

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

In the Matter of Instream Lease Application ) DETERMINATION and FINAL ORDER ON  
IL -1864, Umatilla 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**

Zack Journot  
Shelby Journot  
67005 East Birch Creek Rd.  
Pilot Rock, OR 97868

**Lessee**

Trout Unlimited (TU)  
Aaron Penvose, Director  
621 Main St. Suite C  
Lewiston, ID 83501  
[apenvose@tu.org](mailto:apenvose@tu.org)

**Findings of Fact**

1. On May 6, 2022, Zack and Shelby Journot and TU, filed an application to renew instream lease IL-1864, involving lease a portion of Certificate 86840 for instream use.
2. The portion of the right to be leased is as follows:

**Certificate:** 86840 in the name of Darrled and Sharon Fleenor (Confirmed by decree in Volume 3, at Page 127)

**Use:** Irrigation of 4.2 acres

**Priority Date:** 1873, 1882, 1895

**Quantity:** **Rate:** 0.052 Cubic Foot per Second (CFS)

**Volume:** 18.9 Acre-Feet (AF)

**Limit:** The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed a rate of flow of 0.052 cubic foot per second, subject to the provisions of paragraph 33 of said decree.

**Source:** East Birch Creek, tributary to Birch Creek

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

*Not described on Certificate*

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 Place of Use:**

Priority Date	Twp	Rng	Mer	Sec	Q-Q	Acres
1873	1 S	32E	WM	21	SW NW	0.85
1882	1 S	32E	WM	21	SW NW	2.12
1895	1 S	32E	WM	21	SW NW	1.23
Total Acres						4.20

3. The applicant provided additional information regarding the location of the point of diversion as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Tax lot	Survey Coordinates
1 S	32 E	WM	21	SW NW	1200	N 45*27.883 W118*49.696

4. Certificate 86840 does not specify a rate and duty limit per acre. However, the Umatilla River Decree specifies the distribution directions and rate limit as 1/80<sup>th</sup> cfs per acre during the irrigation season and therefore will be limited to 1/80<sup>th</sup> cfs per acre. The duty limit per acre is not described in the decree, and the duty requested in the application equals to 4.5 acre feet per acre, the Department agrees this is an appropriate duty limit per acre for purposes of this instream lease.
5. 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.
6. The instream use is as follows:

East Birch Creek, tributary to Birch Creek

**Instream Reach:** From the POD (as described in Finding of Fact No. 3) to the confluence of East and West Birch Creek

Certificate	Priority Dates	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
86840	1873, 1882, 1895	0.052	18.90	April 1- October 1, 2022

7. Other conditions to prevent injury and enlargement are:

The amount of water to which this instream use is entitled is limited to the quantities available at the original point of diversion.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Lessors and Lessee have requested that the lease terminate on October 1, 2022. The lease may commence on the date this final order is signed.

### **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 October 1, 2022.

Dated at Salem, Oregon this day JUN 09 2022



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

Mailing date: JUN 10 2022

*This document was prepared by Stacy  
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