

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1501, Polk County) FINAL ORDER ON 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

Helen Gordon
13860 S. Pacific Highway West
Monmouth, Oregon 97361

Co-Lessor

Judy Kangas
13860 S. Pacific Highway West
Monmouth, Oregon 97361

Findings of Fact

1. On January 6, 2016, Helen Gordon and Judy Kangas, filed an application to lease the entirety of Certificates 21211, 67086, 67087, and 67088 and a portion of Certificate 65796 for instream use. The Department assigned the application number IL-1501.
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 30.0 acres
Priority Date: July 5, 1949
Quantity: **Rate:** 0.22 Cubic Foot per Second (CFS)
Volume: 75.0 Acre-Feet (AF)
Limit: ONE-EIGHTIETH 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 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Soap Creek, tributary to Luckiamute River

Authorized Point of Diversion (POD):

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	6	NE NE	64	6.6

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.

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	6	NW NE	64	2.2
10 S	4 W	WM	6	SW NE	64	5.4
10 S	4 W	WM	6	SE NE	64	15.8
Total Acres						30.0

3. Certificate 21211 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Department, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	4 W	WM	6	SE NE	64	420 FEET NORTH AND 1050 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 6

4. The portion of 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 36.0 acres
Priority Date: July 15, 1977
Quantity: **Rate:** 0.45 Cubic Foot per Second (CFS)
Volume: 90.0 Acre-Feet (AF)
Limit: ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: Soap Creek and Gorden Reservoir constructed under Permit R-6689, tributary to Luckiamute River

Authorized Point of Diversion (POD):

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	5	NW NW	65	13.2
10 S	4 W	WM	5	SW NW	65	20.0
10 S	4 W	WM	6	NE NE	65	2.8
Total Acres						36.0

5. 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 42.9 acres
Priority Date: August 25, 1978
Quantity: **Rate:** 0.54 Cubic Foot per Second (CFS)
Volume: 107.25 Acre-Feet (AF)
Limit: ONE-EIGHTIETH of one cubic foot per second FROM DIRECT FLOW (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: Soap Creek and Gordon Reservoir, constructed under Permit R-7823, tributary to Luckiamute River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	4 W	WM	6	SE NE	64	POINT 1 – 420 FEET NORTH AND 1050 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 6
10 S	4 W	WM	5	NW NW	65	POINT 2 – 1840 FEET NORTH AND 1220 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 6

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	5	NE NW	65	10.0
10 S	4 W	WM	5	NW NW	65	25.6
10 S	4 W	WM	6	NE NE	65	7.3
Total Acres						42.9

6. 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 61.0 acres
Priority Date: February 27, 1980
Quantity: **Rate:** 0.76 Cubic Foot per Second (CFS)
Volume: 152.5 Acre-Feet (AF)
Limit: ONE-EIGHTIETH of one cubic foot per second OF DIRECT FLOW (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Source: Soap Creek, tributary to Luckiamute River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	4 W	WM	6	SE NE	64	POINT 1 – 420 FEET NORTH AND 1050 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 6
10 S	4 W	WM	5	NW NW	65	POINT 2 – 1840 FEET NORTH AND 1220 FEET EAST FROM THE EAST 1/4 CORNER OF SECTION 6

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	6	NE NE	64	18.5
10 S	4 W	WM	6	NW NE	64	23.1
10 S	4 W	WM	6	NE NE	65	7.2
10 S	4 W	WM	6	SE NE	65	3.0
10 S	4 W	WM	5	NE NW	65	5.6
10 S	4 W	WM	5	SW NW	65	0.2
10 S	4 W	WM	5	SE NW	65	3.4
Total Acres						61.0

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

Certificate: 67088 in the name of George W. Gordon (perfected under Permit S-45738)
Use: Irrigation of 7.5 acres and Supplemental Irrigation of 28.8 acres

Priority Date: May 21, 1981 for 0.09 CFS and March 25, 1981 for 0.16 CFS
Quantity: **Rate:** 0.25 Cubic Foot per Second (CFS)
Volume: 90.75 Acre-Feet (AF)
Limit: ONE-EIGHTIETH of one cubic foot per second OF DIRECT FLOW (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Soap Creek, tributary to Luckiamute River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	4 W	WM	6	SE NE	64	420 FEET NORTH AND 1050 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 6

Authorized Place of Use:

Primary						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	6	NW NE	64	5.0
10 S	4 W	WM	6	SW NE	64	2.5
Total Acres						7.5

Supplemental						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	4 W	WM	6	NE NE	64	6.7
10 S	4 W	WM	6	NW NE	64	3.4
10 S	4 W	WM	6	SW NE	64	5.6
10 S	4 W	WM	6	SE NE	64	13.1
Total Acres						28.8

8. Certificates 21211, 65796, 67086, 67087, and 67088 do not specify the irrigation season. However, the Luckiamute River Decree establishes the irrigation season for the area as April 1 through September 30.
9. 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.
10. The instream use is as follows:
 Soap Creek, tributary to Luckiamute River

Instream Point: At POD's (as described in Findings of Fact No. 3, 4, 5(Point 1), 6(Point 1), 7)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
21211	July 5, 1949	0.22	75.0	June 23 through September 30
65796	July 15, 1977	0.45	90.0	
67086	August 25, 1978	0.54	107.2	
67087	February 27, 1980	0.76	152.5	
67088	May 21, 1981	0.09	18.7	
Total Primary Rights		2.06	443.4	
67088*	March 25, 1981	0.16	72.0	

*Supplemental to Certificate 21211

11. A portion of Certificate 67088 is supplemental to Certificate 21211. The supplemental 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.
12. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.
13. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
14. The protection of flows at the authorized points 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.
15. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.
16. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.
17. 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.
18. 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.
19. 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.

20. The Lessor has requested that the lease terminate on September 30, 2020. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2016 being the first day of the irrigation season.
21. The Lessor has requested the option of terminating the lease early with written notice to the Department.

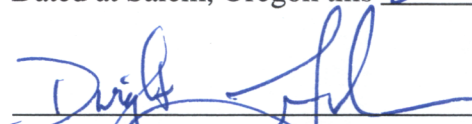
Conclusions of Law

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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of 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 on April 1, 2016. For multiyear leases, the lessor *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 23 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 25 day of February, 2016.



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.

Mailing date: MAR 01 2016