

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1672, 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.

**Lessors**

Gene & Zanna Jones  
1893 NE McKay Creek Road  
Prineville, OR 97754

**Lessee**

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

**Findings of Fact**

1. On January 29, 2020, Gene and Zanna Jones and DRC filed an application to renew instream lease IL-1672, involving the entirety of Certificates 42373 and 42374.
2. The first right to be leased is as follows:

**Certificate:** 42373 in the name of FLOYD JONES (perfected under Permit S-30070)

**Use:** IRRIGATION of 58.2 ACRES

**Priority Date:** SEPTEMBER 29, 1964

**Quantity:** **Rate:** 1.0 CUBIC FOOT PER SECOND (CFS)

**Volume:** 232.8 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, shall be limited to ONE-FORTIETH 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 per acre for each acre irrigated during the irrigation season of each year.

**Source:** MCKAY CREEK, a tributary of CROOKED RIVER

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	16 E	WM	33	SW SW	300 FEET NORTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 4, T 14 S, R 16 E, WM

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:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	16 E	WM	32	NE SE	11.0
13 S	16 E	WM	32	NW SE	8.1
13 S	16 E	WM	32	SW SE	2.0
13 S	16 E	WM	32	SE SE	24.8
13 S	16 E	WM	33	SW SW	12.3
Total					58.2

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

**Certificate:** 42374 in the name of FLOYD M JONES (perfected under Permit S-33073)

**Use:** IRRIGATION of 18.9 ACRES

**Priority Date:** NOVEMBER 22, 1967

**Quantity:** **Rate:** 0.25 CUBIC FOOT PER SECOND (CFS)

**Volume:** 75.6 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, shall be limited to ONE-FORTIETH 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 per acre for each acre irrigated during the irrigation season of each year.

**Source:** MCKAY CREEK, tributary to the CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	16 E	WM	33	SW SW	300 FEET NORTH AND 1160 FEET EAST FROM THE NW CORNER OF SECTION 4, T 14 S, R 16 E, WM

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	16 E	WM	32	NW SE	18.9

4. Certificates 42373 and 42374 do not specify the irrigation season; however, the Crooked River Decree establishes the irrigation season for the area as February 1 until December 1 of each year.
5. The lease application requests to protect water instream from McKay Creek into the Crooked River. An instream reach is generally from the point of diversion to the mouth of the source stream (McKay Creek) but may be protected further if measurable in the receiving stream (Crooked River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from McKay Creek is measurable into the Crooked River and may be protected instream in the Crooked River.
6. 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.

7. The instream use is as follows:  
McKay Creek, tributary to Crooked River

**Instream Reach:** From the POD (as described in Findings of Fact No. 2 and 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
42373	9/29/1964	0.767	232.8	April 1 through August 31
42374	11/22/1967	0.249	75.6	April 1 through August 31
Totals		1.016	308.4	

To the mouth of McKay Creek at RM 0.0 at the confluence with the Crooked River, then into the Crooked River to Lake Billy Chinook.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. 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.
10. By adding to other existing instream leases, for the same location, total monthly quantities of water to be protected instream will exceed the estimated average natural flows during the months of July through August. However, the Department has determined that the estimated average natural flows may be exceeded due to the following:
- The quantities to be protected instream will not exceed the amounts requested in the original instream water right application (IS-70595) filed by the Oregon Department of Fish and Wildlife (ODFW) on McKay Creek and;
  - The water right proposed to be leased instream is in an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.
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. This instream lease in combination with other existing instream leases may replace a portion of Certificate 73200 with an earlier priority date and may add to Certificate 73200 up to the quantities requested under Instream Water Right Application IS-70595, unless otherwise specified by a subsequent order establishing a new instream water right.

13. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.
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 Lessors and Lessee have requested that the lease terminate on August 31, 2020, the end of the instream period. However, the irrigation season runs until December 1. Therefore, the lease may commence on the date this final order is signed and will terminate on December 1, 2020.
18. The Lessors 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, 2020.

4. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this day APR 01 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
THOMAS M. BYLER, DIRECTOR  
Oregon Water Resources Department

Mailing date: APR 03 2020

*This document was prepared by Corey Courchane. If you have any questions, please call 503-986-0825.*