

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-742, 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**

Rick Krueger  
P.O. Box 32  
North Plains, OR 97133

**Lessee**

Tualatin Soil and Water Conservation  
District (TSWCD)  
7175 NE Evergreen Pkwy, #400  
Hillsboro, OR 97124

**Findings of Fact**

1. On May 26, 2023, Rick Krueger and TSWCD filed an application to renew instream lease IL-742, involving a portion of Certificate 21986 for instream use.
2. The portion of the right to be leased is as follows:

**Certificate:** 21986 in the name of Charles Schmidlin (perfected under Permit S-17634)  
**Use:** Irrigation of 7.7 acres  
**Priority Date:** March 26, 1947  
**Quantity:** **Rate:** 0.1 Cubic Foot per Second (CFS)  
**Limit:** One-eightieth CFS per acre, not to exceed 2.5 AF per acre for each acre irrigated during the irrigation season of each year  
**Source:** Dairy Creek, tributary to the Tualatin River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	4 W	WM	24	NW NW	NOT SPECIFIED ON CERTIFICATE

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	Acres
2 N	4 W	WM	13	SW SW	0.1
2 N	4 W	WM	14	SE SE	5.5
2 N	4 W	WM	23	NE NE	0.1
2 N	4 W	WM	24	NW NW	2.0
Total Acres					7.7

3. Certificate 21986 does not provide measured distances for a description of 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 may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
2 N	4 W	WM	24	NW NW	LATITUDE 45.64964294 LONGITUDE -123.13365936

4. Certificate 21986 does not specify the irrigation season. However, the Tualatin River Decree identifies the irrigation season as May 1 through September 30.
5. Certificate 21986 describes the source of water as Dairy Creek. The applicant and the Department have identified that current maps more accurately describe the source as West Fork Dairy Creek.
6. 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.
7. The instream use is as follows:  
West Fork Dairy Creek, tributary to the Tualatin River

**Instream Reach:** From the POD (as described in Finding of Fact No. 3) to the mouth of West Fork Dairy Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
21986	March 26, 1947	0.10	19.25	June 23 through September 30

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. 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.
10. 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.
  11. 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.
  12. 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.
  13. 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.
  14. 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.
  15. The Lessor and Lessee have requested that the lease terminate on September 30, 2027. The lease may commence on the date this final order is signed
  16. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

### **Conclusions of Law**

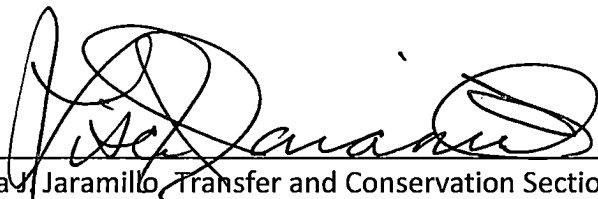
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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, 2027. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and 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 03 2023.



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

Mailing date: JUL 05 2023

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