

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

In the Matter of Instream Lease Application )	DETERMINATION and
IL-1666, Union 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**

Byron Rovey  
Rovey Farms  
58777 Godley Rd  
La Grande, OR 97850

**Lessee**

The Freshwater Trust (TFT)  
401 NE 1<sup>st</sup> Street  
Enterprise, Oregon 97828  
jessica@thefreshwatertrust.org

**Findings of Fact**

1. On April 6, 2020, Byron Rovey and TFT filed an application to renew instream lease IL-1666, involving a portion of Certificate 44330.
2. The portion of the right to be leased is as follows:

**Certificate:** 44330 in the name of W.R. Hutchinson (confirmed by decree of the Circuit Court of the State of Oregon for Union County; Volume 8, Page 1)

**Use:** Irrigation of 80.0 acres

**Priority Dates:** 1870

**Quantity:** **Rate:** 2.0 Cubic Foot per Second (CFS)

**Duty:** 240.0 Acre-Feet (AF)

**Limit:** One-Fortieth of one cubic foot per second (CFS) per acre, not to exceed 3.0 AF per acre per year

**Source:** Catherine Creek, tributary of the Grande Ronde River

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

**Authorized Place of Use:**

Priority Date	Twp	Rng	Mer	Sec	Q-Q	Acres
1870	4 S	39 E	WM	1	NE SE	40.0
1870	4 S	39 E	WM	1	NW SE	40.0
Total						80.0

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 44330 does not specify the location of the authorized point of diversion. For purposes of this lease, based on information provided by the Department field staff and the Lessee, the POD may be described as follows:

Twsp	Rng	Mer	Sec	Q-Q	GPS Coordinates
4 S	39 E	WM	3	NE SW	45.21085, -117.86840

4. Certificate 44330 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. Consistent with OAR 690-250, for the purposes of instream leasing, an irrigation season of March 1 through October 31 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). On April 10, 2018, the Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
6. A portion of the water diverted at the POD (as described in Finding of Fact No. 3) returns to the system below the confluence of Little Creek on Catherine Creek and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for surface return flows. The Watermaster has identified a reduction of 25% below the confluence with Little Creek to mitigate for any injury as a result of the loss of any return flows.
7. Return flows resulting from the exercise of the existing right would re-enter the river below the confluence with Little Creek at approximately river mile (RM) 13.3 (SWNE of Sec. 10, T4S, R39E). To prevent injury and enlargement, the quantity of water to be protected instream has been reduced to ensure the annual volume limitation is not exceeded and to account for return flows below Little Creek.
8. The instream use is as follows:

Catherine Creek, tributary to Grande Ronde River

**Instream Reach 1:** At the authorized POD (as described in Finding of Fact No. 3) to the confluence of Little Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
44330	1870	1.00 CFS	240.0 AF	June 15 through October 13

**Instream Reach 2:** From the confluence of Little Creek with Catherine Creek at approximately RM 13.3, located in the SWNE of Sec. 10, T4S, R39E) to the mouth of Catherine Creek

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
81811	1870	0.75 CFS	180.0 AF	June 15 through October 13

9. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

10. The amount and timing of the proposed instream flow as modified is allowable within the limits and use of the original water right.
11. The protection of flows within the proposed reach is appropriate, considering:
  - a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river downstream from the POD within the reach of the instream water right. The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows.
12. 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.
13. 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.
14. The instream right established by this instream lease shall replace a portion of an instream water right, Certificate 93004, established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470
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 and Lessee have requested that the lease terminate on October 31, 2020. The lease may commence on the date this final order is signed.

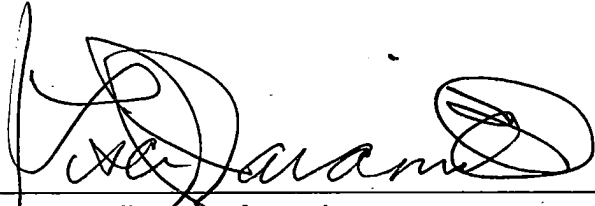
#### **Conclusions of Law**

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 October 31, 2020.

Dated at Salem, Oregon this day MAY 28 2020.

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

Mailing date: MAY 29 2020

*This document was prepared by Arla Davis. If you have any questions, please email [arla.l.davis@oregon.gov](mailto:arla.l.davis@oregon.gov)*