

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

In the Matter of Instream Lease Application) FINAL ORDER TO DENY
IL-1403, Deschutes County) 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

Jim Whitney
P.O. Box 1614
Pendleton, OR 97801

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St. Suite 200
Portland, Oregon 97204
natasha@thefreshwatertrust.org

Findings of Fact

1. On April 28, 2014, Jim Whitney and The Freshwater Trust filed an application to lease the entirety of Certificate 89086 for instream use. The Department assigned the application number IL-1403.
2. The Department provided notice of the lease application pursuant to OAR 690-077-0077(1) on May 6, 2014. No comments were received.
3. Based on the Watermaster review, the lease application does not meet the requirements to suspend the original use. All lands proposed to be leased are in production and a portion of which were being irrigated at the time of the Watermaster's site visit on May 7, 2014.
4. Under OAR 690-077-0077(8), use of water under the right proposed to be leased must only be used for instream purposes. Water may not continue to be used under the original right. In addition, under OAR 690-077-0077(9), if the right proposed to be leased has an associated primary or supplemental right, use under those rights must be suspended as well during the term of the lease.
5. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will result in injury and enlargement.

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.

CONCLUSIONS OF LAW

The Department concludes that the lease will result in injury or enlargement,
OAR 690-077-0077.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is DENIED.

Dated at Salem, Oregon this 30 day of May, 2014.



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

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*

Mailing date: JUN 01 2014