

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

In the Matter of Instream Lease Application ) DETERMINATION and  
 IL-1569, Union 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**

John Sheehy  
 PO Box 253  
 Union, OR 97882

**Lessee**

The Freshwater Trust (TFT)  
 65 SW Yamhill St., Suite 300  
 Portland, Oregon 97204

**Findings of Fact**

1. On October 6, 2016, John Sheehy and TFT filed an application to lease a portion of Certificate 49739 to instream use. The Department assigned the application number IL-1569.
2. The portion of the right to be leased is as follows:

**Certificate:** 49739 in the name of Robert W. Kimbo (perfected under the Grande Ronde River Decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 8, at Page 1)

**Use:** Irrigation of 66.44 acres from Tract 2

**Priority Date:** 1867

**Quantity:** **Rate:** 1.7 Cubic Foot per Second (CFS)  
**Volume:** 199.32 Acre-Feet (AF)  
**Limit:** limited to an amount actually beneficially used for said purpose, and shall not exceed 3.0 AF per acre in any irrigation season, diverted at a rate of not to exceed 1/40<sup>th</sup> CFS per acre, if available at the original points of diversion

**Original Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
4 S	40 E	WM	19	NW NW	GOODLEY DITCH NO. 1
4 S	39 E	WM	14	SW SE	HUTCHINSON ENGLAND DITCH

**Source:** Catherine Creek, tributary to the Grande Ronde River

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 Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	39 E	WM	13	SE SE	POD NO. 1: 710 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 13
4 S	39 E	WM	14	SW SE	POD NO. 2: 400 FEET NORTH AND 1140 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 14

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
4 S	39 E	WM	14	SE SW	2	20.00
4 S	39 E	WM	14	W ½ SW SE	2	2.61
4 S	39 E	WM	23	NW NE	2	15.71
4 S	39 E	WM	23	NE NW	2	28.12
Total:						66.44

3. Certificate 49739 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.
4. A portion of Certificate 27027 for Supplemental Irrigation overlaps a portion of Certificate 49739 in the NWNE of section 23. During the duration of the lease, water use under this portion of Certificate 27027 will also be suspended.
5. 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.
6. The Lessor and Lessee have requested to protect water instream from POD No. 1 to the mouth of Catherine Creek. The Watermaster identified that a portion of the water diverted at POD No. 1 returns to the Catherine Creek within the proposed reach and is available to downstream water right users. Approximately 20% return flows from the existing use generally return to the creek system at River Mile (RM) 16 below the POD. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for at RM 16.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Catherine Creek, tributary to the Grande Ronde River

**Instream Reach No. 1:** From POD No. 1 (as described in Finding of Fact No. 4) to RM 16

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
49739	1867	0.83	199.32	July 1 through October 29

**Instream Reach #2:** From RM 16 to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
49739	1867	0.66	159.46	July 1 through October 29

8. Other conditions to prevent injury and enlargement are:

The amount of water to which this instream use is entitled is limited to the quantities identified in Finding of Fact No. 7 if available at the original points of diversion identified in Finding of Fact No. 2.

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 points 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.

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. 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. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD at RM 16. The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows.
11. 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.
12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
13. If approved, this instream lease is not reasonably expected to affect land use significantly as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
14. 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.
15. 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.

16. The Lessor and Lessee have requested that the lease terminate on October 31, 2021. The Lessor and Lessee have requested that the term of this lease begin in 2017. The lease has been submitted prior to the 2017 irrigation season. The lease may commence on March 1, 2017.
17. The Lessor and Lessee have 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 (including Certificate 27027), or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence March 1, 2017 and terminate on October 31, 2021. For multiyear leases, the Lessor and Lessee *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 (July 1 through October 30) 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 15 day of December 2016.

  
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Dwight French, Water Right Services Administrator, for  
THOMAS M. BYLER, DIRECTOR

Mailing date: DEC 19 2016

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