Pendleton, OR 97801

Findings of Fact

1. On June 29, 2017, the Confederated Tribes of the Umatilla Indian Reservation filed an application to lease the entirety of Certificate 90790 for instream use. The Department assigned the application number IL-1634.
2. During the evaluation of the instream lease application, Department staff and the applicant determined that the instream lease application will be amended for the 2018 season, not active for the 2017 season.
3. The right to be leased is as follows:

Certificate: 90790 in the name of Confederated Tribes of the Umatilla Indian Reservation (perfected under Permit S-22091)

Use: Wildlife, Wetland Maintenance and Stock Use

Priority Date: March 12, 1953

Quantity: **Rate:** 7.8 Cubic Foot per Second (CFS)

Volume: 1960 Acre-Feet (AF)

Limit: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 7.8 CFS further limited to a diversion of not to exceed 7.78 CFS for Wildlife and Wetlands Maintenance, being further limited to a diversion of not to exceed 1960.0 acre-feet during the irrigation season of each year, and 0.02 for Stock Use, at any time of the year.

Source: Columbia River, tributary to Pacific Ocean

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	GLot	Measured Distances
5 N	29 E	WM	7	NW SE	2	1900 FEET NORTH AND 2730 FEET EAST FROM THE SW CORNER OF SECTION 7

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
5 N	28 E	WM	13	SW NE
5 N	28 E	WM	13	SE NE
5 N	28 E	WM	13	SW NW
5 N	28 E	WM	13	SE NW
5 N	28 E	WM	13	NE SW
5 N	28 E	WM	13	NW SW
5 N	28 E	WM	13	SW SW
5 N	28 E	WM	13	SE SW
5 N	28 E	WM	13	NE SE
5 N	28 E	WM	13	NW SE
5 N	28 E	WM	13	SW SE
5 N	28 E	WM	13	SE SE
5 N	28 E	WM	23	NE NE
5 N	28 E	WM	23	NW NE
5 N	28 E	WM	23	SW NE
5 N	28 E	WM	23	SE NE
5 N	28 E	WM	23	NE NW
5 N	28 E	WM	23	NW NW
5 N	28 E	WM	23	SW NW
5 N	28 E	WM	23	SE NW
5 N	28 E	WM	24	NE NE
5 N	28 E	WM	24	NW NE
5 N	28 E	WM	24	SE NE
5 N	28 E	WM	24	NE NW
5 N	28 E	WM	24	NW NW
5 N	29 E	WM	18	SW NW
5 N	29 E	WM	18	NW SW
5 N	29 E	WM	18	SW SW
5 N	29 E	WM	19	NE NE
5 N	29 E	WM	19	NW NE
5 N	29 E	WM	19	SW NE
5 N	29 E	WM	19	SE NE
5 N	29 E	WM	19	NE NW
5 N	29 E	WM	19	NW NW
5 N	29 E	WM	19	SW NW
5 N	29 E	WM	19	SE NW

4. Certificate 90790 does 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.
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 instream use is as follows:
Columbia River, tributary to Pacific Ocean

Instream Reach: From the POD (as described in Finding of Fact No. 3) to the mouth of the Columbia River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90790	March 12, 1953	7.78	1960.0	June 1 through October 5

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. The protection of flows within the proposed reach 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. The Lessor has requested that the lease terminate on October 31, 2018. The lease may commence on March 1, 2018, being the first day of the irrigation season.

15. The Lessor has requested that there not be an option to terminate the lease.

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 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, 2018 and terminate on October 31, 2018. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this 10 day of October, 2017.



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

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

Mailing date: ~~_____~~ **OCT 11 2017** ~~_____~~