

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

In the Matter of Instream Lease Application ) DETERMINATION and  
 IL-791, Marion 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**

Oregon Department of Corrections  
 3601 State Street  
 Salem, Oregon 97301

**Co-Lessor**

Santiam Water Control District  
 284 East Water Street  
 Stayton, Oregon 97383

**Findings of Fact**

1. On April 22, 2016, Oregon Department of Corrections and Santiam Water Control District filed an application to renew instream lease IL-791, involving a portion of Certificate 68665 for instream use.
2. The portion of the right to be leased has been modified from the lease application and is as follows:

**Certificate:** 68665 in the name of Santiam Water Control District (confirmed by the North Santiam River Decree)  
**Use:** Irrigation of 180.9 acres  
**Priority Date:** May 14, 1909  
**Quantity:** **Rate:** 2.26 Cubic Feet per Second (CFS)  
**Source:** North Santiam River, tributary to the Santiam River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Gov Lot	Measured Distances
9 S	1 W	WM	11	SW SE	2	1800 FEET SOUTH AND 2830 FEET EAST FROM THE W 1/4 CORNER OF SECTION 11

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	5	SW NE	4.6
8 S	2 W	WM	5	NE SW	2.3
8 S	2 W	WM	5	SE SW	26.4

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.

Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	5	NE SE	15.0
8 S	2 W	WM	5	NW SE	33.9
8 S	2 W	WM	5	SW SE	31.2
8 S	2 W	WM	5	SE SE	0.1
8 S	2 W	WM	8	NE NE	0.5
8 S	2 W	WM	8	NW NE	29.7
8 S	2 W	WM	8	SW NE	18.6
8 S	2 W	WM	8	SE NE	7.8
8 S	2 W	WM	8	NE NW	8.8
8 S	2 W	WM	8	SE NW	2.0
Total:					180.9

3. Certificate 68665 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.
4. 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.
5. Historically, water has been diverted from the North Santiam River and conveyed to Mill Creek where it is has then been diverted for irrigation. Instead of diverting the water for irrigation, the lease will protect the water in Mill Creek. For the purpose of this lease the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	2 W	WM	7	NW SE	1565 FEET NORTH AND 2335 FEET EAST FROM THE SE CORNER OF SECTION 7

6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
 Mill Creek, tributary to the Willamette River  
**Instream Reach:** From the POD (as described in Finding of Fact No. 5) to the mouth of Mill Creek

Certificate	Priority Date	Instream Rate CFS)	Instream Volume (AF)	Period Protected Instream
68665	May 14, 1909	1.86	452.25	June 1 through September 30

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:
  - 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.
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 affect land use significantly 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 Lessors have requested that the lease terminate on October 31, 2020. The lease may commence on the date this final order is signed.
15. The Lessors have 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, 2020. For multiyear leases, the lessors *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-September 30) 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 1 day of June, 2016.

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

Mailing date: JUN 03 2016

*This document was prepared by  
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