

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1935, Marion 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

Pooled Instream Lease for several water users
(described in Finding of Fact No. 3, 4, 6, 8, 9, 11)

Co-Lessor

Santiam Water Control District (SWCD)
284 E. Water Street
Stayton, Oregon 97383
brent@santiamwater.com

Findings of Fact

1. On June 30, 2022, SWCD, on behalf of several water users filed an application to lease a portion of Certificates 52253, 68664, 68665, 88960, 90905, and 95820 for instream use. The Department assigned the application number IL-1935.
2. On August 3, 2022, the Lessors filed an amended application and supporting documentation including water right conveyance agreements and quitclaim deeds.

3. The portion of the first right to be leased is as follows:

Certificate: 52253 in the name of Cyril & Marjorie Forrette for Santiam Water Control District (perfected under Permit S-1401)

Use: Irrigation of 0.22 acres

Priority Date: June 24, 1911

Quantity: **Rate:** 0.003 Cubic Foot per Second (CFS)

Volume: 0.77 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 1/80 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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.

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 WEST 1/4 CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
9 S	1 W	WM	9	SE SE	0.10	Lynn Marshall (R103391)
9 S	1 W	WM	9	SE SE	0.12	Clarence & Judi Cranston (R328849)
Total Acres					0.22	

4. The portion of the second right to be leased is as follows:

Certificate: 68664 in the name of Porter Improvement District Successor in Interest to Henry C. Porter, Trustee (perfected under Permit S-18572)

Use: Irrigation of 0.80 acres

Priority Date: August 28, 1924

Quantity: **Rate:** 0.007 Cubic Foot per Second (CFS)

Volume: 2.00 Acre-Feet (AF)

Limit: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion 1/80 of one cubic foot per second (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 beginning May 1 and ending September 30, of each year, subject to the terms and conditions of that contract between the Willamette Valley Water Company (Santiam Water Control District), and Porter Improvement District, dated July 3, 1947, provided further that the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein.

Source: North Santiam River, tributary to Santiam River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	18	SW NW	Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
9 S	2 W	WM	1	NE NE	0.50	Jerold & Beverlee Mix (R35025)
9 S	2 W	WM	1	NW NE	0.30	Jerold & Beverlee Mix (R35025)
Total Acres					0.80	

5. Certificate 68664 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by Department records and for purposes of this instream lease, the point of diversion is described as follows:

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 WEST 1/4 CORNER OF SECTION 11

6. The portion of the third right to be leased is as follows:

Certificate: 68665 in the name of Santiam Water Control District (confirmed by decree of the Marion County, recorded at Water Resources Volume 18, Page 437.)

Use: Irrigation of 269.57 acres

Priority Date: May 14, 1909

Quantity: **Rate:** 2.221 Cubic Foot per Second (CFS)

Volume: 673.93 Acre-Feet (AF)

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 WEST 1/4 CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
8 S	2 W	WM	5	SW NE	5.55	SWCD (R327904)
8 S	2 W	WM	5	NE SE	16.00	SWCD (R327904)
8 S	2 W	WM	5	NW SE	35.32	SWCD (R327904)
8 S	2 W	WM	5	NE SW	2.71	SWCD (R327904)
8 S	2 W	WM	7	NE NE	6.30	SWCD (R353766)
8 S	2 W	WM	7	SE NE	12.60	SWCD (R353766)
8 S	2 W	WM	7	SW NW	1.10	R4 Sons LLC (R29493)
8 S	2 W	WM	7	NE SE	18.40	SWCD (R353767)
8 S	2 W	WM	7	NW SE	8.05	SWCD (R353767)
8 S	2 W	WM	7	SE SE	29.47	SWCD (R353767)
8 S	2 W	WM	7	SW SE	25.70	SWCD (R353767)
8 S	2 W	WM	7	NW SW	8.70	R4 Sons LLC (R29493)
8 S	2 W	WM	8	SW NE	3.24	SWCD (R327908)
8 S	2 W	WM	8	NE NW	1.00	SWCD (R327908)
8 S	2 W	WM	8	SE NW	19.00	SWCD (R327908)
8 S	2 W	WM	8	SW NW	6.70	SWCD (R327908)
8 S	2 W	WM	8	SW NW	0.64	SWCD (R353766)
8 S	2 W	WM	8	NW SE	15.00	SWCD (R327908)
8 S	2 W	WM	8	NE SW	21.75	SWCD (R327908)
8 S	2 W	WM	8	NW SW	0.24	SWCD (R327908)
8 S	2 W	WM	8	NW SW	1.80	SWCD (R353767)
8 S	2 W	WM	8	SE SW	0.04	SWCD (R327908)

