

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1574, Certificate 55267, Jackson ) FINAL ORDER ON PROPOSED  
County ) 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**

Bill Grimm  
10670 S. Fork Little Butte Creek Road  
Eagle Point. OR 97524

**Lessee**

The Freshwater Trust (TFT)  
700 SW Taylor St., Suite 200  
Portland, Oregon 97205

**Findings of Fact**

1. On October 18, 2016, Bill Grimm and the Freshwater Trust (TFT), filed an application to renew instream lease L-44, involving a portion of Certificate 55267.
2. During the review process, the Department identified that the irrigation season, instream rate, and instream volume, identified in the Final Order approving IL-44, evidenced by Special Order Volume 78, Page 368, require modification. Therefore, the Department has assigned the application a new lease number, IL-1574, to differentiate it from the original lease.
3. The first right to be leased is as follows:

**Certificate:** 55267 in the name of Loren D. and Laura L. Bush (Confirmed by Decree at Vol. 14, page 498)

**Use:** Irrigation of 2.15 acres

**Priority Date:** February 1894

**Quantity:** **Rate:** 0.027 Cubic Foot per Second (CFS)  
**Volume:** 9.68 (AF)

**Source:** South Fork Little Butte Creek, tributary to Little Butte Creek

**Original Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distance & Survey Coordinates
37 S	3 E	WM	17	NE NW	CLAGG DITCH: SOUTH 77 DEGREES, 16 MINUTES, 908 FEET WEST FROM THE N ¼ CORNER OF SECTION 17

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.

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	3 E	WM	18	NE NE	510 FEET SOUTH AND 20 FEET WEST FROM THE NE CORNER OF SECTION 18

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
37S	3E	WM	18	NE NE	2.15

4. Certificate 55267 does not specify the irrigation season. However, the Little Butte Creek Decree establishes the irrigation season as being April 1 to October 1.
5. Certificate 55267 does not specify a rate and duty limit per acre. However, the Little Butte Creek Decree specifies the rate limit as one-eightieth of one cfs per acre and the duty limit as 4.5 AF.
6. 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.
7. The instream use is as follows:  
 South Fork Little Butte Creek, tributary to Little Butte Creek  
**Instream Reach:** From the authorized POD (as described in Finding of Fact #2) to the confluence with Little Butte Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
55267	February 1894	0.027	9.68	April 1 through September 30

8. 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 (Clagg Ditch as described in Finding of Fact #2). Stream channel losses and gains 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.
9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. 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. 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.
11. 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.
12. 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.
13. 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.
14. Based upon review of the application, comments received, 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.
15. 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.
16. The Lessor and Lessee have requested that the lease terminate on September 30, 2021. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2017, being the first day of the irrigation season.
17. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

### **Conclusions of Law**

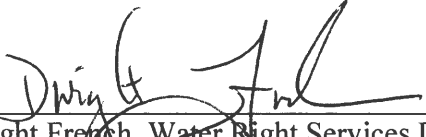
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. That the Lease as described herein is APPROVED.
2. During each year of 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 on April 1, 2017 and terminate on September 30, 2021. For multiyear leases, the lessor and 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 (April 1) 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 21 day of February 2017.

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

Mailing date: FEB 23 2017

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