

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

In the Matter Instream Lease IL-1028,            )     DETERMINATION and  
Certificates 44345 and 47048,                    )     FINAL ORDER ON PROPOSED  
Benton 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**

Lee and Linda Parker  
PO Box 69  
Alsea, OR 97324  
LP5962@peak.org

**Agent**

Steve P. Trask  
P.O. Box 65  
Alsea, OR 97324

**Findings of Fact**

1. On December 4, 2009 Lee and Linda Parker filed an application to lease a portion of Certificates 44345 and 47048 for instream use. The Department assigned the application number IL-1028.

2. The portion of the first right to be leased is as follows:

**Certificate:** 44345 in the name of LEWIS R. STEEPROW (perfected under Permit S-35089)  
**Use:** Irrigation of 14.0 acres  
**Priority Date:** April 22, 1970  
**Quantity:** **Rate:** 0.175 Cubic Foot per Second (CFS)  
**Duty:** 35.0 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** BUMMER CREEK, tributary to the SOUTH FORK ALSEA RIVER

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 Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	8 W	WM	13	NE NW	750 FEET SOUTH AND 1490 FEET EAST FROM THE NW CORNER OF SECTION 13

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	8 W	WM	13	NW NW	14.0

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

**Certificate:** 47048 FRED H and ESTHER CALLAHAN (perfected under Permit S-36793)

**Use:** Irrigation of 23.2 acres

**Priority Date:** March 19, 1973

**Quantity:** **Rate:** 0.294 Cubic Foot per Second (CFS)

**Duty:** 58.0 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, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** BUMMER CREEK, tributary to the SOUTH FORK ALSEA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	8 W	WM	13	SW NW	1860 FEET SOUTH AND 1130 FEET EAST FROM THE NW CORNER OF SECTION 13

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	8 W	WM	13	SW NW	23.2

4. Neither Certificate 44345 nor Certificate 47048 specify the irrigation season. Therefore, the default irrigation season of March 1 through October 31, as established under Division 250 will be used for the purposes of this lease.

5. 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 lease.

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

BUMMER CREEK tributary to SOUTH FORK ALSEA RIVER

**Instream Reach #1:** From the POD for Certificate 44345, as described in Finding of Fact #2, to the POD for Certificate 47048, as described in Finding of Fact #3.

Certificate	Priority Date	Instream Rate	Instream Volume (AF)	Period Protected Instream
44345	4/22/1970	0.07 CFS	35.0 AF	March 1 through October 31

**Instream Reach #2:** From the POD for Certificate 47048, as described in Finding of Fact #3 to the mouth of Bummer Creek.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
44345	4/22/1970	0.07 CFS	35.0 AF	March 1 through October 31
47048	3/19/1973	0.12 CFS	58.0 AF	March 1 through October 31
TOTAL:		0.19 CFS	93.0 AF	

- 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.
- 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.
- 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.
- The Lessor requested that the lease begin on March 1, 2010 and terminate on October 31, 2014.
- 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 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 commence on March 1, 2010 and terminate on October 31, 2014. The Lessor *shall* have the option of terminating the lease each year with written notice 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 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 11<sup>th</sup> day of February 2010.

  
for Phillip C. Ward, Director

Mailing date: FEB 17 2010