

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1878, Jefferson County) 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

Wheeler Family Trust
Laura & Ervin Wheeler
PO Box 61
Camp Sherman, Oregon 97730

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703
gen@deschutesriver.org

Findings of Fact

1. On February 24, 2022, Wheeler Family Trust and DRC filed an application to renew Instream Lease IL-1878 involving a portion of Certificate 88890.
2. The portion of the right to be leased is as follows:

Certificate: 88890 in the name of John Burns (confirmed under Deschutes River Decree Volume 9, Page 362)

Use: Irrigation of 7.8 acres

Season of Use: May 1 through September 15

Priority Date: 1888

Quantity: **Rate:** 0.13 Cubic Foot per Second (CFS)
Volume: 23.4 Acre-Feet (AF)
Limit: One-sixtieth of one CFS per acre, not to exceed 3.0 AF per acre per irrigation season

Source: Lake Creek, tributary to North Fork Lake Creek

Authorized Point of Diversion (POD): Not described on certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	WM	16	SW NE	7.8

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 88890 does not provide a description of the Authorized Point of Diversion (POD), however, information found in the Department records and for the purpose of this lease the POD is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	WM	17	NW SE	LATITUDE 44.44246 LONGITUDE: -121.68118

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: Lake Creek, tributary to Metolius River
Instream Reach: From the POD (as described in Finding of Fact No. 2) to the Mouth of Lake Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
88890	1888	0.13	23.4	June 16 through September 15

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:
- 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.
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 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.
10. 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.
11. 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.

12. 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.
13. The Lessor and Lessee have requested that the lease terminate on September 15, 2026. The lease may commence on the date this final order is signed.
14. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

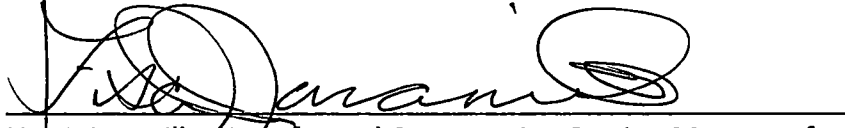
Conclusions of Law

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 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 September 15, 2026. For multiyear leases, the lessor and/or 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 (June 16 through September 15) 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 day APR 04 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.

Mailing date: APR 05 2022