

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

In the Matter of the Proposed Lease of) Existing Water Rights for Instream Use,) Certificate 8873, Wasco County)	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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

Dan Peterson
 80736 Shady Brook Road, Apt. A
 Tygh Valley, Oregon 97063

Lessee

Oregon Water Trust
 522 SW Fifth Avenue, Suite 825
 Portland, Oregon 97204

Findings of Fact

1. Dan Peterson and the Oregon Water Trust filed an application to renew L-16, involving all of Certificate 8873 to instream use. The Department assigned the application number IL-16.

2. The rights to be leased are as follows:

Certificate: 8873 in the name of E. KARLEN (perfected under Permit S-7151)
Use: IRRIGATION of 20.0 ACRES
Priority Date: JANUARY 20, 1926
Rate: 0.25 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre
Source: TYGH CREEK, tributary to WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	13 E	WM	31	SW NW

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:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	13 E	WM	31	SE NW	7.0
3 S	13 E	WM	31	NE SW	7.0
3 S	13 E	WM	31	NW SW	6.0

3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.

4. The instream use is as follows:
TYGH CREEK tributary to WHITE RIVER

Instream Reach: From POD (as described in Finding of Fact #2) to mouth of Tygh Cr

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
8873	JANUARY 20, 1926	0.25	April 1 through July 29

5. Other conditions to prevent injury and enlargement are:

- A 3.0 acre-foot/acre limitation has been added to prevent injury or enlargement.
- 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.

6. 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. This finding is made through an abbreviated review recognizing that the 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.

7. 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.

8. The lease will commence on April 1, 2007 and terminate on November 1, 2008.

9. The Lessor has requested the option of terminating the lease early with written notice to the Department.

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. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any ground water registrations for the same use during the term of the lease.
3. The lease will terminate on November 1, 2008. The Lessor has the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 9th day of March 2007.


Phillip C. Ward, Director

Mailing date: MAR 13 2007