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
8 S	2 W	WM	1	SW SW	0.18	SWCD (R353767)
8 S	2 W	WM	18	NE NE	4.82	SWCD (R353767)
8 S	2 W	WM	18	NW NE	22.66	SWCD (R353767)
8 S	2 W	WM	18	SE SW	1.55	Abraham & Veronica Hillebrand (R49269)
9 S	1 W	WM	18	SW NW	0.20	Rayford, Shirley & Leslie Stevens (R64498)
9 S	1 W	WM	18	NW SE	0.20	Diane Halseth (R34885)
9 S	2 W	WM	15	NW SW	0.60	Smith Living Trust (R35490)
9 S	2 W	WM	16	SW NE	0.05	Kathy Bridges (R35326)
Total Acres					269.57	

7. Certificate 68665 does not specify a rate and duty limit per acre. However, the North Santiam River Decree specifies the rate limit as 1/80 CFS and the duty limit as 2.5 AF.

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

Certificate: 88960 in the name of Santiam Water Control District (perfected under Permit S-51317)

Use: Irrigation of 28.00 acres

Priority Date: April 10, 1987

Quantity: **Rate:** 0.231 Cubic Foot per Second (CFS)

Volume: 70.00 Acre-Feet (AF)

Limit: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of 1/80 of one cubic foot per second (or its equivalent) and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from live flow and storage.

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	RIVER: 44° 47.801' NORTH, -122° 46.412' WEST

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
9 S	2 W	WM	16	NE SE	1.50	Kathy Bridges (R35326)
9 S	2 W	WM	16	NE SE	0.40	Kathy Bridges (R35327)
9 S	2 W	WM	16	NW SE	2.00	Kathy Bridges (R35326)
9 S	2 W	WM	16	SE SE	5.60	Kathy Bridges (R35326)
9 S	2 W	WM	16	SW SE	18.50	Kathy Bridges (R35326)
Total Acres					28.00	

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

Certificate: 90905 in the name of Frank H. Spears, ET AL (confirmed by decree of the Marion County, recorded at Water Resources Volume 14, Page 354)
Use: Irrigation of 14.8 acres
Priority Date: May 14, 1909
Quantity: **Rate:** 0.122 Cubic Foot per Second (CFS)
Volume: 37.00 Acre-Feet (AF)
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 WEST 1/4 CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
7 S	3 W	WM	25	SE SE	0.70	Wells Fargo Bank (R335030)
7 S	3 W	WM	25	SW SE	8.20	Wells Fargo Bank (R335030)
7 S	3 W	WM	25	SW SE	0.50	MWSH Office LLC (R82461)
7 S	3 W	WM	36	NE NE	1.00	Wells Fargo Bank (R335030)
7 S	3 W	WM	36	NE NE	1.00	Bank of Cascades (R342340)
7 S	3 W	WM	36	NW NE	3.40	Wells Fargo Bank (R335030)
Total Acres					14.80	

10. Certificate 90905 does not specify a rate and duty limit per acre. However, the North Santiam River Decree specifies the rate limit as 1/80 CFS and the duty limit as 2.5 AF.

