

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1746, 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.

**Lessor**

Paul Schanno  
82163 Dufur Valley Road  
Dufur, Oregon 97021

**Lessee**

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

**Findings of Fact**

1. On May 6, 2019, Paul Schanno and the TFT filed an application to lease the entirety of Certificate 40409 for instream use. The Department assigned the application number IL-1746.
2. The portion of Certificate 40409 which allows the use of water for stock and domestic purposes will not be protected under this lease.
3. The right to be leased is as follows:

**Certificate:** 40409 in the name of Nicholas Fax (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County and entered of record at Salem, in Volume 7, at page 406)

**Use:** Irrigation of 30.3 acres

**Priority Date:** 1872

**Quantity:** **Volume:** 90.9 Acre-Feet (AF)

**Limit:** 3.0 Acre-Feet per acre in any irrigation season

**Source:** Fifteen Mile Creek, tributary to Columbia River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	14 E	WM	3	NW SE	3980 FEET SOUTH AND 1450 FEET EAST FROM THE NW CORNER OF SECTION 3

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
1 S	14 E	WM	3	SW NE	0.8
1 S	14 E	WM	3	SE NE	6.5
1 S	14 E	WM	3	NE SW	2.9
1 S	14 E	WM	3	SE SW	2.3
1 S	14 E	WM	3	NE SE	2.5
1 S	14 E	WM	3	NW SE	15.3
Total Acres					30.3

4. Certificate 40409 describes the annual duty of the right as 3.0 acre-feet (AF) per acre; however the Fifteenmile Creek Decree further describes the duty in the following 30-day volumes: Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30-day period. From July 1<sup>st</sup>, the diversion is limited to  $\frac{3}{4}$  AF per acre in any 30-day period.
5. Certificate 40409 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree indicates that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40<sup>th</sup> of CFS per acre after July 1<sup>st</sup>, except in case of rotation.

Certificate	Max Rate After July 1 <sup>st</sup>
40409	0.758 CFS

6. Certificate 40409 does not specify the irrigation season; nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
7. There is a supplemental irrigation water right, Certificate 55638, appurtenant to all or a portion of the lands described in Finding of Fact No. 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.
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 Lessor and Lessee have requested that the instream use begin at the POD, as described in finding of Fact No. 3. The POD is located within a known losing reach on Fifteenmile Creek, which begins 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 more than 50 percent. Therefore, the quantity of water that may be protected instream beginning at the POD will be reduced immediately below the POD by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.

10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Fifteenmile Creek, tributary to Columbia River

**Instream Point:** At the POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
40409	1872	0.38	90.9	June 2 through September 30

**Instream Reach:** From immediately below the POD to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
40409	1872	0.19	45.6	June 2 through September 30

11. Other conditions to prevent injury and enlargement are:

The instream use may also be conditioned to allow for more or less water to be protected instream below the PODs based upon instream measurements conducted by Department staff or other 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 the.

Within the specified stream reach, stream channel losses and gains calculated based on available data and use 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 from the PODs to the mouth of Fifteenmile Creek and whether the described instream flows below the PODs may be adjusted. If adjusted, instream flows from immediately below the PODs to the mouth of Fifteenmile Creek may not exceed the quantities specified at the PODs.

12. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
13. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - 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.
14. 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.

15. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach exceed the estimated average natural flow in the month of September.
16. The Department has identified that during the term of this lease, the quantities protected instream may be additive to other existing instream water rights established within the same reach under ORS 537.341 (state agency instream water right application process), 537.346 (minimum streamflow conversion process), 537.348 (instream transfer and instream lease process) or 537.470 (allocation of conserved water process) during the month of September. During the other months being protected, this instream use will be additive to instream rights created under ORS 537.348 and 537.470 and replace portions of instream rights created under ORS 537.341 and 537.346.
17. 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.
18. 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.
19. 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.
20. The Lessor and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.
21. The Lessor and Lessee have requested that there not be an option to terminate the lease.

### **Conclusions of Law**

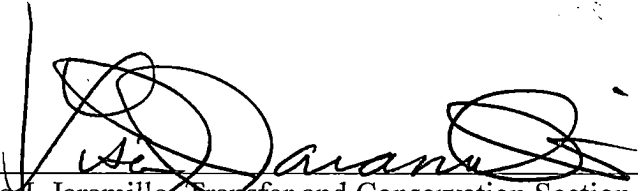
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **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 October 31, 2023. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day JUN 06 2019

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

Mailing date: JUN 07 2019

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