

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

In the Matter of Instream Lease Application )  
IL-44, Certificate 55267, Jackson 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**

Bill Grimm  
10670 S. Fork Little Butte Creek Road  
Eagle Point, OR 97524

**Lessee**

Oregon Water Trust  
65 SW Yamhill St., Suite 200  
Portland, Oregon 97204

**Findings of Fact**

1. On April 15, 2009 Bill Grimm and the Oregon Fresh Water Trust (FWT) filed an application to renew instream lease L-44, involving a portion of Certificate 55267 for instream use. The Department assigned the application number IL-44.
2. The first right to be leased is as follows:
  - Certificate:** 55267 in the name of Loren D. and Laura Bush
  - Use:** Irrigation of 2.15 acres
  - Season of Use:** April 1 through October 1
  - Priority Date:** February 1894
  - Rate:** 0.044 Cubic Foot per Second (CFS) if available at the original POD,  
Clagg Ditch: South 77 Degrees, 16 Minutes, 908 Feet West from the N ¼  
Corner of Section 17.
  - Source:** SOUTH FORK LITTLE BUTTE CREEK, TRIBUTARY TO LITTLE BUTTE  
CREEK

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
37s	3E	WM	17	NE NW	510 FEET SOUTH AND 20 FEET WEST FROM THE NE CORNER OF SECTION 18

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
37S	3E	WM	18	NE NE	2.15

3. Certificate 55267 does not specify the irrigation season. However, the Little Butte Creek Decree establishes the irrigation season as being April 1 through October 1.
4. 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.
5. The instream use is as follows:

SOUTH FORK LITTLE BUTTE CREEK, TRIBUTARY TO LITTLE BUTTE CREEK

**Instream Reach:** From the authorized POD (as described in Finding of Fact #2) to the confluence with Little Butte Creek

Certificate	Priority Date	Instream Rate	Period Protected Instream
55267	February 1894	0.044 CFS	April 1 through October 31

6. Other conditions to prevent injury and enlargement are:

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 points of diversion within the specified stream reach.

7. 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.
8. 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.
9. 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.

10. The Lessor has requested that the lease terminate on October 31, 2013
11. 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 other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2013. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (April 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 9<sup>th</sup> day of July 2009.



Phillip C. Ward, Director *rcw*

Mailing date: JUL 16 2009