

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1965, Jefferson 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**

Souza Bradley Emile & Shellie Ann Revocable Trust  
Brad & Shellie Souza  
PO Box 412  
Camp Sherman, Oregon 97730  
[bsouzamail@yahoo.com](mailto:bsouzamail@yahoo.com)

**Lessee**

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

**Findings of Fact**

1. On April 21, 2023, DRC and Brad and Shellie Souza of Souza Bradley Emile & Shellie Ann Revocable Trust filed an application to lease a portion of Certificate 94033 for instream use. The Department assigned the application number IL-1965.
2. The portion of the right to be leased is as follows:  

<b>Certificate:</b>	94033 in the name of Carol Williams (confirmed by Deschutes River, Modify Findings, 1928 Decree, Special Order Volume 9, Page 362)
<b>Use:</b>	Irrigation of 15.84 acres, Domestic and Stock Use
<b>Season of Use:</b>	May 1 to September 15
<b>Priority Date:</b>	1888
<b>Quantity:</b>	<b>Rate:</b> 0.264 Cubic Foot per Second (CFS)

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.

**Volume:** 47.52 Acre-Feet (AF)

**Limit:** The amount of water to which this right is entitled for the purposes aforesaid is limited to an amount actually beneficially used for said purposes, and shall not exceed 3 acre-feet per acre measured at the point of diversion from the stream, which may be diverted at a rate of not to exceed 1/60<sup>th</sup> of one cubic foot per second during the irrigation season from May 1 to September 15

**Source:** Lake Creek

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

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	9 E	WM	16	NW NE	POD #3 Latitude 44.44685, Longitude -121.66160
13 S	9 E	WM	16	NW NE	POD #4 Latitude 44.44679, Longitude -121.66143
13 S	9 E	WM	16	NW NE	POD #5 Latitude 44.44679, Longitude -121.66142
13 S	9 E	WM	16	SE NW	POD #2 Latitude 44.44579, Longitude -121.66918
13 S	9 E	WM	17	NW SE	POD #1 Latitude 44.44246, Longitude -121.68118

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
13 S	9 E	WM	16	NE NE	700	3.98
13 S	9 E	WM	16	NW NE	700	11.86
Total Acres						15.84

3. 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.
4. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Lake Creek, tributary to Metolius River

**Instream Reach:** From the POD (as described in Finding of Fact No. 2) to the Metolius River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
94033	1888	0.174	47.52	May 1 to September 15

5. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
6. The protection of flows within the proposed reach is 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on September 30, 2023. The lease may commence on the date this final order is signed.

### **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 September 30, 2023.

Dated at Salem, Oregon this day MAY 31 2023.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Douglas E. Woodcock, Acting Director  
Oregon Water Resources Department

Mailing date: JUN 01 2023

*This document was prepared by Corey Courchane. If you have any questions, please call 503-979-3917.*