

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-947, Marion County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

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

Manton Carl, LLC
PO Box 149
Hubbard, OR 97032

Findings of Fact

1. On June 2, 2014 Manton Carl, LLC, filed an application to renew instream lease IL-947, involving the entirety of Certificates 57994, 27061, 12243, 13463, and 26055.
2. The first right to be leased is as follows:

Certificate: 57994 in the name of MANTON A. CARL (perfected under Permit 42234)

Use: Irrigation of 65.2 acres

Priority Date: May, 16 1977

Quantity: **Rate:** 0.82 Cubic Foot per Second (CFS)

Volume: 163.0 Acre Feet (AF)

Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year

Source: Pudding River, tributary to the Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	2	SW SW	80 FEET NORTH AND 700 FEET EAST FROM THE SE CORNER OF SECTION 3

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	DLC	Acres
5 S	1 W	WM	3	NW NE	39	33.5
5 S	1 W	WM	3	SW NE	39	2.5
5 S	1 W	WM	3	SW NE	60	22.5
5 S	1 W	WM	3	NE NW	39	6.2
5 S	1 W	WM	3	SE NW	39	0.5
Total Acres						65.2

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

Certificate: 12243 in the name of MRS. H. L. CARL (perfected under Permit 10906)

Use: Irrigation of 100.0 acres

Priority Date: June 16, 1933

Quantity: Rate: 1.25 Cubic Foot per Second (CFS)

Volume: 250.0 Acre Feet (AF)

Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated

Source: Pudding River, tributary to the Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	2	SW SW	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	2	NE SW		13.0
5 S	1 W	WM	2	NW SW		18.1
5 S	1 W	WM	2	SW SW		32.7
5 S	1 W	WM	2	SE SW		10.0
5 S	1 W	WM	3	SE SE	3	19.2
5 S	1 W	WM	10	NE NE		3.0
5 S	1 W	WM	11	NW NW		4.0
Total Acres						100.0

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

Certificate: 27061 in the name of MANTON A. CARL (perfected under Permit 22913)

Use: Irrigation of 80.3 acres

Priority Date: March 22, 1954

Quantity: Rate: 1.00 Cubic Foot per Second (CFS)

Volume: 200.75 Acre Feet (AF)

Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year.

Source: Pudding River, tributary to the Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 W	WM	2	SW SW	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	1 W	WM	2	SW NW	5	0.8
5 S	1 W	WM	2	NW SW		14.4
5 S	1 W	WM	3	NE SE	2	6.9
5 S	1 W	WM	3	SW SE	4	19.7
5 S	1 W	WM	3	SE SE	3	18.7
5 S	1 W	WM	10	NE NE		10.2
5 S	1 W	WM	10	NW NE		8.6
5 S	1 W	WM	11	NW NW		1.0
Total Acres						80.3

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

Certificate: 13463 in the name of MANTON A. CARL (perfected under Permit 11825)

Use: Irrigation of 35.3 acres

Priority Date: August 30, 1935

Quantity: Rate: 0.45 Cubic Foot per Second (CFS)

Volume: 88.25 Acre Feet (AF)

Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year

Source: Unnamed Stream, tributary to the Pudding River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
5 S	1 W	WM	3	NE SE	2	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
5 S	1 W	WM	2	SW NW		59	14.5
5 S	1 W	WM	3	SSE NE		59	4.0
5 S	1 W	WM	2	SW NW	5		1.4
5 S	1 W	WM	2	NW SW			4.4
5 S	1 W	WM	3	SE NE	1		0.4
5 S	1 W	WM	3	NE SE	2		10.6
Total Acres							88.25

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

Certificate: 26055 in the name of MANTON A. CARL (perfected under Permit 22728)

Use: Irrigation of 56.5 acres

Priority Date: October 23, 1950

Quantity: Rate: 0.71 Cubic Foot per Second (CFS)

Volume: 141.25 Acre Feet (AF)

Limit: One-eightieth CFS per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 AF per acre for each acre irrigated during the irrigation

season of each year from direct flow and storage from reservoir constructed under Permit No. R-1584

Source: Unnamed drainage ditch and reservoir, constructed under Permit R-1584, tributary to the Pudding River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
5 S	1 W	WM	3	NE SE	2	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	DLC	Acres
5 S	1 W	WM	3	SW NE		60	4.6
5 S	1 W	WM	3	SE NE		60	13.0
5 S	1 W	WM	3	SE NE		59	14.9
5 S	1 W	WM	3	SE NE	1		2.9
5 S	1 W	WM	3	NE SE	2		1.5
5 S	1 W	WM	3	NE SE		60	5.2
5 S	1 W	WM	3	NW SE		60	12.3
5 S	1 W	WM	3	SW SE		60	1.2
5 S	1 W	WM	3	SE SE		60	0.9
Total Acres							56.5

7. Certificate 26055 includes the diversion of water from an unnamed reservoir. In Section 1.5 of the lease application, the source of water for the proposed lease is described as only being from the unnamed drainage ditch. The lease of water under certificate 26055 shall be limited to live flow from the unnamed drainage ditch.
8. None of the certificate to be leased specify the irrigation season. However, the Willamette Basin Program establishes the irrigation season for the area as March 1 to October 31.
9. The POD for Certificates 27061 and 12243 appears to be the same as that of Certificate 57994, as described in Finding of Fact No. 2. For purposes of this lease, the POD described in Finding of Fact No. 2 shall be used as the starting point for the instream use associated with these certificates.
10. The POD for Certificate 13463 and 26055 is located near where Carl Road crosses the unnamed stream. For purposes of this lease, where the road crosses the unnamed stream shall be used as the starting point of the instream use associated with these Certificates.
11. 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.
12. The Lessor has requested to limit the amount of water protected instream under Certificate 26055 to 129.8 AF. The full duty allowed under this right is 141.25 AF (2.5 acre-feet per acre during the irrigation season). The requested limitation is to account for stored water that may also be used under this right but is not being leased instream.

13. The instream use is as follows:

Unnamed Stream, tributary to the Pudding River

Instream Reach #1: From where Carl Road crosses the unnamed stream to the confluence with the Pudding River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
13463	August 30, 1935	0.45 CFS	88.25 AF	June 1 through Sept 8
26055	October 23, 1950	0.71 CFS	129.8 AF	June 9 through Sept 8
Total		1.16 CFS	218.05 AF	

Pudding River, tributary to the Willamette River

Instream Reach #2: From the POD (as described in Finding of Fact No. 2) to the Aurora Gage, located approximately River Mile 8.11

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
12243	June 16, 1933	1.25	250.0	June 1 through September 8
27061	March 22, 1954	1.00	200.75	
57994	May 16, 1977	0.82	163.0	
Total		3.07	613.75	

14. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right(s).

15. 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.

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. 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 for 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, 2018. The lease may commence on the date this final order is signed.
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. 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 October 31, 2018. 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 September 8) 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 11 day of July, 2014.


Dwight French,
Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

Mailing date: JUL 14 2014