

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1860, Douglas 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

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Co-Lessor

Lookingglass Olalla Water Control District
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Findings of Fact

1. On April 22, 2021, John and Lynn Schofield and Lookingglass Olalla Water Control District filed an application to lease a portion of Certificate 93735 for instream use. The Department assigned the application number IL-1860.
2. The portion of the right to be leased is as follows:

Certificate: 93735 in the name of Lookingglass Olalla Water Control District (perfected under Permit S-46786)
Use: Irrigation of 90.3 acres and Supplemental Irrigation of 0.5 acre
Priority Date: March 17, 1981
Quantity: **Rate:** 1.135 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 a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: Ben Irving Reservoir, constructed under Permit R-7256 and enlarged under Permit R-8444, tributary to Berry Creek
POD 23 – Olalla Creek, tributary to Looking Glass Creek

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 Re-Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
29 S	7 W	WM	20	SE NW	RESERVOIR (POD 2) 930 FEET NORTH AND 2170 FEET EAST FROM THE W1/4 CORNER OF SECTION 20
28 S	7 W	WM	34	SW SW	POD 23 – 175 FEET NORTH AND 375 FEET EAST FROM THE SW CORNER OF SECTION 34

Authorized Place of Use:

Use	Twp	Rng	Mer	Sec	Q-Q	Acres
IR	28 S	7 W	WM	34	NE SW	5.8
IR	28 S	7 W	WM	34	SE SW	3.2
IS	28 S	7 W	WM	34	SE SW	0.5
IR	28 S	7 W	WM	34	NE SE	16.4
IR	28 S	7 W	WM	34	NE SE	1.6
IR	28 S	7 W	WM	34	NE SE	1.0
IR	28 S	7 W	WM	34	NW SE	13.7
IR	28 S	7 W	WM	34	SW SE	17.2
IR	28 S	7 W	WM	34	SE SE	13.2
IR	28 S	7 W	WM	34	SE SE	4.5
IR	28 S	7 W	WM	34	SE SE	11.3
IR	28 S	7 W	WM	35	NW SW	0.3
IR	28 S	7 W	WM	35	SW SW	0.4
IR	29 S	7 W	WM	3	NE NE	1.7
Total Acres						90.8

- Certificate 93735 does 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.
- 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.
- The instream use is clarified to prevent injury and enlargement and maximize the instream use period and is as follows:
Olalla Creek, tributary to Looking Glass Creek

Instream Point: At the POD 23 (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
93735	3/17/1981	0.62	227.0	March 1 through August 31

- The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
- 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.
8. 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.
 9. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
 10. 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.
 11. 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.
 12. 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.
 13. The Lessor and Co-Lessor have requested that the lease terminate on October 31, 2025. The lease may commence on the date this final order is signed.
 14. The Lessor and Co-Lessor have requested the option of terminating the lease early with written notice to the Department.

Conclusions of Law

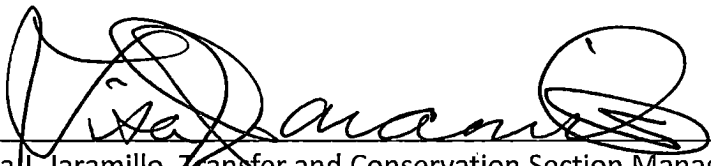
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 31, 2025. For multiyear leases, the lessors *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 (March 1 through August 31) 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 16 2021.



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

Mailing date: JUN 17 2021

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