

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

In the Matter of Instream Lease Application	)	DETERMINATION and
IL-1413, Grant County	)	FINAL ORDER ON 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**

Mark Hoeffner  
48 Wnuk Rd.  
White Salmon, WA 98672

**Lessee**

The Freshwater Trust (TFT)  
1782 South Main Street  
Union, OR 97883  
[tony@thefreshwatertrust.org](mailto:tony@thefreshwatertrust.org)

**Findings of Fact**

1. On May 19, 2014, TFT and Mark Hoeffner filed an application to lease a portion of Certificate 87479 for instream use. The Department assigned the application number IL-1413.
2. The place of use for certificate 87479 is located on multiple tax lots. On June 25, 2014 the Department requested evidence that the footprint of the water right to be leased is contained to the applicant's property. On July 2, 2014 TFT provided a tax lot map as evidence.
3. The portion of the right to be leased has been clarified and is as follows:

**Certificate:** 87479 in the name of Bond and Margaret Jobe (perfected under the John Day River Decree, of record at Salem, in the order Record of the Water Resources Department in Volume 15, at Page 461.)

**Use:** Irrigation of 2.2 acres

**Season of Use:** April 1 through September 30

**Priority Date:** 1868

**Quantity: Rate:** 0.06 Cubic Foot per Second (CFS) prior to June 1 and  
0.03 CFS thereafter

**Volume:** 8.8 Acre-Feet (AF)

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.

**Limit:** together with the amount secured under any other right for the same lands, is limited to a diversion of one-fortieth CFS per acre irrigated to June 1 and one-eightieth thereafter; further limited to 1 AF per calendar month to June 1 and 4 AF per acre during the season April 1 to September 1, measured at the point of diversion

The quantity of water diverted at the new point of diversion shall not exceed the quantity of water available from the original point of diversion described as follows:

**Original Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	26	NW NW	HYDE DITCH: 790 FEET SOUTH AND 410 FEET EAST FROM THE NW CORNER OF SECTION 26

**Source:** Reynolds Creek, tributary to John Day River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	25	SE NW	REYNOLDS DITCH: 2400 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF SECTION 25

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	22	NE SE	2.2
<b>Total Acres</b>					<b>2.2</b>

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. At the full instream rate and volume requested, water may only be protected instream for 161 days. To prevent enlargement of the right, the requested instream use requires modification. The Department has reduced the instream rate (0.024cfs) and volume (8.7AF) to prevent enlargement and maximize the instream period (183 days).
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Reynolds Creek, tributary to the John Day River

**Instream Point:** At the authorized POD (as described in Finding of Fact No. 3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
87479	1868	0.024	8.8	April 1 – September 30

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. The protection of flows at the authorized point of diversion 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. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
- 9. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.
  - 10. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow.
  - 11. 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.
  - 12. 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.
  - 13. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
  - 14. The Lessor and Lessee have requested that the lease terminate on September 30, 2014. The lease may commence on the date this final order is signed.

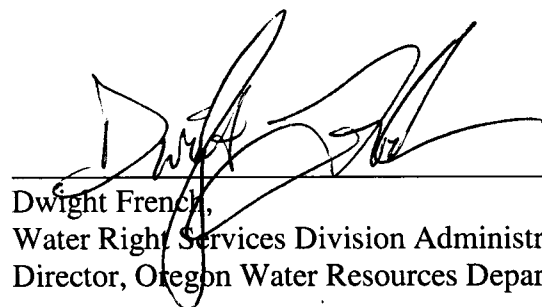
### **Conclusions of Law**

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 this right, 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 30, 2014.

Dated at Salem, Oregon this 2 day of July 2014.

  
Dwight French,  
Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

Mailing date: JUL 03 2014

*This document was prepared by  
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questions, please call 503-986-0888.*