

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1881, Wasco 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.

Lessors

Bradley and Brenda Kaser
5722 Eightmile Road
The Dalles, Oregon 97058

Findings of Fact

1. On June 21, 2021, Bradley and Brenda Kaser filed an application to lease the entirety of Certificates 5680, 31662, 31663, and 31664 for instream use. The Department assigned the application number IL-1881.

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

Certificate: 5680 in the name of J. N. Williams (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, Volume 8, at Page 110)
Use: Irrigation of 1.5 acres and domestic
Priority Date: 1888
Quantity: **Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed three acre feet per acre in any irrigation season, and a reasonable amount for domestic purposes.
Source: Eightmile Creek, tributary to Fifteenmile Creek
Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	11	NE NE	0.5
1 S	13 E	WM	11	SE NE	1.0
Total Acres					1.5

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.

3. The second right to be leased is as follows:

Certificate: 31662 in the name of Halbert Gerking (perfected under Permit S-2715)
Use: Irrigation of 7.5 acres
Priority Date: November 15, 1915
Quantity: **Rate:** 0.09 Cubic Foot per Second (CFS)
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.
Source: Eightmile Creek, tributary to Fifteenmile Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	11	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	11	SE NE	7.5
Total Acres					7.5

4. The third right to be leased is as follows:

Certificate: 31663 in the name of Halbert Gerking (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, Volume 7, at Page 406)
Use: Irrigation of 9.1 acres
Priority Date: 1896
Quantity: **Limit:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed three acre feet per acre in any irrigation season.
Source: Eightmile Creek, tributary to Fifteenmile Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	11	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	11	NE NE	4.1
1 S	13 E	WM	11	SE NE	5.0
Total Acres					9.1

5. The fourth right to be leased is as follows:

Certificate: 31664 in the name of Halbert Gerking (perfected under Permit S-4338)
Use: Irrigation of 1.5 acres
Priority Date: December 11, 1919
Quantity: **Rate:** 0.018 Cubic Foot per Second (CFS)

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

Source: Eightmile Creek, tributary to Fifteenmile Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 S	13 E	WM	11	NE NE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	11	SE NE	1.5
Total Acres					1.5

6. Certificates 5680, 31662, 31663, and 31664 do not provide measured distances 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	Measured Distances
1 S	13 E	WM	11	NE NE	APPROXIMATELY LATITUDE: 45.501930 LONGITUDE: -121.136465

7. 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.
8. The application does not specify an instream period however, the watermaster has recommended that the instream use period be June 2 through September 30.
9. The instream use is clarified from the lease application to prevent injury and enlargement and is as follows:
Eightmile Creek, tributary to Fifteenmile Creek

Instream Point: At the POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5680	1888	0.02	4.5	June 2 through September 30
31662	11/15/1915	0.09	22.5	
31663	1896	0.11	27.3	
31664	12/11/1919	0.02	4.5	
Totals		0.24	58.8	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
11. 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 would re-enter the river downstream of the point of the instream water right.
12. 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.
 13. 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 flow.
 14. 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.
 15. 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.
 16. 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.
 17. The Lessors have requested that the lease terminate on June 2026. The term of an instream lease may not exceed five years and terminates on the last day of the irrigation season. Therefore, this instream lease will terminate on September 30, 2025. The lease may commence on the date this final order is signed.
 18. The Lessors have 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 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, 2025. 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 (June 2 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 SEP 27 2021



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

Mailing date: SEP 28 2021

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