

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

In the Matter of the Proposed Lease of )  
Existing Water Rights for Instream Use, )  
Certificate 38089, Klamath County )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

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**

Stephen Hess  
P.O. Box 111  
Beaty, Oregon 97621

**Findings of Fact**

1. Stephen Hess filed an application to renew L-350, involving a portion of Certificate 38089 to instream use. The Department assigned the application number IL-350.
2. The rights to be leased are as follows:

**Certificate:** 38089 in the name of W.M. and ELIZABETH WILLIAMS (perfected under Permit S-28803)

**Use:** IRRIGATION of 139.7 ACRES

**Priority Date:** NOVEMBER 9, 1962

**Rate:** 1.75 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

**Source:** WHISKY CREEK, tributary to SPRAGUE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
36 S	11 E	WM	13	SW NE	10	180 FEET WEST & 1790 FEET S FROM NW CORNER, NE 1/4 NE 1/4, SECTION 13

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	11 E	WM	12	NE SE	17	19.2
36 S	11 E	WM	12	NE SE	24	20.2
36 S	11 E	WM	12	NW SE	18	6.5
36 S	11 E	WM	12	NW SE	23	13.6
36 S	11 E	WM	12	SW SE	31	19.9
36 S	11 E	WM	12	SW SE	26	19.9

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.

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	11 E	WM	12	SE SE	32	20.2
36 S	11 E	WM	12	SE SE	25	20.2

3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.

4. The instream use is as follows  
WHISKY CREEK tributary to SPRAGUE RIVER

**Instream Reach:** From POD (as described in Finding of Fact #2) to mouth of Whiskey Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
38089	NOVEMBER 9, 1962	1.75	May 1 through August 28

5. 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. This finding is made through an abbreviated review recognizing that the 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.

6. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.

7. The lease will commence on April 1, 2008 and terminate on October 31, 2012.

8. The Lessor has 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.

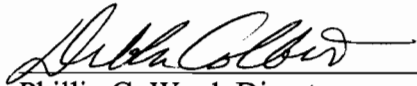
### ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any ground water registrations for the same use during the term of the lease.

3. The lease will terminate on October 31, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by April 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 15<sup>th</sup> day of February 2007.

  
BY Phillip C. Ward, Director

Mailing date: FEB 20 2007