

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

In the Matter of Instream Lease Application    )    DETERMINATION and FINAL ORDER ON  
IL-1923, Jackson 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**

Robert Russell  
PO Box 1  
Eagle Point, OR 97524  
[rrussell1950@aol.com](mailto:rrussell1950@aol.com)

**Lessee**

Trout Unlimited (TU)  
633 Iowa Street  
Ashland, OR 97520  
[chrysten.rivard@tu.org](mailto:chrysten.rivard@tu.org)

**Findings of Fact**

1. On May 9, 2022, Robert Russell and TU filed an application to lease a portion of Certificate 86767 for instream use. The Department assigned the application number IL-1923.
2. The right to be leased is as follows:

**Certificate:**       86767 in the name of Robert E and Deborah S Russell (confirmed by Little Butte Creek Decree of record at Salem, in the Order Record of the Water Resources Director in Volume 3, at Page 1)

**Use:**                Power Development

**Season of Use:**    April 1 through March 31

**Priority Date:**    1872

**Quantity:**        **Limit:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 16.0 Cubic Feet per Second (CFS) from April 1 through October 31 and 16.0 CFS from November 1 through March 31 of each year, or its equivalent in case of rotation, measured at the point of diversion.

**Source:**            Little Butte Creek, tributary to Rogue 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 Point of Diversion (POD):**

| Twp  | Rng | Mer | Sec | Q-Q   | Measured Distances  |
|------|-----|-----|-----|-------|---|
| 35 S | 1 W | WM  | 35  | SW SW | 90 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 35 |

**Authorized Place of Use:**

| Twp  | Rng | Mer | Sec | Q-Q   |
|------|-----|-----|-----|-------|
| 36 S | 1 W | WM  | 3   | NE NE |

3. 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.
4. The instream use is as follows:  
Little Butte Creek, tributary to Rogue River

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

| Certificate | Priority Date | Instream Rate (CFS) | Period Protected Instream   |
|-------------|---------------|---------------------|-----------------------------|
| 86767       | 1872          | 16.0                | April 1 through October 31  |
|             |               | 16.0                | November 1 through March 31 |

5. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. The Lessor and Lessee have requested that the lease terminate on October 31, 2022. The lease may commence on the date this final order is.

### 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 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, 2022.

Dated at Salem, Oregon this day JUN 27 2022



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

Mailing date: JUN 28 2022

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