

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

In the Matter of Instream Lease Application )  
IL-1327, Certificate 82056, Wasco County ) DETERMINATION and  
 ) FINAL ORDER ON PROPOSED  
 ) INSTREAM LEASE

**Authority**

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. OAR Chapter 690, Division 077 implements the statutes and provides the Department’s procedures and criteria for evaluating instream lease applications.

**Lessor**

Tom and Joyce Akeson  
81133 Dufur Valley Rd.  
Dufur, OT 97021

**Lessee**

The Freshwater Trust (TFT)  
65 SW Yamhill St., Suite 300  
Portland, OR 97204  
[natasha@thefreshwatertrust.org](mailto:natasha@thefreshwatertrust.org)

**Findings of Fact**

- 1. On June 28, 2013, TFT and Tom and Joyce Akeson filed an application to lease a portion of Certificate 82056 for instream use. The Department assigned the application number IL-1327.
- 2. On August 27, 2013, TFT requested to modify the instream period requested to March 1 through October 29.
- 3. The portion of the right to be leased is as follows:

**Certificate:** 82056 in the name of Rick Cantrell (perfected under permit S-40564)  
**Use:** IRRIGATION of 39.5 ac, being 11.0 acres from Ramsey Creek and 28.5 acres form Fifteenmile Creek  
**Priority Date:** April 27, 1976  
**Quantity:** **Rate:** 0.5 Cubic Foot per Second (CFS), being 0.36 CFS from Fifteenmile Creek and 0.14 CFS from Ramsey Creek  
**Volume:** 118.5 AF  
**Limit:** is limited to 1/80<sup>th</sup> cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year  
**Source:** RAMSEY CREEK AND FIFTEENMILE CREEK, tributary to the COLUMBIA 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 Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	13 E	WM	6	NW NW	RAMSEY CR – 140 FEET SOUTH AND 350 FEET EAST FROM THE NW CORNER OF SECTION 6
1 S	13 E	WM	31	SW SE	FIFTEENMILE CR – 20 FEET NORTH AND 3540 FEET EAST FROM THE SW CORNER OF SECTION 31

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
Ramsey Creek – 11.0 acres					
1 S	13 E	WM	31	SW SW	11.0
Fifteenmile Creek – 28.5 acres					
1 S	13 E	WM	31	NE SW	0.1
1 S	13 E	WM	31	SE SW	14.0
1 S	13 E	WM	31	NW SE	5.3
1 S	13 E	WM	31	SW SE	9.1

4. Certificate 82056 does not specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. For purpose of this instream lease and based on consultation with the Department’s Watermaster, an irrigation season of March 1 through October 31 shall be used to help establish when water may be leased instream.
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 lease application requests to protect a portion of the water instream from Ramsey Creek into Fifteenmile Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Ramsey Creek) but may be protected further if measurable in the receiving stream (Fifteenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Ramsey Creek is measurable into Fifteenmile Creek and may be protected instream in Fifteenmile Creek.
7. The authorized POD’s are above a known losing reach on Fifteenmile Creek beginning at approximately River Mile 30.5. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to 50 percent. Therefore, protected flows generated from this lease will be reduced immediately below each POD by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.
8. The instream use may also be conditioned to allow more or less water to be protected instream below each POD based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at each POD.

9. The instream use has been modified from the lease application both at the Lessee's request and to prevent injury and enlargement and is as follows:

Ramsey Creek, tributary to Fifteenmile Creek.

**Instream Reach:** From the Ramsey Creek POD (as described in Finding of Fact #3) to the mouth of Ramsey Creek (confluence with Fifteenmile Creek)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82056	4/27/1976	0.07	33.0	March 1 through October 29

Fifteenmile Creek, tributary to the Columbia River

**Instream Reach #1:** From the Fifteenmile Creek POD (as described in Finding of Fact #3) to the confluence with Ramsey Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82056	4/27/1976	0.18	85.5	March 1 through October 29

**Instream Reach #2:** From confluence with Ramsey Creek to Rivermile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82056	4/27/1976	0.25	118.5	March 1 through October 29

**Instream Reach #3:** From Rivermile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82056	4/27/1976	0.13	60.75	March 1 through October 29

10. Other conditions to prevent injury and enlargement are:

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from River Mile 30.5 to the mouth of Fifteenmile Creek and whether the described instream flows below River Mile 30.5 may be adjusted. If adjusted, instream flows from immediately below River Mile 30.5 to the mouth of Fifteenmile Creek may not exceed the quantities specified at each POD.

11. There is a supplemental water right, Certificate 82059, appurtenant to all or a portion of the lands described in Finding of Fact #3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
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, comments received, 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 or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
15. The Lessor has requested that the lease terminate on October 1, 2013. Instream leases generally terminate on the last day of the irrigation season. For purposes of this instream lease, the last day of the irrigation season is October 31. The lease may terminate on October 31, 2013.

### 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.

### ORDER

Therefore, it is ORDERED:

1. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2013.

Dated at Salem, Oregon this 30 day of August, 2013.

  
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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.*

Mailing date: SEP 05 2013