

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

In the Matter of Instream Lease Renewal            )     DETERMINATION and  
IL-685, Certificate 27866                                )     FINAL ORDER ON PROPOSED  
Wasco County    )     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**

Justesen Ranches  
59720 Twin Lakes Road  
Grass Valley, Oregon 97029

**Findings of Fact**

1. December 3, 2010 Justesen Ranches filed an application to renew instream lease L-685, involving all of Certificate 27866. The Department assigned the application number IL-685.
2. The 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 CFS and 1916 for 0.25 CFS  
**Quantity:** **Rate:** 0.50 Cubic Foot per Second (CFS)  
**Limit:** Not to exceed 0.50 CFS and further limited to 96 Acre-Feet (AF) during any irrigation season.

**Source:** White River, tributary to the Deschutes River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
4 S	13 E	WM	10	SE SW	Not Specified

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 Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
4 S	13 E	WM	10	NE SW
4 S	13 E	WM	10	SE SW
4 S	13 E	WM	10	NW SE
4 S	13 E	WM	10	SW SE

- Certificate 27866 does not specify the irrigation season. OAR Chapter 690 Division 250 establishes a default irrigation season of March 1 through October 31. However, for the purposes of this instream lease, the season of use will be reduced to prevent injury and enlargement.
- 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 in response to that notice.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

White River, tributary to the Deschutes River

**Instream Reach:** From the POD, as described in Finding of Fact #2, to the mouth of the White River.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
27866	1902	0.25	April 1 to July 1
		0.20	July 1 through July 5
	1916	0.25	April 1 to July 1
		0.20	July 1 through July 5

- Other conditions to prevent injury and enlargement are:  
No water will be protected or diverted from the Three Mile Creek Diversion
- 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.
- 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.
- 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 the lease commence on January 1, 2011 and terminate on December 31, 2015. However, the lease may not commence prior to the first day of the irrigation nor may the lease extend beyond the last day of the irrigation season. Therefore, the lease will commence on March 1, 2011 and terminate on October 31, 2015.
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, pursuant 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 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 not received prior to March 1, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.
4. The lease will commence on March 1, 2011 and terminate on October 31, 2015.

Dated at Salem, Oregon this 23 day of February 2011.

  
Dwight French for  
PHILLIP C. WARD, DIRECTOR

**FEB 24 2011**

*Mailing date:*

The order approving this was prepared by Kody Thurgood. If you have any questions about the information in this document, you may reach me at 503-986-0892 or thurgokj@wrdd.state.or.us