

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

In the Matter of Instream Lease Application)
IL-1990, Polk County) DETERMINATION and 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

Rainbow Hill Ranch Inc.
14190 Airlie Road
Monmouth, OR 97361

Findings of Fact

1. On June 20, 2023, Rainbow Hill Ranch Inc. filed an application involving the entirety of Certificates 50861 and 64089, and a portion of Certificates 91320, 48484, 61819, 68321 for instream use. The Department assigned the application number IL-1990.

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

Certificate: 50861 in the name of Dorothy Y. Davies (perfected under Permit S-41219)

Use: Irrigation of 18.8 acres

Priority Date: December 13, 1976

Quantity: **Rate:** 0.24 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 1/80 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: Luckiamute River, tributary to Willamette 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	Lot	Measured Distances
9 S	5 W	WM	14	SW SE	2	470 FEET NORTH AND 1870 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	23	NW NE	62	0.1
9 S	5 W	WM	23	SW NE	62	11.5
9 S	5 W	WM	23	SE NW	62	7.2
Total Acres						18.8

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

Certificate: 64089 in the name of Dorothy Davies (perfected under Permit S-19883)
Use: Irrigation of 88.6 acres
Priority Date: October 12, 1950
Quantity: **Rate:** 0.69 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 1/80 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: Luckiamute River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
9 S	5 W	WM	14	SW SE	2	390 FEET NORTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	23	NE NE	62	27.6
9 S	5 W	WM	23	NW NE	62	20.0
9 S	5 W	WM	23	SW NE	62	22.2
9 S	5 W	WM	23	SE NE	62	14.8
9 S	5 W	WM	23	NE SE	62	0.4
9 S	5 W	WM	23	NW SE	62	3.6
Total Acres						88.6

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

Certificate: 91320 in the name of Steve Hamilton (perfected under Permit S-54496)
Use: Irrigation of 90.1 acres
Priority Date: August 29, 2007
Period of Use: May 1 through June 30
Quantity: **Rate:** 1.05 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, is limited to a diversion of 1/80 of one cubic foot per second, and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Luckiamute River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
9 S	5 W	WM	19	NE SW	2	POD 1: 3930 FEET NORTH AND 840 FEET WEST FROM THE SW CORNER OF DLC 70

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	5 W	WM	30	NE NW		0.2
9 S	5 W	WM	30	NW NW		0.9
9 S	5 W	WM	30	SW NW	1	26.6
9 S	5 W	WM	30	SE NW		7.3
9 S	6 W	WM	25	NE NE		1.1
9 S	6 W	WM	25	NW NE	1	1.2
9 S	6 W	WM	25	SW NE	2	26.0
9 S	6 W	WM	25	SE NE	3	26.8
Total Acres						90.1

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

Certificate: 48484 in the name of Mary Isabel Weisensee (perfected under Permit S-21841)

Use: Irrigation of 29.8 acres

Priority Date: October 10, 1952

Quantity: **Rate:** 0.32 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 1/80 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: Luckiamute River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
9 S	6 W	WM	26	SE NW	3	POD 1: 430 FEET NORTH AND 320 FEET WEST FROM THE CENTER OF SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Lot	Acres
9 S	6 W	WM	26	SW NE	49		7.2
9 S	6 W	WM	26	SW NE		2	11.5
9 S	6 W	WM	26	SE NW		3	4.3
9 S	6 W	WM	26	NE SW		6	6.8
Total Acres							29.8

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

Certificate: 61819 in the name of Weisensee Ranch Incorporated, Joe Weisensee, Manager (perfected under Permit S-44395)

Use: Irrigation of 7.4 acres

Priority Date: August 21, 1979

Quantity: **Rate:** 0.09 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 1/80 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: Luckiamute River, tributary to Willamette River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Lot	Measured Distances
9 S	6 W	WM	26	SE NW		3	430 FEET NORTH AND 320 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 26
9 S	6 W	WM	26	NE SW	50		330 FEET SOUTH AND 1300 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
9 S	6 W	WM	26	SE NE	1	3.2
9 S	6 W	WM	26	NE SW	6	4.2
Total Acres						7.4

7. The portion of the sixth right to be leased is as follows:

Certificate: 68321 in the name of Verda Cook (perfected under Permit S-32204)

Use: Irrigation of 5.1 acres

Priority Date: March 13, 1967

Quantity: **Rate:** 0.06 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, is limited to 1/80 of one cubic foot per second, or its equivalent and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Little Luckiamute River, tributary to Luckiamute River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	8	NE SW	50	200 FEET NORTH AND 400 FEET EAST FROM THE NW CORNER OF DLC 56
9 S	5 W	WM	8	NW SE	56	200 FEET SOUTH AND 1630 FEET EAST FROM THE NW CORNER OF DLC 56

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
9 S	5 W	WM	8	SE NW	50	3.1
9 S	5 W	WM	8	NE SW	50	2.0
Total Acres						5.1

8. Certificates 50861, 64089, 48484, 61819, and 68321 do not specify an irrigation season; however, the Luckiamute River Decree establishes the irrigation season for the area as April 1 through September 30 of each year.
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 clarified from the lease application to prevent injury and enlargement and is as follows:

Luckiamute River, tributary to Willamette River

Instream Point #1: At the POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
50861	12/13/1976	0.24	47.0	June 23 to September 30

Instream Point #2: At the POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
64089	10/12/1950	0.69	221.5	April 23 to September 30

Instream Point #3: At the POD (as described in Finding of Fact No. 4)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
91320	8/29/2007	1.05	225.3	May 1 to June 30

Instream Point #4: At the POD (as described in Finding of Fact No. 5)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
48484	10/10/1952	0.32	74.5	June 5 to September 30

Instream Point #5: At the POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
61819	8/21/1979	0.09	18.5	June 19 to September 30

Little Luckiamute River, tributary to Luckiamute River

Instream Point #1: At the POD (as described in Finding of Fact No. 7)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
68321	3/13/1967	0.06	12.8	June 23 to September 30

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
12. The protection of flows at the authorized points of diversion are 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 rights would re-enter the river downstream of the points of the instream water right.
13. 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.
14. 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.
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 has requested that the lease terminate October 2023. The lease must terminate the last day of the irrigation season which is September 30, 2023. The lease may commence on the date this final order is signed.
19. The Lessor has requested the option of terminating the lease early with written notice to the Department.

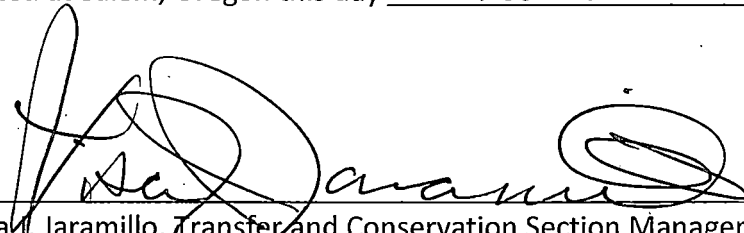
Conclusions of Law

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 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 September 30, 2023.

Dated at Salem, Oregon this day **AUG / 3 2023**



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

Mailing date: **AUG / 4 2023**

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