

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

In the Matter of Instream Lease Application )  
IL-1502, Marion County ) DETERMINATION and  
) 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**

427 SC LLC, Oregon  
Premier Management Services Corp., a  
Washington corporation  
Bradley A. Colson, Vice President  
2264 McGilchrist St. SE #210  
Salem, OR 97302

**Co-Lessor**

Santiam Water Control District  
Brent Stevenson, District Manager  
284 East Water Street  
Stayton, OR 97383

**Findings of Fact**

1. On January 15, 2016, Santiam Water Control District, on behalf of a single landowner, filed an application to lease a portion of Certificate 54286 for instream use. The Department assigned the application number IL-1502.
2. On February 12, 2016, the Department notified the applicant of deficiencies in the application. The applicant provided the requested information on April 26, 2016.
3. The lease application was modified to exclude the inchoate lands as described in Special Order Volume 98, Pages 190-194.
4. The portion of the right to be leased has been modified from the lease application and is as follows:

**Certificate:** 90905 in the name of Frank H. Spears, ET. AL (confirmed by decree of record at Salem, in the Order Record of the Water Resources Director in Volume 14, at Page 352)  
**Use:** Irrigation of 3.3 acres  
**Priority Date:** May 14, 1909  
**Quantity:** **Rate:** 0.041 Cubic Foot per Second (CFS)  
**Volume:** 8.25 Acre-Feet (AF)

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:** shall not exceed 1.01 CFS. To compensate for losses between the point of diversion to the place of use, an additional amount not exceeding ten percent is allowed.

**Source:** North Santiam River, tributary to Santiam River

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

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
9 S	1 W	WM	11	SW SE	2	1800 FEET SOUTH AND 2830 FEET EAST FROM THE W1/4 CORNER OF SECTION 11

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	3 W	WM	36	NW NE	2.8
7 S	3 W	WM	36	SW NE	0.5
Total Acres					3.3

5. Certificate 90905 does not specify a rate and duty limit per acre. However, the North Santiam Decree specifies the rate limit as 1/80 CFS and the duty limit as 2.5 AF.
6. Certificate 90905 does not specify the irrigation season. However, the North Santiam Decree establishes the irrigation season for the area as May 1 through September 30.
7. The instream rate and volume requested to be protected instream exceeds the amount authorized by Certificate 90905. To prevent enlargement of the right, the requested instream use requires modification. The Department has reduced the instream quantity to the amount authorized by Certificate 90905.
8. The applicant requested that water be protected instream from January 1 through December 31 each year. The instream use created from Certificate 90905 may only be protected instream during the irrigation season. The instream rate has been further reduced to protect water instream over the full irrigation season, (as described in Finding of Face No. 6).
9. 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.
10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
North Santiam River, tributary to Santiam River

**Instream Reach:** From the POD (as described in Finding of Fact No. 4) to the mouth of North Santiam River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
90905	May 14, 1909	0.027	8.25	May 1 through September 30

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. The Lessor has requested that the lease terminate on December 30, 2020. The lease may commence upon approval of this final order.
19. 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.

**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 and terminate on September 30, 2020. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (May 1 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 12 day of October, 2016.



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

Mailing date: OCT 13 2016

*This document was prepared by Joan  
Smith and if you have any questions,  
please call 503-986-0892.*