

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1395, Klamath County ) FINAL ORDER ON PROPOSED  
 ) INSTREAM LEASE

**Authority**

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department’s procedures and criteria for evaluating instream lease applications.

**Lessor**

John and Amber Jacobson  
17284 Rustic Lane  
Brookings, OR 97415

**Findings of Fact**

1. On August 20, 2018, John and Amber Jacobson, filed an application to lease a portion of Certificate 8201 for instream use. The Department assigned the application number IL-1395.
2. The portion of the right to be leased is as follows:

**Certificate:** 8201 in the name of Ivan Pankey (perfected under Permit S-6765)  
**Use:** Irrigation of 148.5 acres  
**Priority Date:** May 28, 1925  
**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, or its equivalent in case of rotation  
**Source:** Sprague River, tributary to Williamson River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	10 E	WM	3	NW SW	Description not provided

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	10 E	WM	32	NE SE	12.0
35 S	10 E	WM	32	NW SE	15.2
35 S	10 E	WM	32	SW SE	40.0
35 S	10 E	WM	32	SE SE	33.6
35 S	10 E	WM	33	NW SW	2.0
35 S	10 E	WM	33	SW SW	21.0
35 S	10 E	WM	33	SE SW	24.7
<b>Total Acres</b>					<b>148.5</b>

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.

- Certificate 8201 does not provided a measured distance for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
36 S	10 E	WM	3	NW SW	Lat. 42.476827, Long. -121.523558

- Certificate 8201 does not specify the irrigation season. However, the Order of Determination for the Klamath Basin Adjudication identifies the irrigation season for the area of the place of use as April 1 through October 31.
- Certificate 8201 does not specify a duty limit per acre. However, other rights issued by the Department through the permit application process in the area (including Certificate 42756, leased instream by the Lessor under IL-1326) identify the duty limit as 3.0 Acre-Feet (AF) per acre during the irrigation season.
- Certificate 8201 is a deficient water right. If water were diverted simultaneously to all authorized lands described in the right at the maximum rate allowed (described in Finding of Fact No. 2), the total rate for the water right would be exceeded. In the event water were diverted simultaneously to all authorized irrigated lands described in the right at the maximum rate allowed at the POD (described in Finding of Fact No. 3), the portion of the right involved in this instream lease would be limited to 1.78 Cubic Feet per Second (CFS).
- 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.
- At the full instream rate requested (1.86 CFS), the instream quantity would exceed maximum rate that may be diverted as identified in Finding of Fact No. 6. To prevent enlargement of the water right, the instream rate and also the instream period require modification.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Sprague River, tributary to Williamson River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
8201	5/28/1925	1.78	445.5	May 28 through September 30

- Other conditions to prevent injury and enlargement are:

During the period of the lease, the applicant cannot exercise any claims (KA-99) that may be underlying the portion of the right proposed to be lease instream.

- 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 for 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 lease will terminate on October 31, 2023. The lease may commence on the April 1, 2019, being the first day of the irrigation season.

### **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, Klamath Adjudication claims (KA-99), and permits.

3. The term of the lease will commence on April 1, 2019 and terminate on October 31, 2023. For multiyear leases, the lessors *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 28 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 OCT 04 2018

  
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Dwight French,  
Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

*This document was prepared by Arla Heard and if you have any questions, please call 503-986-0806.*

Mailing date: OCT 08 2018