

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-780, Certificates 57814, 64074 and)	FINAL ORDER ON PROPOSED
64075, Lane County)	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

PeaceHealth
Attn: Tamara Miller
P.O. Box 1479
Eugene, Oregon 97440

Findings of Fact

1. On May 21, 2012 Peace Health South filed an application to renew instream lease L-780, involving all of Certificates 57814, 64074 and 64075 for instream use. The Department assigned the application number IL-780.
2. The portion of the first right to be leased is as follows:

Certificate: 57814 in the name of HARRY A. PURVINE (perfected under Permit S-41975)

Use: Irrigation of 13.7 Acres

Priority Date: MARCH 24, 1977

Quantity: **Rate:** 0.17 Cubic Foot per Second (CFS)

Volume: 34.25 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

Source:, MCKENZIE RIVER, tributary to WILLAMETTE RIVER

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
17 S	3 W	WM	23	SW NW	46	2000 FEET SOUTH AND 660 FEET EAST FROM THE NE CORNER OF 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	1.1
17 S	3 W	WM	22	SE NE	46	2.1
17 S	3 W	WM	23	NW NW	46	8.0
17 S	3 W	WM	23	SW NW	46	2.5
TOTAL:						13.7

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

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

Quantity: **Rate:** 0.41 Cubic Foot per Second (CFS)

Volume: 81.75 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF 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 AND 2140 FEET EAST FROM THE NORTHERLY NE CORNER OF DLC 46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
17 S	3 W	WM	14	SW SW	8	15.0
17 S	3 W	WM	14	SE SW	5	2.0
17 S	3 W	WM	23	NE NW	5	7.4
17 S	3 W	WM	23	NW NW	11	8.3
TOTAL:						32.7

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

Certificate: 64075 in the name of DURWARD L BOYLES (perfected under Permit S-48454)

Use: Irrigation of 33.5 Acres

Priority Date: OCTOBER 14, 1983

Quantity: **Rate:** 0.42 Cubic Foot per Second (CFS)

Volume: 83.75 Acre-Feet (AF)

Limit: One-eightieth CFS per acre, not to exceed 2.5 AF per acre per year

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 AND 430 FEET EAST FROM THE NORTHERLY NE CORNER OF DLC 46

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
17 S	3 W	WM	22	NE NE	46	3.6
17 S	3 W	WM	22	NW NE	46	0.6
17 S	3 W	WM	22	SW NE	46	2.0
17 S	3 W	WM	22	SE NE	46	26.0
17 S	3 W	WM	23	SW NW	46	1.3
TOTAL:						33.5

5. Certificates 57814, 64074 and 64075 do not specify the irrigation season. However, to provide the greatest benefit to the aquatic environment and to avoid enlargement, the Applicant requested the rights to be leased herein, be protected instream from June 1 to October 1.
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 in response to that notice.
7. The rights proposed to be leased instream are junior to Instream Water Right Certificate 59757, which is "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."
8. 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.
9. 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.
10. 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.
11. The instream use has been modified from the lease application to make beneficial use of water, as described in Findings of Fact #6 through 9, 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

12. Other conditions to prevent injury and enlargement are:

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.

13. 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 registrations were exercised on the same lands described in Findings of Fact #2 through #3 during the term of the lease. To avoid enlargement, the groundwater registrations and any other supplemental rights shall not be used on the lands leased herein during the term of this lease.
14. If approved, this instream lease is not 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.
15. 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.
16. 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.
17. The Lessor requested that the lease terminate on October 31, 2016.
18. The Lessor requested the option of terminating the lease early.

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 Lease as described herein is APPROVED.
2. 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 during the term of the lease.
3. The lease will terminate on October 31, 2016. The lessor *shall* have the option of terminating the lease by submitting a written request 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 (May 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 8th day of August, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: AUG 09 2012

Kody Thurgood prepared the order approving this instream lease. If you have any questions about the information in this order, you may reach Mr. Thurgood at 503-986-0892 or thurgokj@wrds.state.or.us.