

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-893, Polk County) 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.

Lessors

Jerry and Dana Smith
1115 Madison Street, NE #824
Salem, OR 97301

Findings of Fact

1. On June 23, 2021, Jerry and Dana Smith filed an application to renew instream lease IL-893, involving portions of Certificates 11898 and 27435.
2. The portion of the first right to be leased is as follows:

Certificate: 11898 in the name of E. H. Breeden (perfected under Permit S-10969)
Use: Irrigation of 2.2 ACRES
Priority Date: August 3, 1933
Quantity: **Rate:** 0.027 cubic feet per second (cfs)
Limit: One-eightieth CFS per acre
Source: Little Luckiamute River, tributary to Luckiamute River

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
8 S	6 W	WM	22	SE SW
8 S	6 W	WM	27	NW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	6 W	WM	22	SE SW	1.4
8 S	6 W	WM	22	SW SE	0.8
Total Acres					2.2

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.

3. The portion of the second right to be leased is as follows:
Certificate: 27435 in the name of John C. Collins (perfected under Permit S-19485)
Use: Irrigation of 1.1 ACRES
Priority Date: MAY 5, 1950
Quantity: **Rate:** 0.014 cubic feet per second (cfs)
Limit: One-eightieth CFS per acre, not to exceed 2.5 acre-feet per acre per year
Source: Little Luckiamute River, tributary to Luckiamute River

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	6 W	WM	22	SE SW	47
8 S	6 W	WM	22	SW SE	47

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	6 W	WM	27	NW NE	47	1.1

4. Certificates 11898 and 27435 do not specify the irrigation season; however, the Willamette Basin Program, OAR 690-502-0020(1)(f), provides for an irrigation season of March 1 through October 31.
5. Certificate 11898 does not specify the duty limit per acre. However, the Luckiamute Decree establishes the duty limit as 2.5 acre-feet per acre.
6. Certificates 11898 and 27435 do not specify a specific location for the point of diversion located in the SESW of Section 22. The point of diversion is the same for both certificates. Based on information available to the Department and water right maps, the approximate location of the point of diversion in Section 22 is located at approximately River Mile 12.1 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	6 W	WM	22	SE SW	521 FEET NORTH AND 117 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 22

7. 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.

8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

LITTLE LUCKIAMUTE RIVER, tributary to LUCKIAMUTE RIVER

Instream Reach: From the POD located at approximately RM 12.1 (as shown below) to the Bridgeport Bridge (RM 10)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	6 W	WM	22	SE SW	521 FEET NORTH AND 117 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 22

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
11898	August 3, 1933	0.027	5.50	June 22 through September 30
27435	May 5, 1950	0.014	2.75	

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

15. 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.
16. The Lessors have requested that the lease terminate on September 30, 2025. The lease may commence on the date this final order is signed.
17. The Lessors have requested the option of terminating the lease early with written notice to the Department.

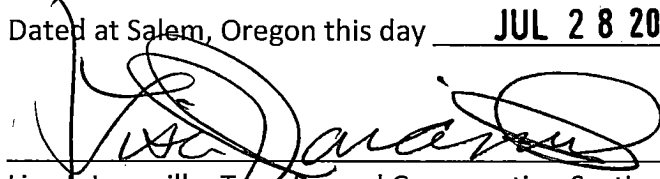
Conclusions of Law

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 September 30, 2025. 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 22 through 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 day JUL 28 2021



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

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.

Mailing date: JUL 29 2021