

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1979, Jackson 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

Carol Ross
100 Sixth Street
Ashland, Oregon 97520

Lessee

Trout Unlimited (TU)
1777 N. Kent Street, Suite 100
Arlington, VA 22209

Findings of Fact

1. On May 26, 2023, Carol Ross and TU filed an application involving the entirety of Certificate 17218 for instream use. The Department assigned the application number IL-1979.

2. The right to be leased is as follows:

Certificate: 17218 in the name of Aden C. Spencer (confirmed by Little Butte Creek decree in Jackson County recorded in Volume 14, Page 498)

Use: Irrigation of 50.0 acres

Season of Use: April 1 to October 1

Priority Date: 1904

Quantity: **Rate:** 0.90 Cubic Foot per Second (CFS)

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 0.90 cubic foot per second; measured at the head of the ditch or the point where the same leaves the natural stream each year.

Source: West Branch of Latgawa Creek, tributary to Latgawa Creek (Formerly known as Dead Indian 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:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------------|-----|-----|-----|-------|-------|
| 38 S | 3 E | WM | 20 | SW NE | 11.0 |
| 38 S | 3 E | WM | 20 | SE NE | 5.0 |
| 38 S | 3 E | WM | 20 | NE NW | 9.0 |
| 38 S | 3 E | WM | 20 | NW NW | 5.0 |
| 38 S | 3 E | WM | 20 | SE NW | 20.0 |
| Total Acres | | | | | 50.0 |

3. Certificate 17218 does not provide a description of the location of the point of diversion. Based upon additional information provided by the Lessor, for purposes of this instream lease, the point of diversion is described as follows:

| Twp | Rng | Mer | Sec | Q-Q | Gov't Lot | Latitude/Longitude |
|------|-----|-----|-----|-------|-----------|---|
| 38 S | 3 E | WM | 20 | SW NE | 4400 | LATITUDE: 42.252626 LONGITUDE: -122.491371 |

4. Certificate 17218 does not identify a duty per acre; the duty for other rights in the area is 4.5 acre feet per acre, however, for the purposes of the water being leased instream in this application, the Lessor and Lessee have identified the duty to be limited to 3.4 acre feet per acre for beneficial use and will be calculated as such.
5. There is a monitoring location on the source creek which is downstream of the proposed point of diversion that will be used to monitor the water being protected instream. Based upon additional information provided by Department records and the Watermaster, for purposes of this instream lease, the point of diversion that will be monitored for the protected water instream is described as follows:

| Twp | Rng | Mer | Sec | Q-Q | Latitude/Longitude |
|------|-----|-----|-----|-------|--|
| 38 S | 3 E | WM | 15 | NE SE | LATITUDE: 42.247733934 LONGITUDE: -122-4678126775 |

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. At the full instream rate and volume requested, water may only be protected instream over a 95 day period. The full instream period requested by the Lessor and Lessee, April 1 through October 31, is 184 days. To maximize the instream use and prevent enlargement, the Department has reduced the instream rate to protect the water instream over the full irrigation season as requested in the application.

8. The instream use is as follows:

West Branch of Latgawa Creek, tributary to Latgawa Creek

Instream Reach: At the POD (as described in Finding of Fact No. 5)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|---------------------------|
| 17218 | 1904 | 0.47 | 170.0 | April 1 through October 1 |

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. 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.
11. 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.
12. 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 the month of October.
13. On Latgawa Creek there are two instream water rights, Certificate 72736 and 72737 established under ORS 537.336 for the purposes of providing stream flows for resident cutthroat and rainbow trout. The certificates carry priority dates of October 1, 1992.
14. The instream right established by this instream lease shall replace a portion of instream water rights established pursuant to ORS 537.336 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.
15. 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.
16. 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.
17. 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.

18. The Lessor and Lessee have requested that the lease begin April 2023 and terminate in October 2028. However, the term of an instream lease may only be a period of five years, therefore, the lease will commence on the date this final order is signed and terminate on October 1, 2027.
19. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

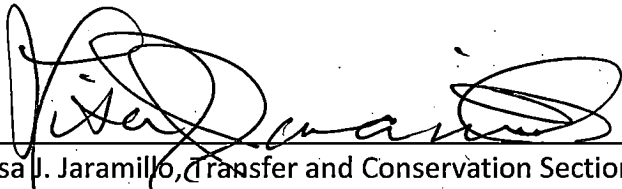
Conclusions of Law

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 1, 2027. For multiyear leases, the lessor and/or lessee *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 (April 1 to October 1) 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 AUG / 4 2023



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Mailing date: AUG / 3 2023

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