

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

In the Matter of Instream Lease IL-81, Polk County)
County) CORRECTING FINAL ORDER
) TERMINATING INSTREAM
) LEASE

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

Victoria Avery
5130 Waymire Road
Dallas, OR 97338

Lessee

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

Findings of Fact

1. On April 10, 2013, George P. Ryan Trust and Arletha M Ryan Trust and The Freshwater Trust filed an application to renew Instream Lease IL 81, involving all of Certificates 21312 and 36341 for instream use.
2. The lease application requested to protect water instream for five years, terminating on September 30, 2018. A Final Order approving this lease was issued by the Department on January 2, 2014, as evidenced by Special Order Volume 91, Page 636.
3. The final order contained a condition allowing the Lessor to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department.
4. On July 13, 2017, the Department received a request from Michael A. Atherton and Victoria L. Avery to terminate the lease prior to the 2018 instream use period.
5. On July 31, 2017, the Department issued a terminating Final Order, as evidenced by Special Order Volume 105, Pages 383-384. However, the final order terminated the instream lease in 2016; the instream lease should have been active until the end of the 2017 irrigation season.
3. The lease was exercised during the 2014, 2015, 2016, and 2017 water use periods ending on September 30, 2017.

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 terminating the lease in advance of the 2018 instream use period is consistent with OAR 690-077.

Now, therefore it is ORDERED:

The Instream Lease described herein was TERMINATED on September 30, 2017 and is no longer in effect.

Dated at Salem, Oregon this **OCT 22 2018** .



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

Mailing date: **OCT 23 2018**

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.