

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificates 21211, 65796, 67086, 67087,) INSTREAM LEASE
and 67088, Polk County)

Authority

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

George W. Gordon
13860 S. Pacific Highway West
Monmouth, Oregon 97361

Findings of Fact

1. George W. Gordon filed an application to lease a portion of Certificates 21211, 65796, 67086, 67087, and 67088 to instream use. The Department assigned the application number IL-895.

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

Certificate: 21211 in the name of GEORGE W GORDON (perfected under Permit S-19332)

Use: IRRIGATION of 10.0 ACRES

Priority Date: JULY 5, 1949

Rate: 0.07 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: SOAP CREEK, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

| Twtp | Rng | Mer | Sec | Q-Q | DLC |
|------|-----|-----|-----|-------|-----|
| 10 S | 4 W | WM | 6 | SE NE | 64 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twtp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 10 S | 4 W | WM | 6 | SW NE | 64 | 1.4 |
| 10 S | 4 W | WM | 6 | SE NE | 64 | 8.6 |

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: 65796 in the name of GEORGE GORDEN (perfected under Permit S-42245)
Use: IRRIGATION of 1.3 ACRES
Priority Date: JULY 15, 1977
Rate: 0.02 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: SOAP CREEK, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|------|-----|-----|-----|-------|-----|---|
| 10 S | 4 W | WM | 6 | SE NE | 65 | 2420 FEET NORTH AND 260 FEET EAST FROM SW CORNER OF SECTION 6 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 10 S | 4 W | WM | 5 | SW NW | 65 | 0.2 |
| 10 S | 4 W | WM | 6 | SE NE | 65 | 1.1 |

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

Certificate: 67086 in the name of GEORGE W GORDON (perfected under Permit S-44137)
Use: IRRIGATION of 7.1 ACRES
Priority Date: AUGUST 25, 1978
Rate: 0.09 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: SOAP CREEK, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|------|-----|-----|-----|-------|-----|---|
| 10 S | 4 W | WM | 5 | NW NW | 65 | POD 1: 1840 FEET NORTH AND 1220 FEET EAST FROM E1/4 CORNER OF SECTION 6 |
| 10 S | 4 W | WM | 6 | SE NE | 64 | POD 2: 420 FEET NORTH AND 1050 FEET WEST FROM E1/4 CORNER OF SECTION 6 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 10 S | 4 W | WM | 5 | NE NW | 65 | 1.6 |
| 10 S | 4 W | WM | 5 | NW NW | 65 | 5.2 |
| 10 S | 4 W | WM | 6 | NE NE | 65 | 0.3 |

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

Certificate: 67087 in the name of GEORGE W GORDON (perfected under Permit S-44956)

Use: IRRIGATION of 2.4 ACRES

Priority Date: FEBRUARY 27, 1980

Rate: 0.03 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: SOAP CREEK, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|------|-----|-----|-----|-------|-----|---|
| 10 S | 4 W | WM | 5 | NE NW | 65 | POD 1: 1840 FEET NORTH AND 1220 FEET EAST FROM E1/4 CORNER OF SECTION 6 |
| 10 S | 4 W | WM | 6 | SE NE | 64 | POD 2: 420 FEET NORTH AND 1050 FEET EAST FROM E1/4 CORNER OF SECTION 6 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 10 S | 4 W | WM | 5 | NE NW | 65 | 1.2 |
| 10 S | 4 W | WM | 6 | SE NE | 65 | 1.2 |

6. The fifth right to be leased is as follows:

Certificate: 67088 in the name of GEORGE W GORDON (perfected under Permit S-45738)

Use: SUPPLEMENTAL IRRIGATION of 9.2 ACRES

Priority Date: MARCH 25, 1981, MAY 21, 1981

Rate: 0.06 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: SOAP CREEK, tributary to LUCKIAMUTE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Survey Coordinates |
|------|-----|-----|-----|-------|-----|---|
| 10 S | 4 W | WM | 6 | SE NE | 64 | 420 FEET NORTH AND 1050 FEET WEST FROM E1/4 CORNER OF SECTION 6 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-----|-------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres |
| 10 S | 4 W | WM | 6 | SW NE | 64 | 1.1 |
| 10 S | 4 W | WM | 6 | SE NE | 64 | 8.1 |

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 instream use is as follows:
SOAP CREEK tributary to LUCKIAMUTE RIVER

Instream Reach: From PODs (as described in Finding of Fact #2 – 6; where multiple PODs in a certificate, then from POD #1) to mouth of Soap Creek

| Certificate | Priority Date | Instream Rate (cfs) | Period Protected Instream |
|-------------------------|---------------------------------|---------------------|------------------------------|
| 21211 | JULY 5, 1949 | 0.07 | June 23 through September 30 |
| 65796 | JULY 15, 1977 | 0.02 | |
| 67086 | AUGUST 25, 1978 | 0.09 | |
| 67087 | FEBRUARY 27, 1980 | 0.03 | |
| Total of Primary Rights | | 0.21 | |
| 67088* | MARCH 25, 1981, MAY 21, 1981 | 0.06 | June 23 through September 30 |

*Supplemental to Certificate 21211

9. Certificate 67088 is supplemental to Certificate 21211. The portion of Certificate 67088 being leased instream shall only be protected instream if the full rate and duty under Certificate 21211 are not available during the period for which water is being leased instream.
10. 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.
11. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.
12. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
13. The lease will terminate on September 30, 2012.
14. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

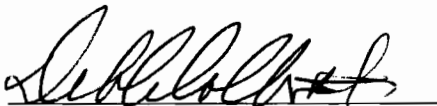
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on September 30, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by May 23 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 9th day of May 2008.


FA Phillip C. Ward, Director

Mailing date: MAY 14 2008