

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-341, Benton 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

Barry Hendrix
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Seal Rock, OR. 97376
hbgconsulting@gmail.com

Findings of Fact

1. On June 24, 2019, Barry Hendrix, filed an application to renew instream lease IL-341, involving the entirety of Certificates 47573 and 27268 for instream use.
2. The first right to be leased is as follows:

Certificate: 47573 in the name of JOHN F. SAPP, C/O LOBSTER VALLEY FARMS
(perfected under Permit S-7893)

Use: Irrigation of 47.0 acres

Priority Date: March 25, 1927

Quantity: **Rate:** 0.59 Cubic Foot per Second (CFS)
Volume: 117.5 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 1/2 acre feet per acre for each acre irrigated during the
irrigation season of each year.

Source: Lobster Creek and Coal Bank and Coal Bank Creek, tributary of Alsea
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 | Measured Distances |
|------|-----|-----|-----|-------|---|
| 15 S | 8 W | WM | 4 | SE SE | COAL BANK CREEK: 5.9 CHAINS WEST AND 4.4 CHAINS NORTH FROM THE NE CORNER OF SECTION 9 |
| 15 S | 8 W | WM | 9 | NE NE | LOBSTER CREEK: 5.4 CHAINS WEST AND 13.6 CHAINS SOUTH FROM THE NE CORNER OF SECTION 9 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|-------|-----|-----|-----|-------|-------|
| 15 S | 8 W | WM | 4 | SW NE | 10.0 |
| 15 S | 8 W | WM | 4 | SW NW | 16.0 |
| 15 S | 8 W | WM | 4 | SE NW | 10.0 |
| 15 S | 8 W | WM | 4 | NE SW | 4.0 |
| 15 S | 8 W | WM | 4 | NW SW | 7.0 |
| Total | | | | | 47.0 |

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

Certificate: 27268 in the name of LOBSTER VALLEY FARMS (perfected under Permit S-23512)

Use: Irrigation of 47.2 acres

Priority Date: March 18, 1955

Quantity: **Rate:** 0.59 Cubic Foot per Second (CFS)

Volume: 118.0 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 1/2 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Lobster Creek, tributary to Alsea River

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|-----|-----|-----|-------|
| 15 S | 8 W | WM | 5 | NE SW |
| 15 S | 8 W | WM | 6 | NE SE |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 15 S | 8 W | WM | 5 | NE SW | 10.0 |
| 15 S | 8 W | WM | 5 | NW SW | 24.8 |
| 15 S | 8 W | WM | 6 | NE SE | 11.8 |
| 15 S | 8 W | WM | 6 | SE SE | 0.6 |
| Total | | | | | 47.2 |

4. Certificates 47573 and 27268 do not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

5. Coal Bank Creek is more accurately described as a tributary of Lobster Creek. Lobster Creek is a tributary of Five Rivers, which is a tributary to the Alsea River.

6. A portion of the water diverted at the POD's return to Lobster Creek below the POD and is available to downstream water right holders. To prevent injury and enlargement, the quantity of water that may be protected instream has been reduced by 50%.
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:
LOBSTER CREEK, tributary to FIVE RIVERS

Instream Point: At the PODs (as described in Findings of Fact No. 2 and 3)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|----------------|---------------------|----------------------|------------------------------|
| 47573 | March 25, 1927 | 0.59 | 117.5 | June 23 through September 30 |
| 27268 | March 18, 1955 | 0.59 | 118.0 | |

Instream Reach: Immediately below the PODs to the mouth of Lobster Creek

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|----------------|---------------------|----------------------|------------------------------|
| 47573 | March 25, 1927 | 0.295 | 59.0 | June 23 through September 30 |
| 27268 | March 18, 1955 | 0.295 | 59.0 | |

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
10. The protection of flows at the authorized points of diversion/ immediately below the points of diversion and within the 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 POD. The quantity of water to be protected instream has been reduced to account for return flows.
11. 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.
12. 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.
13. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.

14. 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.
15. 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.
16. The Lessor has requested that the lease terminate on October 31, 2024. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on March 1, 2020, being the first day of the irrigation season.
17. The Lessor has requested the option of terminating the lease early with written notice to the Department.

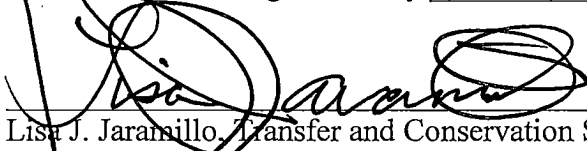
Conclusions of Law

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 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 March 1, 2020 and terminate on October 31, 2024. 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 day AUG 12 2019



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

Mailing date: AUG 13 2019

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.