BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1429, Klamath 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

Klamath Lake Land Trust PO Box 5142 Klamath Falls, OR 97601 Gordon@klamathlakelandtrust.org

Findings of Fact

- 1. On July 21, 2014, Klamath Lake Land Trust filed an application to lease the entirety of Certificates 46195 and 27073 for instream use. The Department assigned the application number IL-1429.
- 2. On August 13, 2014, the applicant clarified the term of the lease to be the maximum term allowed. The term of the lease has been modified from the original application to reflect a period of five years, beginning in 2014 and terminating in 2018.
- 3. During the review process, the Department identified that the place of use described in Certificate 27073 appears to contain a scrivener error. Based on the Final Proof Survey map, both Lot 9 and Lot 16 are located in the SE NE of Section 12 in Township 36 South, Range 11 East, W.M. The certificate identifies Lot 16 as being located within the SE SE of Section 12. For purposes of this lease, the place of use associated with Certificate 27073 is consistent with the final proof map.
- 4. The first right to be leased is as follows:

Certificate: 46195 in the name of

46195 in the name of John and Donna Perry (perfected under Permit S-

34932)

Use: Irrigation of 128.7 acres

Priority Date: March 3, 1970

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.

Quantity:

Rate: 1.66 Cubic Foot per Second (CFS)

Volume: 386.1 Acre-Feet (AF)

Limit: One-fortieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 AF per acre

for each acre irrigated during the irrigation season of each year.

Source:

Sprague River, tributary to the Williamson River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	11 E	WM	12	SE NW	11	700 FEET NORTH AND 575 FEET WEST FROM THE CENTER 1/4 CORNER OF SECTION 12

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
36 S	11 E	WM	12	NE NW	3	19.0
36 S	11 E	WM	12	NE NW	6	20.0
36 S	11 E	WM	12	NW NW	4	19.0
36 S	11 E	WM	12	NW NW	5	20.0
36 S	11 E	WM	12	SW NW	12	20.0
36 S	11 E	WM	12	SW NW	13	12.4
36 S	11 E	WM	12	SE NW	11	18.0
36 S	11 E	WM	12	SE NW	14	0.3
					Total Acres	128.7

5. The second right to be leased is as follows:

Certificate:

27073 in the name of George H. and Regina M. