

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1440, Grant 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.

**Lessors**

Diane and Derrick Greenwood  
9496 Alta Mesa Road  
Wilton, CA 95693

**Lessee**

The Freshwater Trust (TFT)  
700 SW Taylor, Suite 200  
Portland, Oregon 97205

**Findings of Fact**

1. On April 25, 2019, Diane and Derrick Greenwood and the TFT filed an application to renew instream lease IL-1440, involving the entirety of Certificate 81996 and a portion of Certificate 87479.
2. The first right to be leased is as follows:

**Certificate:** 81996 in the name of Tibor and Nancy Donnell Stefansky (perfected under Permit S-48051)  
**Use:** Irrigation of 40.0 acres  
**Priority Date:** September 14, 1983  
**Quantity:** **Rate:** 1.0 Cubic Foot per Second (CFS)  
**Volume:** 4.0 Acre-Feet (AF)  
**Limit:** One-fortieth of one cubic foot per second (or its equivalent) and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.  
**Source:** Reynolds Creek, a tributary of John Day River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	25	SE NW	2400 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF SECTION 25

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:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	22	SE SE	1.7
13 S	34 E	WM	23	NW SW	3.8
13 S	34 E	WM	23	SW SW	20.2
13 S	34 E	WM	23	SE SW	0.2
13 S	34 E	WM	26	NE NW	10.6
13 S	34 E	WM	26	NW NW	3.5
Total Acres					40.0

- Certificate 81996 does not specify the irrigation season. However, the John Day River (F) Decree establishes the irrigation season for the area as April 1 to September 30.
- The portion of the second right to be leased is as follows:

**Certificate:** 87479 in the name of Bond & Margaret Jobe and Tibor & Nancy Donnell Stefansky (perfected under the John Day River (F) Decree)

**Use:** Irrigation of 10.9 acres

**Season of Use:** April 1 to September 30

**Priority Date:** 1868

**Quantity:** **Limit:** One-fortieth of one cubic foot per second per acre irrigated to June 1 and one-eightieth cubic foot per second per acre irrigated thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to September 30, measured at the point of diversion.

**Source:** Reynolds Creek, tributary to John Day River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	25	SE NW	REYNOLDS DITCH: 2400 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF SECTION 25

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	22	NE SE	8.4
13 S	34 E	WM	26	NE NW	2.5
Total Acres					10.9

- 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.
- Streamflows are lost within the proposed reach due to evaporation. Reductions of 1% per mile in the quantities that may be protected instream are necessary to prevent injury to downstream water users and enlargement of the rights.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Reynolds Creek, tributary to John Day River

**Instream Point No. 1:** At the POD (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
81996	September 14, 1983	1.00	160.00	April 1 to September 30
87479	1868	0.12	43.60	

**Instream Reach:** Immediately below the POD to the mouth of Reynolds Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
81996	September 14, 1983	0.27	97.60	April 1 to September 30
87479	1868	0.07	26.60	

**Instream Point No. 2:** At the mouth of Reynolds Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
81996	September 14, 1983	0.260	96.53	April 1 to September 30
87479	1868	0.069	25.03	

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
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 known losses to stream flow due to evaporation. Evaporative losses of 1% per mile have been accounted for in Finding of Fact No. 7; and
  - d. The instream flows just below the point of diversion have been reduced to the consumptive portion of the right to account for return flows and prevent injury and enlargement.
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 Lessor and Lessee have requested that the lease terminate on September 30, 2020. The lease may commence on the date this final order is signed.
16. The Lessor and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

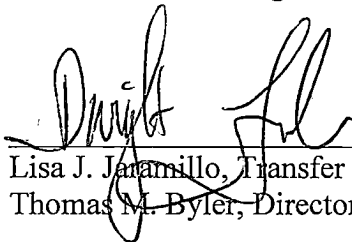
### Conclusions of Law

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, 2020. For multiyear leases, the lessor and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to 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 MAY 30 2019.

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

Mailing date: MAY 31 2019

*This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.*