

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1567, Tillamook 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**

Oregon Department of Fish and Wildlife (ODFW)  
4034 Fairview Industrial Drive SE  
Salem, OR 97302  
[Alan.D.Ritchey@state.or.us](mailto:Alan.D.Ritchey@state.or.us)

**Findings of Fact**

1. On September 9, 2016, Alan Ritchey, ODFW filed an application involving the entirety of Certificate 43202 for instream use. The Department assigned the application number IL-1567.

2. The right to be leased is as follows:

**Certificate:** 43202 in the name of Department of Fish and Wildlife (perfected under S-34781)

**Use:** Fish Propagation

**Priority Date:** November 24, 1969

**Quantity:** **Rate:** 29.75 Cubic Foot per Second (CFS)

**Source:** East Fork of South Fork of Trask River, tributary to Trask River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	7 W	WM	7	SE NW	1100 FEET SOUTH AND 1700 FEET EAST FROM THE NE CORNER OF SECTION 12, T2S, R8W W.M.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
2 S	7 W	WM	7	SE NW

3. Certificate 43202 does not specify the period of allowed use. However, use of water for Fish Propagation is assumed to be a year round use unless otherwise specified in the certificate.

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:  
 East Fork of South Fork of Trask River, tributary to Trask River

**Instream Reach:** From the POD (as described in Finding of Fact No. 2) to the mouth of East Fork of South Fork of Trask River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
43202	November 24, 1969	29.75	21538.02	Year Round

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 within the proposed reach 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 reach of the instream water right.

8. 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.

9. The instream use created by this instream lease will be additive to other instream rights within the proposed reach. By adding to this existing instream water right within the same reach, the total monthly quantities of water to be protected instream will exceed the estimated average natural flow. The estimated average natural flow may not be exceeded unless criteria for exceeding are met.

10. The Department has determined that the estimated average natural flows may be exceeded due to the following:

- a) There is an existing state agency established instream water right certificate (Certificate 72537) that covers the same reach or portion of the reach to be established by the proposed instream lease. In addition, the quantities to be protected instream will not exceed the amounts requested in the original instream water right application (IS-71267) filed by the Oregon Department of Fish and Wildlife (ODFW) and;
- b) The water right proposed to be leased is in an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.

11. 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.
12. 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.
13. 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.
14. The Lessor has requested that the lease terminate on December 31, 2023. The lease may commence on January 1, 2019.
15. 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.

### 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 on January 1, 2019 and terminate on December 31, 2023. 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 (January 1 through December 31) 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 12 day of October, 2016.

  
 \_\_\_\_\_  
 Dwight French, Water Right Services Division Administrator, for  
 Thomas M. Byler, Director, Oregon Water Resources Department

*This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0890.*

Mailing date: OCT 13 2016