

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-685, Wasco 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**

Justesen Ranches  
59720 Twin Lakes Rd  
Grass Valley OR 97029  
fredjustesen@hotmail.com

**Findings of Fact**

1. On September 4, 2015, Justesen Ranches filed an application to renew instream lease IL-685, involving the entirety of Certificate 27866.
2. The first right to be leased is as follows:

**Certificate:** 27866 in the name of TYGH VALLEY LUMBER CO  
**Use:** Industrial Use including water for mill pond and fire protection  
**Priority Date:** 1902 for 0.25 Cubic Foot per Second (CFS); 1916 for 0.25 CFS  
**Quantity:** **Rate:** 0.50 CFS  
**Limit:** shall not exceed 0.50 cubic foot per second and shall be further limited to 96 acre feet during any irrigation season.  
**Source:** White River and Three Mile Creek, tributary to Deschutes River  
**Authorized Point of Diversion (POD):** None described on Certificate

**Authorized Place of Use:**

Use	Twp	Rng	Mer	Sec	Q-Q
IND/FP	4 S	13 E	WM	10	NE SW
MP/IND/FP	4 S	13 E	WM	10	SE SW
FP	4 S	13 E	WM	10	NW SE
FP	4 S	13 E	WM	10	SW SE

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.

3. Certificate 27866 does not describe the location of the points of diversion, but research shows the points of diversion as being as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	13 E	WM	10	SE SW	WHITE RIVER POD – 1100 FEET NORTH AND 1200 FEET WEST FROM THE S1/4 CORNER OF SECTION 10
4 S	13 E	WM	10	SE SW	RESERVOIR POD – 1150 FEET NORTH FROM THE S1/4 CORNER OF SECTION 10

4. Certificate 27866 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.
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 instream use is as follows:  
White River, tributary to Deschutes River

**Instream Reach:** From the POD (as described in Finding of Fact No. 3) to mouth of White River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
27866	1902	0.25	45.62	April 1 to July 1
		0.20	1.98	July 1 through July 5
	1916	0.25	45.62	April 1 to July 1
		0.20	1.98	July 1 through July 5

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
  - The location of confluences with other streams downstream of the point of diversion.
  - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - 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.
9. There are several instream water rights located within the proposed instream reach on the White River. Generally, instream rights established through transfer, lease and allocation of conserved water under ORS 537.348 and ORS 537.470 are additive to each other and replace portions of instream water rights established under ORS 537.341 (state agency application process to establish new instream rights) or ORS 537.346 (conversion of minimum perennial streamflows to instream rights) with earlier priority dates.

10. Within the reach on the White River extending from approximately River Mile (RM) 7.4 to RM 1.9, there are two existing instream water rights, Certificate 64196, with a priority date of October 2, 1989, and Certificate 73267, with a priority date of December 16, 1994. These instream water rights were established under ORS 537.341 to provide fish passage for summer steelhead in the lower reach, as well as passage and rearing for resident trout, recreational fishing, and scenic attraction. The proposed instream use is senior to these rights and may replace a portion of these rights within this reach with an earlier priority date.
  
11. Within the reach on the White River extending from approximately RM 1.9 to RM 0.8, there are four existing instream water rights; Certificate 64196, 73267, Certificate 59750, with a priority date of February 20, 1962, and Certificate 59751, with a priority date of January 10, 1980. Certificates 59750 and 59751 were established under ORS 537.346 to maintain an instream flow for the purpose of supporting aquatic life. These existing rights replace portions of each other with earlier priority dates. During the months of January and July through December, Certificates 59750, 59751, and 64196 each protect the same quantity of water instream. Also, during the period February 1 through February 15, Certificates 59750 and 59751 also protect the same quantity. The proposed instream use is senior to Certificate 59750 and may not replace a portion of that right with an earlier priority date. However, the Department has identified that additional flows are needed within this reach and will provide increased public benefit. Therefore, water may be protected instream in conjunction with other instream water rights as follows:
  - a. During the months of January through December, this instream lease may be additive to Certificate 59750.
  - b. During the months of January, February 1 through 15, and July through December, this instream lease may be additive to Certificates 59750 and 59751.
  - c. During the months of January and August through December, this instream lease may be additive to Certificates 59750, 59751, and 64196.
  - d. This instream lease may also replace a portion of the existing instream water rights with an earlier priority date. During months of January through December, this instream lease may replace a portion of Certificate 73267. During the months of February through June, this instream lease may replace a portion of Certificate 64196. During the months of February 16 through June, this instream lease may replace a portion of Certificate 59751.
  
12. Within the reach on the White River from RM 0.8 to RM 0.0, there are three existing instream water rights; Certificate 59750, 59751, and 64196. These existing rights replace portions of each other with earlier priority dates. During the months of January and July through December, Certificates 59750, 59751, and 64196 each protect the same quantity of water instream. Also, during the period February 1 through February 15, Certificates 59750 and 59751 also protect the same quantity. The proposed instream use is senior to Certificate 59750 and may not replace a portion of that right with an earlier priority date. However, the Department has identified that additional flows are needed within this reach and will provide increased public benefit. Therefore, water may be protected instream in conjunction with other instream water rights as follows:

- a. During the months of January through December, this instream lease may be additive to Certificate 59750.
  - b. During the months of January, February 1 through 15, and July through December, this instream lease may be additive to Certificates 59750 and 59751.
  - c. During the months of January and August through December, this instream lease may be additive to Certificates 59750, 59751, and 64196.
  - d. This instream lease may also replace a portion of the existing instream water rights with an earlier priority date. During the months of February through June, this instream lease may replace a portion of Certificate 64196. During the months of February 16 through June, this instream lease may replace a portion of Certificate 59751.
13. 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.
  14. 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.
  15. 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.
  16. 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.
  17. 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.
  18. The Lessor has requested that the lease terminate on October 31, 2020. The lease may commence on the date this final order is signed.
  19. The Lessor has requested the option of terminating the lease early with written notice to the Department.

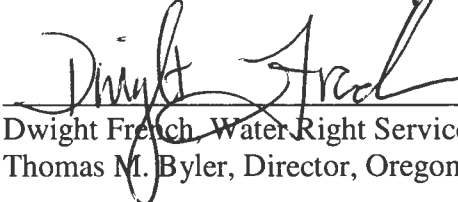
### **Conclusions of Law**

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 upon approval of the instream lease and terminate on October 31, 2020. 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 through July 5) 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 9 day of August, 2016.

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

Mailing date: AUG 11 2016

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