

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1928, Washington 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.

**Lessor**

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**Lessee**

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**Findings of Fact**

1. On May 25, 2022, Judy Bendix, Thomas Pehrson, Zoe Pehrson, Piper Pehrson and Tualatin Soil & Water Conservation District, filed an application involving a portion of Certificate 20252 for instream use. The Department assigned the application number IL-1928.
2. The portion of the right to be leased is as follows:  

<b>Certificate:</b>	20252 in the name of Henry Peters (perfected under Permit S-13998)
<b>Use:</b>	Irrigation of 10.0 acres
<b>Priority Date:</b>	August 12, 1939
<b>Quantity:</b>	<b>Rate:</b> 0.125 Cubic Foot per Second (CFS) being 0.060 cfs from the north stream; 0.065 cfs from the south stream

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.

**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-eightieth 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** Two Unnamed Streams, tributary to Campbell Creek

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

Twp	Rng	Mer	Sec	Q-Q	Source
1 S	3 W	WM	35	NE SE	NORTH STREAM
1 S	3 W	WM	35	SW SE	SOUTH STREAM

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	35	SE SE	5.2
1 S	3 W	WM	35	NE SE	4.8
Total Acres					10.0

3. Certificate 20252 does not describe the measured distances of the points of diversion, for the purposes of this instream lease the points of diversion are described as below:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	1 S	3 W	WM	35	NE SE	NORTH STREAM: LATITUDE: 45.4399646833 LONGITUDE: -123.0168455673
2	1 S	3 W	WM	35	SW SE	SOUTH STREAM: LATITUDE: 45.4349974261 LONGITUDE: -123.0173122717

4. Certificate 20252 does not specify the irrigation season; however, the irrigation season is described in the Tualatin River Decree as May 1 through September 30, this time 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 is as follows:  
Two Unnamed Streams, tributary to Campbell Creek

**Instream Reach No. 1:** From the POD No. 1 (as described in Finding of Fact No. 3) to the mouth of the unnamed stream

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
20252	August 12, 1939	0.060	12.0	June 23 through September 30

**Instream Reach No. 2: From the POD No. 2 (as described in Finding of Fact No. 3) to the mouth of the unnamed stream**

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
20252	August 12, 1939	0.065	13.0	June 23 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 reaches are 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 reaches 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 reaches 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 Lessors and Lessee have requested that the lease terminate on September 30, 2026. The lease may commence on the date this final order is signed.

15. The Lessors and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

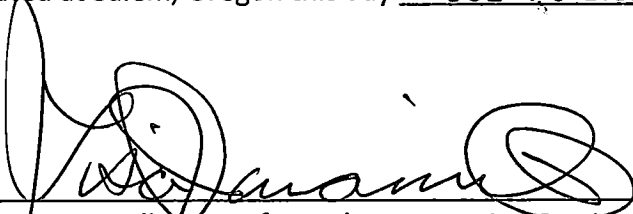
**Conclusions of Law**

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 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, 2026. For multiyear leases, the lessors and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (June 23 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 15 2022.

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

Mailing date: JUL 18 2022

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