

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1763, Crook 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

Jim Bauersfeld
5600 NE Mill Creek Road
Prineville, Oregon 97754
dogues@aol.com

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703
gen@deschutesriver.org

Findings of Fact

1. On June 24, 2019, Jim Bauersfeld and the DRC filed an application to lease portions of Certificates 93665, 93667 and 93668 for instream use. The Department assigned the application number IL-1763.
2. During the review process, Department staff identified 5.6 acres under Certificate 93667 and 1.0 acre under Certificate 93668 that could not have been beneficially used. This acreage is being omitted from the instream lease application and will not be leased instream.
3. The portion of the first right to be leased is as follows:

Certificate: 93665 in the name of ML Bella Ranch LLC, Skidmore LP (confirmed by decree of the Circuit Court of the State of Oregon for Crook County, of record at Salem, in Volume 1, at Page 420-1)

Use: Irrigation of 0.5 acres

Priority Date: 1868

Quantity: **Rate:** 0.006 Cubic Foot per Second (CFS)
Volume: 2.0 Acre-Feet (AF)
Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to

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.

exceed 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Mill Creek, tributary to Ochoco Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH (ORIGINAL) – 940 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF SECTION 10
14 S	17 E	WM	15	NE NE	APOD NO.1 (ADDITIONAL) – 1190 FEET SOUTH AND 1040 FEET WEST FROM THE NE CORNER OF SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NW NE	0.5

4. The portion of the second right to be leased has been modified from the lease application and is as follows:

Certificate: 93667 in the name of ML Bella Ranch LLC (confirmed by decree of the Circuit Court of the State of Oregon for Crook County, of record at Salem in Volume 1, at Page 325)

Use: Irrigation of 48.5 acres

Priority Date: 1868

Quantity: **Rate:** 0.604 Cubic Foot per Second (CFS)
Volume: 194.0 Acre-Feet (AF)

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Mill Creek, tributary to Ochoco Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH (ORIGINAL) – 940 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF SECTION 10
14 S	17 E	WM	11	SW NW	STANTON DITCH AND EVANS DITCH
14 S	17 E	WM	15	NE NE	APOD NO.1 (ADDITIONAL) – 1190 FEET SOUTH AND 1040 FEET WEST FROM THE NE CORNER OF SECTION 15

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Point of Diversion
14 S	17 E	WM	15	NE NE	16.3	STANTON DITCH & APOD NO. 1
14 S	17 E	WM	15	SE NE	17.2	STANTON DITCH & APOD NO. 1
14 S	17 E	WM	15	NE SE	7.9	STANTON DITCH
14 S	17 E	WM	15	SE SE	7.1	STANTON DITCH
Total Acres					48.5	

5. The portion of the third right to be leased has been modified from the lease application and is as follows:

Certificate: 93668 in the name of Billy L. Coffey (confirmed by decree of the Circuit Court of the State of Oregon for Crook County, of record at Salem in Volume 1, at Page 449)

Use: Irrigation of 3.8 acres

Priority Date: 1868

Quantity: **Rate:** 0.047 Cubic Foot per Second (CFS)
Volume: 15.2 Acre-Feet (AF)

Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Mill Creek, tributary to Ochoco Creek

Authorized Point of Diversion (POD): STANTON DITCH

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE SE	0.4
14 S	17 E	WM	15	SE SE	3.4
Total Acres					3.8

6. Certificate 93668 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department's files, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	10	SE SE	STANTON DITCH (ORIGINAL) - 940 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF SECTION 10

7. Certificates 93665, 93667 and 93668 do not specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.
8. 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.

9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
 Mill Creek, tributary to Ochoco Creek

Authorized POD's:

POD #	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	14 S	17 E	WM	10	SE SE	STANTON DITCH (ORIGINAL) – 940 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF SECTION 10
2	14 S	17 E	WM	15	NE NE	APOD NO.1 (ADDITIONAL) – 1190 FEET SOUTH AND 1040 FEET WEST FROM THE NE CORNER OF SECTION 15

Instream Reach: From the POD's to the mouth of Mill Creek

Certificate	POD #	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93665	1, 2	1868	0.006	2.0	June 1 through November 9
93667	1		0.187	60.0	
93667	1, 2		0.417	134.0	
93668	1		0.047	15.2	
Total			0.657	211.2	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. 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.
12. 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.
13. 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.
14. 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.

15. 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.
16. 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.
17. The Lessor and Lessee have requested that the lease terminate in November of 2019, however the last day of the irrigation season is December 1. The lease will terminate on December 1, 2019. The lease may commence on the date this final order is signed.
18. The Lessor and Lessee have requested that there not be an option to terminate the lease.

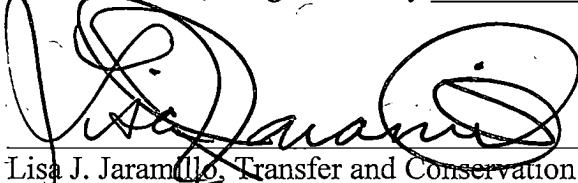
Conclusions of Law

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 upon approval of the instream lease and terminate on December 1, 2019. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day SEP 06 2019



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: SEP 09 2019

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.