

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-1550, Klamath 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. Senate Bill (SB) 206 (Chapter 445, Oregon Laws 2015) establishes that a determined claim in the Upper Klamath Basin may be leased to instream use. 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

Jeld-Wen Inc.
 David Bleha, VP Engineering
 401 Harbor Isles Blvd.
 Klamath Falls, OR 97601

Findings of Fact

1. On March 17, 2021, Jeld-Wen Inc. filed an application to renew instream lease IL-1550 involving the entirety of Klamath Water Right Claim KA-107 for instream use.
2. The Klamath Water Right Claim to be leased is as follows:

Claim: KA-107 in the name of Jeld-Wen Inc. (Partial Order of Determination Water Right Claim 107)
Use: Industrial Use and Fire Suppression
Season of Use: January 1 through December 31
Priority Date: October 14, 1864
Quantity: **Rate:** 1.0 Cubic Foot per Second (CFS)
Volume: 100.0 Acre-Feet (AF) per year
Source: Upper Klamath Lake, tributary to the Klamath River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GOV'T LOT	Measured Distances
36 S	7 E	WM	15	NW SW	21	515 FEET SOUTH AND 200 FEET WEST FROM THE NE CORNER OF GOV'T LOT 21

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	Gov't Lot
36 S	7 E	WM	15	NE SW	19
36 S	7 E	WM	15	NE SW	22
36 S	7 E	WM	15	NW SW	20
36 S	7 E	WM	15	NW SW	21

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 requested by the Lessor requires modification to prevent any injury to other water rights and enlargement. The Lessor requests to protect water instream from June 1 through October 15, a 137 day period. At the requested rate (1.0 CFS) and volume (100.0 AF), water may not be protected instream for the full 137 days without exceeding the 100.0 AF volume limit. However, the instream rate may be reduced to protect water instream for the 137 day period requested up to 100.0 AF.

5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Upper Klamath Lake, tributary to Klamath River

Instream Point: At the POD (as described in Finding of Fact No. 2)

Water Right Claim	Priority Date	Instream Volume (AF)	Instream Rate (CFS)	Period Protected Instream
KA-107	10/14/1864	100.0	0.37	June 1 through October 15

6. Other conditions to prevent injury and enlargement are:
The instream use established by this lease may, during the requested instream period, provide for maintenance of natural lake levels in Upper Klamath Lake up to 4143.3 feet (elevation).
7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right claim.
8. The protection of flows at the authorized point of diversion 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 claim would re-enter the river downstream of the point of the instream water right.

9. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
10. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural lake level.
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 water right claim 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 Lessor has requested that the lease terminate on December 31, 2025. The lease may commence on the date this final order is signed.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

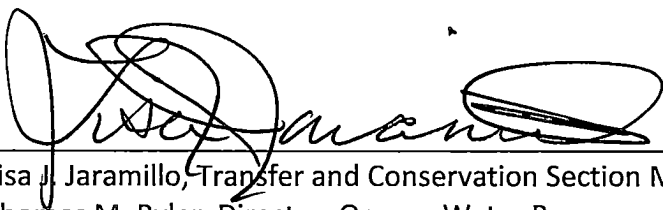
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 this water right claim.

3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2025. 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 (June 1 through October 15) 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 14th day of May, 2021.



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

Mailing date: MAY 17 2021

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