

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL-1834, Jefferson 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**

Gerald and Elizabeth Otter  
16512 Otter Lane NE  
Mt. Angel, Oregon 97362

**Findings of Fact**

1. On January 6, 2021, Gerald and Elizabeth Otter filed an application involving the entirety of Certificates 2252 and 64158 for instream use. The Department assigned the application number IL-1834.
2. The first right to be leased is as follows:

**Certificate:** 2252 in the name of Nicholas Monner (confirmed by decree of the State of Oregon for Jefferson County entered of record at Salem, in the Order Record of the State Water Board of the State of Oregon, in Volume 5 at page 57)

**Use:** Irrigation of 29.0 acres, Domestic, and Stock Use

**Priority Date:** 1904 for Tract No. 1; 1897 for Tract No. 2; 1897 for Tract No. 3

**Quantity:** **Rate/Volume/Limit:** 1.50 acre feet per acre during any period of 30 days or 6 acre feet per acre during any irrigation season, and shall be subject to all other conditions and limitations contained in said decree.

**Source:** Trout Creek, a tributary of Deschutes River and Sage Brush Creek, a tributary of Trout Creek

**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 Track No. 1 (Trout Creek):**

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	14 E	WM	9	SW NE	1.50
9 S	14 E	WM	9	SE NW	1.50
Total Acres					3.00

**Authorized Place of Use Track No. 2 (Sage Brush Creek):**

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	14 E	WM	15	SW NW	6.00
9 S	14 E	WM	15	SW SW	5.00
9 S	14 E	WM	15	NW SE	2.75
Total Acres					13.75

**Authorized Place of Use Track No. 3 (Sage Brush Creek):**

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	14 E	WM	9	NE SE	3.50
9 S	14 E	WM	9	NW SE	6.75
9 S	14 E	WM	9	SW NE	2.00
Total Acres					12.25

3. Certificate 2252 does not provide a description of the location of the points of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion for all three tracks is described as follows:

Twp	Rng	Mer	Sec	Measured Distances
9 S	14 E	WM	15	SW CORNER OF SECTION 15

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

**Certificate:** 64158 in the name of Estate of Joseph B. Otter (perfected under Permit S-44271)

**Use:** Irrigation of 8.7 acres

**Priority Date:** May 24, 1979

**Quantity:** **Rate:** 0.22 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-fortieth 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 6.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** Sagebrush Creek, tributary to Trout Creek

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	14 E	WM	9	NE SE	900 FEET SOUTH AND 990 FEET WESTS FROM THE E1/4 CORNER OF SECTION 9

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	14 E	WM	9	SW NE	6.3
9 S	14 E	WM	9	SE NW	0.4
9 S	14 E	WM	9	NE SE	0.1
9 S	14 E	WM	9	NW SE	1.9
Total Acres					8.7

5. Certificates 2252 and 64158 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.
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:  
Trout Creek and Sage Brush Creek, tributary to Deschutes River and Trout Creek  
**Certificate 2252**

**Instream Point:** At the POD (as described in Finding of Fact No. 3)

Track	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
1 (Trout)	1904	0.04	18.0	March 1 through October 31
2 (Sage Brush)	1897	0.17	82.5	
3 (Sage Brush)	1897	0.15	73.5	

Trout Creek, tributary to Deschutes River

**Certificate 64158**

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

Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
5/24/1979	0.11	52.2	March 1 through October 31

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. 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.
10. 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.
11. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do exceed the estimated average natural flow in Mud Springs Creek during the months of July, August, September and October. The Department has determined that the estimated average natural flows may be exceeded due to the water right proposed to be leased is in an Oregon Department of Fish and Wildlife flow restoration priority watershed.
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 Lessors have requested that the lease terminate on October 31, 2025. The lease may commence on the date this final order is signed.
16. The Lessors have requested the option of terminating the lease early with written notice to the Department.

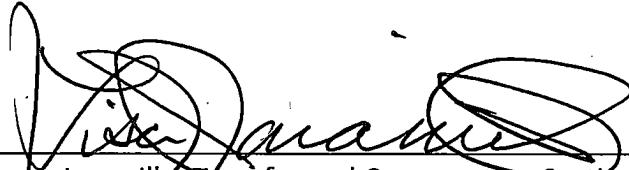
### **Conclusions of Law**

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 October 31, 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 (March 1 through October 31) 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     **MAR 25 2021**    .

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

Mailing date:     **MAR 26 2021**    

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