

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1805, Douglas 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**

Yvonne Silveira  
5620 Fort McKay Road  
Oakland, OR. 97462

**Findings of Fact**

1. On April 3, 2020, Yvonne Silveira filed an application to lease the entirety of Certificates 22912 and 87279 and a portion of Certificate 87280 for instream use. The Department assigned the application number IL-1805.
2. 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.

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

**Certificate:** 22912 in the name of Esselstrom Logging Co. (perfected under Permit S-19130)  
**Use:** Irrigation of 18.0 acres  
**Priority Date:** December 9, 1949  
**Quantity:** **Rate:** 0.22 Cubic Foot per Second (CFS)  
**Volume:** 45.0 Acre-Feet (AF)  
**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 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

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.

exceed 2 ½ acre feet per acre for each acre irrigated during the irrigation season of each year

**Source:** Calapooya Creek, a tributary of Umpqua River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	AS PROJECTED WITHIN BURK DLC 42

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	NE SW	42	8.8
25 S	6 W	WM	29	SE NW	42	9.2
Total Acres						18.0

4. Certificate 22912 does not provide the measured distance of the point of diversion, however information is available describing the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

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

**Certificate:** 87279 in the name of Kurt M. and Veronica Spencer and Northwest Farm Credit Services, PCA. (perfected under Permit S-21982)

**Use:** Irrigation of 0.9 acre

**Priority Date:** December 15, 1952

**Quantity:** **Rate:** 0.01 Cubic Foot per Second (CFS)

**Volume:** 2.25 Acre-Feet (AF)

**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 one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year and shall be further limited to a diversion of not to exceed 2 ½ acre feet per acre for each acre irrigated during the irrigation season of each year

**Source:** Calapooya Creek, tributary to Umpqua River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	110 FEET NORTH AND 1220 FEET EAST FROM THE SW CORNER OF DLC 42

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	SW NE	42	0.9

6. The portion of the third right to be leased

**Certificate:** 87280 in the name of Kurt M. and Veronica Spencer and Northwest Farm Credit Services, FLCA. (perfected under Permit S-45243)

**Use:** Irrigation of 3.9 acres

**Priority Date:** January 3, 1980

**Quantity:** **Rate:** 0.049 Cubic Foot per Second (CFS)

**Volume:** 9.75 Acre-Feet (AF)

**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 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 ½ acre feet per acre for each acre irrigated during the irrigation season of each year

**Source:** Calapooya Creek, tributary to Umpqua River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	6 W	WM	29	NW SE	42	110 FEET NORTH AND 1220 FEET EAST FROM THE SE CORNER OF DLC 42

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	6 W	WM	29	SW NE	42	1.7
25 S	6 W	WM	29	NW SE	42	2.2
Total Acres						3.9

7. Certificates 22912, 87279, and 87280 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.

8. The instream use is as follows:

Calapooya Creek, tributary to Umpqua River

**Instream Reach:** From the PODs (as described in Finding of Facts Nos. 4, 5, and 6) to the mouth of Calapooya Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
22912	December 9, 1949	0.220	45.00	June 20 through September 30
87279	December 15, 1952	0.010	2.25	June 10 through September 30
87280	January 3, 1980	0.049	9.75	June 23 through September 30
Totals		0.279	57.00	

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 within the proposed 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 reach of the instream water right.
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 significantly affect land use 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 may commence on the date this final order is signed.
17. The Lessor has requested the option of terminating the lease early with written notice to the Department.

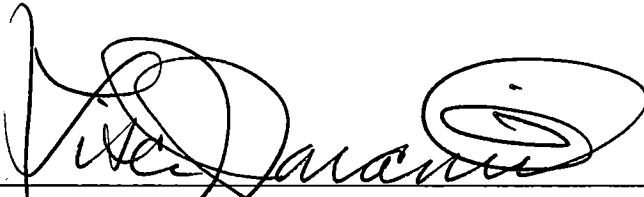
## Conclusions of Law

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 upon approval of the instream lease and terminate on October 31, 2024. For multiyear leases, the lessor *shall* have the option of terminating the lease any time with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (June 10 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 JUN 08 2020.



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

Mailing date: JUN 09 2020

*This document was prepared by Joan Smith. If you have any questions, please call 503-986-0892.*