



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

Twp	Rng	Mer	Sec	Q-Q	DLC
10 S	6 W	WM	20	NE NE SW NE NW SE	Norton DLC 43

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	6 W	WM	16	SW SW	43	2.6
10 S	6 W	WM	17	SE SE	43	0.8
10 S	6 W	WM	20	NE NE	43	21.6
10 S	6 W	WM	20	SW NE	43	8.5
10 S	6 W	WM	20	SE NE	43	4.8
10 S	6 W	WM	20	NE SE	43	0.6
10 S	6 W	WM	20	NW SE	43	1.5
10 S	6 W	WM	21	NW NW	43	21.3
10 S	6 W	WM	21	SW NW	43	2.0
Total Acres						63.7

4. Certificate 28041 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rate and duty allowed, the total rate and duty for the water right would be exceeded. In the event water was diverted simultaneously to all authorized lands and uses described in the right at the maximum rate and duty allowed at the POD, the portion of the right involved in this instream lease would be limited as described above.
5. The portion of the second right to be leased is as follows:

**Certificate:** 54648 in the name of Jack Mahana (perfected under Permit S-39639)

**Use:** Supplemental irrigation of 12.7 acres

**Priority Date:** October 18, 1974

**Quantity:** **Rate:** 0.16 Cubic Foot per Second (CFS) (proportioned rate)  
**Volume:** 31.75 Acre-Feet (AF)  
**Limit:** One-eightieth on one CFS per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 AF 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:** LUCKIAMUTE RIVER, tributary of the WILLAMETTE RIVER

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

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	6 W	WM	20	NW SE	Norton DLC 43	2310 FEET NORTH AND 1650 FEET WEST FROM THE SE CORNER OF SECTION 20

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	6 W	WM	20	SW NE	43	8.5
10 S	6 W	WM	20	SE NE	43	2.3
10 S	6 W	WM	20	NE SE	43	0.6
10 S	6 W	WM	20	NW SE	43	1.3
Total Acres						12.7

6. Certificates 28041 and 54648 do not specify the irrigation season. However, the Luckiamute River Decree establishes the irrigation season for the area as April 1 through September 30.
7. Certificate 28041 does not identify a specific location for the point of diversion in the NW SE of Section 20. However, it appears from the final proof maps that Certificate 28041 and 54648 have the same point of diversion in the NW SE. Therefore, the instream point will be located at the point of diversion identified above under Certificate 54648.
8. 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.
9. The instream use has been modified from the renewal application and is as follows:  
LUCKIAMUTE RIVER, tributary to WILLAMETTE RIVER

**Primary Instream:**

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

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
28041	July 23, 1951	0.13	47.55	April 1 through September 30

**Supplemental Instream:**

**Instream Point:** At the POD

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
54648	Oct. 18, 1974	0.09	31.75	April 1 through September 30

10. Other conditions to prevent injury and enlargement are:

Certificate 54648 is supplemental to a portion of Certificate 28041. The portion of Certificate 54648 leased instream as supplemental shall only be protected instream if the full rate and duty under Certificate 28041 are not available during the period in which water is leased instream. Certificate 28041 is a deficient water right. A portion of Certificate 54648 may also be protected instream as primary to bring the rate and duty allowed under the primary right, Certificate 28041, for 12.7 acres up to the full rate and duty allowed, being 1/80 cfs per acre and 2.5 AF per acre.

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 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.
13. 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.
14. 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.
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 in September of 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.

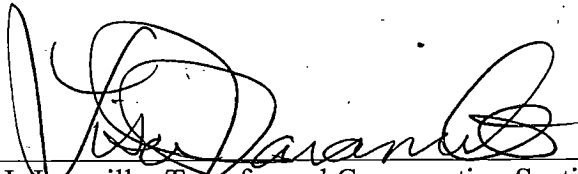
### **Conclusions of Law**

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 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 September 30, 2023. 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, April 1 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.

Signed at Salem, Oregon this day April 11, 2019.



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

Mailing date: APR 12 2019

*This document was prepared by Corey Courchane. If you have any questions, please call 503-986-0825.*