

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1030, Josephine County) 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

The Nature Conservancy
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Medford, OR. 97501
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Findings of Fact

1. On March 27, 2014, filed an application to renew instream lease IL-1030, involving the entirety of Certificate 61599 for instream use.
2. The right to be leased is as follows:

Certificate: 61599 in the name of Erros W. Feehely (perfected under Permit 44332)
Use: Irrigation of 4.0 acres
Priority Date: June 12, 1979
Quantity: **Rate:** 0.08 Cubic Foot per Second (CFS)
Volume: 14.0 Acre-Feet (AF)
Limit: One-fiftieth CFS per acre, not to exceed 3.5 AF per acre per year
Source: Rough and Ready Creek, tributary to the West Fork Illinois River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 W	WM	14	NE SW	1380 FEET NORTH AND 2440 FEET EAST FROM THE SW CORNER OF SECTION 14

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	9 W	WM	14	SE SW	4.0

3. Certificate 61599 does not specify an irrigation season. The irrigation season is specified in the Illinois River Decree Vol. 13, Page 97 as April 1 to November 1.

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.

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:
Rough and Ready Creek, tributary to the West Fork Illinois River

Instream Point: At the POD (as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
61599	June 12, 1979	0.033	14.0	April 1 to November 1

6. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
7. 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.
8. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point of diversion will provide for a beneficial purpose.
9. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point of diversion do not exceed the estimated average natural flow.
10. 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.
11. 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.
12. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.

13. The Lessor requested the lease begin on April 1, 2015 and terminate November 1, 2019. The lease may commence on April 1, 2015.
14. The Lessor 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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During 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 on April 1, 2015, and terminate on November 1, 2019. For multiyear leases, the lessor *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to November 1) 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 13 day of May, 2014.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This document was prepared by Joan Smith and if you have any questions, please call 503-986-0892.

Mailing date: MAY 15 2014