

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-1028, Benton 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

Lee R. and Linda P. Parker
 PO Box 69
 Alsea, OR 97324

Findings of Fact

1. On May 23, 2016, Lee R. and Linda P. Parker filed an application to renew instream lease IL-1028, involving a portion of Certificates 47048, 44345.
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:** 0.18 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

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

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	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:** 0.29 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. Certificates 44345 and 47048 do 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.

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.

6. The instream use has been clarified from the previous approval order and is as follows:

BUMMER CREEK, tributary to SOUTH FORK ALSEA RIVER

Instream Reach No. 1: From the POD for Certificate 47048, as described in Finding of Fact No. 3, to the POD for Certificate 44345, as described in Finding of Fact No. 2.

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
47048	3/19/1973	0.12	58.0	March 1 through October 31

Instream Reach No. 2: From the POD for Certificate 44345 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	

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
8. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded points of diversion;
 - b. The location of confluences with other streams downstream of the points of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
 - d. Any return flows resulting from the exercise of the existing water rights 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 significantly affect land use 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 Lessor has requested that the lease terminate in December, 2020. The term of an instream lease generally ends on the last day of the period of allowed use/irrigation season. This lease may terminate on October 31, 2020. The lease may commence on the date this final order is signed.

15. The Lessor has requested that there not be an option to terminate the lease early.

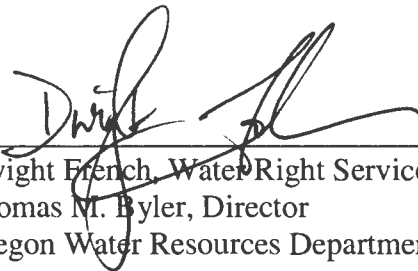
Conclusions of Law

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.

Now, therefore it is ORDERED:

1. That 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 lease will commence upon approval of the instream lease and terminate on October 31, 2020. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this 27 day of June 2016.



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

Mailing date: JUN 28 2016

This document was prepared by Kate Fitzgerald. If you have questions, please call 503-986-0898.