11. The portion of the sixth right to be leased is as follows:

Certificate: 95820 in the name of Santiam Water Control District (perfected under Permit E-82)
Use: Irrigation of 276.18 acres
Priority Date: May 14, 1909
Quantity: **Rate:** 3.185 Cubic Foot per Second (CFS)
Volume: 966.63 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 1/80 of one cubic foot per second (or its equivalent) and 3.5 acre-feet for each acre irrigated during the irrigation season of each year.
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 WEST 1/4 CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information from Application (Water Right Holder)
8 S	1 W	WM	30	SE SW	0.30	SWCD (R28740)
8 S	1 W	WM	30	SW SW	0.60	SWCD (R28740)
8 S	1 W	WM	31	NE NW	6.50	SWCD (R28727)
8 S	1 W	WM	31	NE NW	1.60	SWCD (R28740)
8 S	1 W	WM	31	NW NW	0.60	SWCD (R28740)
8 S	2 W	WM	34	SE NE	1.77	Mary Stengel (R31139)
8 S	2 W	WM	34	SW NE	9.63	Mary Stengel (R31139)
9 S	2 W	WM	13	NW SW	0.30	Martha Porter (R35285)
9 S	2 W	WM	15	SW NW	12.30	Kathy Bridges (R35327)
9 S	2 W	WM	15	SW SW	14.00	Smith Living Trust (R35490)
9 S	2 W	WM	16	SE NE	2.90	Kathy Bridges (R35326)
9 S	2 W	WM	16	SE NE	11.20	Kathy Bridges (R35327)
9 S	2 W	WM	16	NE SE	6.38	Kathy Bridges (R35326)
9 S	2 W	WM	16	NE SE	3.60	Kathy Bridges (R35327)
9 S	2 W	WM	16	NW SE	5.70	Kathy Bridges (R35326)
9 S	2 W	WM	16	SE SE	14.80	Smith Living Trust (R35490)
9 S	2 W	WM	16	SE SE	17.70	Smith Living Trust (R35491)
9 S	2 W	WM	16	SW SE	14.80	Smith Living Trust (R35491)
9 S	2 W	WM	16	SW SE	3.50	Smith Living Trust (R35492)
9 S	2 W	WM	16	NW SW	0.20	Kathy Bridges (R35326)
9 S	2 W	WM	16	SE SW	3.10	Smith Living Trust (R35492)
9 S	2 W	WM	21	NE NE	13.00	Smith Living Trust (R35486)
9 S	2 W	WM	21	NE NE	7.60	Smith Living Trust (R35490)
9 S	2 W	WM	21	NE NE	10.10	Smith Living Trust (R35491)
9 S	2 W	WM	21	NW NE	17.20	Smith Living Trust (R35486)
9 S	2 W	WM	21	NW NE	11.70	Smith Living Trust (R35491)
9 S	2 W	WM	21	NW NE	5.80	Smith Living Trust (R35492)
9 S	2 W	WM	21	SE NE	4.50	Smith Living Trust (R35483)
9 S	2 W	WM	21	SE NE	14.80	Smith Living Trust (R35486)
9 S	2 W	WM	21	SW NE	8.80	Smith Living Trust (R35483)
9 S	2 W	WM	21	SW NE	28.90	Smith Living Trust (R35486)
9 S	2 W	WM	21	NE NW	4.70	Smith Living Trust (R35486)
9 S	2 W	WM	21	NE NW	5.40	Smith Living Trust (R35492)
9 S	2 W	WM	21	SE NW	0.40	Smith Living Trust (R35483)
9 S	2 W	WM	21	SE NW	3.30	Smith Living Trust (R35486)
9 S	2 W	WM	22	NW NW	6.30	Smith Living Trust (R35490)
9 S	2 W	WM	24	SE NE	1.50	SWCD (R35640)
9 S	2 W	WM	34	NW NE	0.70	Mark Hill (R36006)
Total Acres					276.18	

12. Certificates 52253, 68665, 88960, 90905, and 95820 do not specify the irrigation season. However, the North Santiam River Decree establishes the irrigation season for the area as May 1 through September 30.

13. 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.

14. The instream use is as follows:

North Santiam River, tributary to Santiam River

Instream Reach: From the POD (as described below) to the mouth of North Santiam River

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 WEST 1/4 CORNER OF SECTION 11

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
52253	6/24/1911	0.003	0.77	May 1 through September 30
68664	8/28/1924	0.007	2.00	
68665	5/14/1909	2.221	673.93	
88960	4/10/1987	0.231	70.00	
90905	5/14/1909	0.122	37.00	
95820	5/14/1909	3.185	966.63	
Totals		5.769	1750.33	

15. The amount and timing of the proposed instream flow is allowable within the limits and use

16. The protection of flows within the proposed reach is appropriate, considering:

- The instream water use begins at the recorded point of diversion;
- The location of confluences with other streams downstream of the point of diversion.
- There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- 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.

17. 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.

18. 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.

19. 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.

20. 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.
21. 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.
22. This lease is active during the 2022 irrigation season only.

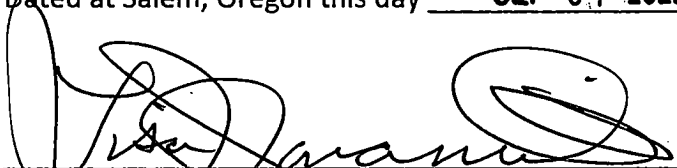
Conclusions of Law

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 commenced during the 2022 irrigation season.

Dated at Salem, Oregon this day SEP 07 2022



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

Mailing date: SEP 08 2022

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-9872.