

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1827, Douglas 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

Briggs Management, LLC
Mathew Lee Briggs, Administrative Member
PO Box 805
Canyonville, OR 97417

Findings of Fact

1. On July 1, 2020, Briggs Management, LLC filed an application to lease the entirety of Certificates 3291, 21172, and 21347 and a portion of Certificates 22928 and 65232 for instream use. The Department assigned the application number IL-1827.

2. The first right to be leased is as follows:

Certificate: 3291 in the name of Ermel Briggs and Zylpha Weaver Briggs (perfected under Permit S-3588)

Use: Irrigation of 3.5 acres

Priority Date: November 2, 1917

Quantity: **Rate:** 0.044 Cubic Foot per Second (CFS)

Volume: 8.75 Acre-Feet (AF)

Limit: The amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.044 cubic feet per second, or its equivalent in case of rotation.

Source: Small Creek, tributary to South Umpqua River

Authorized Point of Diversion (POD): Not described 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
30 S	5 W	WM	23	SW NW	1.50
30 S	5 W	WM	23	NW SW	2.00
Total Acres					3.50

- Certificate 3291 does not specify the rate and duty limit per acre. However, other certificates issued in the same area are limited to one-eightieth of one cubic foot per second per acre, and 2.5 acre feet per acre irrigated during the irrigation season.
- Certificate 3291 does not provide a description of the location of the point of diversion. Based upon additional information provided by documents in the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	5 W	WM	23	SW NW	11 CHAINS EAST AND 24 CHAINS SOUTH OF THE NW CORNER OF SECTION 23

- The second right to be leased is as follows:

Certificate: 21172 in the name of Ermel Briggs (perfected under Permit S-17513)

Use: Irrigation of 4.8 acres

Priority Date: September 7, 1945

Quantity: **Rate:** 0.06 Cubic Foot per Second (CFS)

Volume: 12.00 Acre-Feet (AF)

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 per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Unnamed Creek, tributary to South Umpqua River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	5 W	WM	23	SW NW	AS PROJECTED WITHIN J. FULLERTON D.L.C. NO. 52

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
30 S	5 W	WM	23	SW NW	52	0.40
30 S	5 W	WM	23	NW SW	52	4.40
Total Acres						4.80

- The third right to be leased is as follows:

Certificate: 21347 in the name of Ermel Briggs (perfected under Permit S-22848)

Use: Irrigation of 17.9 acres

Priority Date: March 5, 1954

Quantity: **Rate:** 0.223 Cubic Foot per Second (CFS)

Volume: 44.75 Acre-Feet (AF)

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 per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion at the stream of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Umpqua River, tributary to Umpqua River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot
30 S	5 W	WM	23	SW SW	9

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	GLot	Acres
30 S	5 W	WM	22	SE SE	52		0.30
30 S	5 W	WM	23	SW SW	52		11.80
30 S	5 W	WM	23	SW SW		9	5.80
Total Acres							17.90

7. Certificate 21347 does not provide a description of the location of the point of diversion. Based upon additional information provided by documents in the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	5 W	WM	23	SW SW	NORTH 63' 30' EAST, 1145.1 FEET AND SOUTH 450'E, 160 FEET FROM THE SW CORNER OF SECTION 23, LOT 9

8. The portion of the fourth right to be leased is as follows:

Certificate: 22928 in the name of Webster E. Briggs (perfected under Permit S-20138)

Use: Irrigation of 7.0 acres

Priority Date: March 7, 1951

Quantity: **Rate:** 0.086 Cubic Foot per Second (CFS)

Volume: 17.50 Acre-Feet (AF)

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 per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: South Umpqua River, tributary to Umpqua River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot
30 S	5 W	WM	23	SW SW	9

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	GLot	Acres
30 S	5 W	WM	23	SW SW	52		3.70
30 S	5 W	WM	23	SE SW	52		1.50

Twp	Rng	Mer	Sec	Q-Q	DLC	GLot	Acres
30 S	5 W	WM	23	SW SW		9	1.30
30 S	5 W	WM	23	SE SW		8	0.50
Total Acres							7.00

9. Certificate 22928 does not provide a description of the location of the point of diversion. Based upon additional information provided by documents in the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	5 W	WM	23	SW SW	BEGINNING AT THE SECTION CORNERS 22; 23; 27; 26, NORTH 510 FEET, EAST 1023 FEET SOUTH 45 DEGREES EAST 160 FEET, LOT 9

10. The portion of the fifth right to be leased is as follows:

Certificate: 65232 in the name of Webster Briggs (perfected under Permit S-49872)
Use: Irrigation of 55.80 acres
Priority Date: January 22, 1985
Quantity: **Rate:** 0.698 Cubic Foot per Second (CFS)
Volume: 139.50 Acre-Feet (AF)
Limit: The amount of water used for irrigation together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: South Umpqua River, tributary to Umpqua River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	5 W	WM	27	SE SE	220 FEET SOUTH AND 1280 FEET WEST FROM THE SW CORNER OF SECTION 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
30 S	5 W	WM	22	NE SW	48	8.30
30 S	5 W	WM	22	SE SW	48	5.30
30 S	5 W	WM	22	SE SW	51	1.00
30 S	5 W	WM	22	NW SE	48	16.90
30 S	5 W	WM	22	SW SE	48	6.30
30 S	5 W	WM	22	SW SE	51	3.00
30 S	5 W	WM	22	NW SE	52	15.00
Total Acres						55.80

11. Certificates 3291, 21172, 21347, 22928, and 65232, do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

12. 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.

13. The instream use is as follows:

Small Creek, tributary to South Umpqua River

Instream Point No. 1: At the POD (as described in Finding of Fact No. 4)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
3291	11/2/1917	0.044	8.75	July 24 through October 31

Unnamed Stream, tributary to South Umpqua River

Instream Point No. 2: At the POD (as described in Finding of Fact No. 5)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
21172	9/7/1945	0.06	12.0	July 24 through October 31

South Umpqua River, tributary to Umpqua River

Instream Point No. 3: From the POD's (as described in Findings of Fact No's. 7, 9, and 10)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
21347	3/5/1954	0.223	44.75	July 23 through October 31
22928	3/7/1951	0.086	17.5	July 22 through October 31
65232	1/22/1985	0.698	139.5	July 24 through October 31

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

15. The protection of flows at the authorized points 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 would re-enter the river downstream of the points of the instream water right.

16. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.

17. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.

18. 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.
19. 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.
20. 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.
21. The Lessor has requested that the lease terminate on October 31, 2020. The lease may commence on the date this final order is signed.

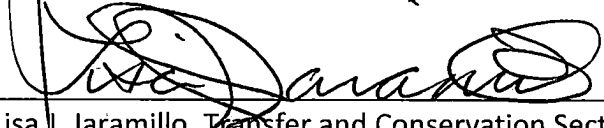
Conclusions of Law

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 October 31, 2020.

Dated at Salem, Oregon this day OCT 05 2020.



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

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.

Mailing date: OCT 06 2020