

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON PROPOSED
Use, Certificates 57814, 64074, and 64075,)	INSTREAM LEASE
and Suspension of use of Groundwater)	
Registrations 1406, 2054, and 3930, Lane)	
County)	

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 short-term instream lease applications.

Lessor

PeaceHealth

Attn: Tamara Miller

P.O. Box 1479

Eugene, Oregon 97440

Findings of Fact

1. PeaceHealth filed an application to lease all of Certificates 57814, 64074, and 64075 to instream use. The Department assigned the application number L-780.
2. The rights to be leased are 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

Rate: 0.17 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

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

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:**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	22	NE NE	46	1.10
17 S	3 W	WM	22	SE NE	46	2.10
17 S	3 W	WM	23	NW NW	46	8.00
17 S	3 W	WM	23	SW NW	46	2.50

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

Rate: 0.41 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

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:**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	3 W	WM	14	SW SW	8	15.00
17 S	3 W	WM	14	SE SW	5	2.00
17 S	3 W	WM	23	NE NW	5	7.40
17 S	3 W	WM	23	NW NW	11	8.30

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

Rate: 0.42 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

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:**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	22	NE NE	46	3.60
17 S	3 W	WM	22	NW NE	46	0.60
17 S	3 W	WM	22	SW NE	46	2.00
17 S	3 W	WM	22	SE NE	46	26.00
17 S	3 W	WM	23	SW NW	46	1.30

3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
4. The rights proposed to be leased instream are junior to Certificate 59757, which is an instream water right "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 cubic feet per second throughout the year."
5. The Department does not find that it is a beneficial use of water to add to the 1025 cfs of water protected instream by Certificate 59757.
6. There is no instream water right in the McKenzie River below the intersection of the McKenzie River and Interstate Highway 5 to the mouth of the McKenzie River.
7. The Department does find that it is a beneficial use of water to protect instream flows in the McKenzie River below the intersection of the McKenzie River and Interstate Highway 5 to the mouth of the McKenzie River.
8. The instream use has been modified from the lease application to make beneficial use of water, as described in Finding of Fact #7, and is as follows:

MCKENZIE RIVER tributary to WILLAMETTE RIVER

Instream Reach: Below the intersection of the McKenzie River and Interstate Highway 5 (approximately RM 7.3) to the mouth of the McKenzie River

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
57814	MARCH 24, 1977	0.13	June 1 through October 1
64074	OCTOBER 14, 1983	0.32	June 1 through October 1
64075	OCTOBER 14, 1983	0.33	June 1 through October 1

9. Groundwater registration numbers 1406 and 2054 may cover some of the same land as Certificate 57814. Groundwater registration 3930 may cover some of the same land as Certificate 64074. Groundwater registration 1406 may cover some of the same land as Certificate 64075. There would be enlargement if the groundwater registration were exercised on the same lands described in Finding of Fact #2 during the term of the lease. Enlargement can be prevented by conditioning the lease to prevent the exercise of the groundwater registrations for the lands described in Finding of Fact #2 during the term of the lease.
10. 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. 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.

11. 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.
12. The lease will terminate on October 31, 2010.
13. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

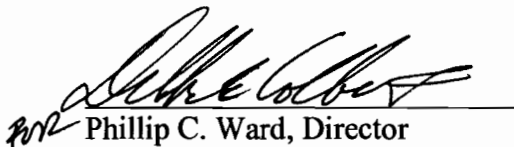
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights or the groundwater registrations during the term of the lease.
3. The lease shall terminate on October 31, 2010. The lessor shall have the option of terminating the lease each year, with notification to the Department by May 1 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 14th day of September 2006.


Phillip C. Ward, Director

Mailing date: SEP 18 2006