

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1883, 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

John D. Petshow
2725 NW Gales Creek Road
Forest Grove, Oregon 97116

Co-Lessor

Tualatin Soil and Water Conservation District
(TSWCD)
Attn: Lacey Townsend
7175 NE Evergreen Parkway #400
Hillsboro, Oregon 97124

Findings of Fact

1. On June 21, 2021, TSWCD and John Petshow filed an application to lease a portion of Certificates 66483 and 22077 for instream use. The Department assigned the application number IL-1883.

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

Certificate: 22077 in the name of Charles Newton James (perfected under Permit S-22038)

Use: Irrigation of 0.7 acres

Priority Date: January 19, 1953

Quantity: **Rate:** 0.009 Cubic Foot per Second (CFS)

Volume: 1.75 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 on 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: Gales Creek, tributary to Tualatin River

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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q
1 N	4 W	WM	6	NE SE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 N	4 W	WM	5	NW SW	0.7
Total Acres					0.7

3. Certificate 22077 does not provide measured distances for the location of the points of diversion. Based upon additional information provided by the Department's records, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 N	4 W	WM	5	NW SW	150 FEET NORTH AND 16 DEGREES EAST FROM THE QUARTER CORNER OF THE EAST LINE OF SECTION 6, T1N, R4W

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

Certificate: 66483 in the name of John D. Petshow (perfected under Permit S-43206)

Use: Irrigation of 0.9 acres

Priority Date: June 28, 1972

Quantity: **Rate:** 0.006 Cubic Foot per Second (CFS)

Volume: 2.25 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 on 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. CFS from White's Creek with any deficiency in the available supply to be made up by diversion from Gales Creek.

Source: White's Creek & Gales Creek, tributary to Gales Creek, Tualatin River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 N	5 W	WM	36	NW SE	GALES CREEK – 2540 FEET NORTH AND 260 FEET WEST FROM THE SE CORNER OF DLC 38; AS PROJECTED WITHIN D. HARPER DLC 38
2 N	5 W	WM	36	SE SW	WHITE'S CREEK – 970 FEET NORTH AND 1800 FEET WEST FROM THE SE CORNER OF DLC 38; AS PROJECTED WITHIN D. HARPER DLC 38

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	5 W	WM	36	SW SE	0.9
Total Acres					0.9

5. Certificates 15444 and 23098 do not specify the irrigation season. However, the Tualatin River Decree establishes the irrigation season as May 1 through September 30.
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 has been modified from the lease application to prevent injury and enlargement and is as follows:
 White's Creek, tributary to Gales Creek
 Gales Creek, tributary to Tualatin River

Instream Reach: From the POD's (as described in Findings of Fact No. 3 and 4) to mouth of the source stream

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
66483	6/28/1972	0.006	2.25	May 1 through September 30
22077	1/19/1953	0.009	1.75	June 20 through September 30

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 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, 2025. 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

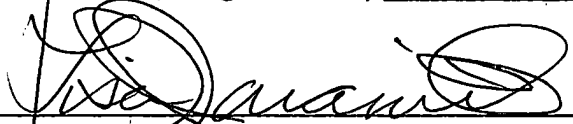
Conclusions of Law

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 approve of the instream lease and terminate on September 30, 2025. 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/or 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 (May 1 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 OCT 11 2021.



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

Mailing date: OCT 12 2021

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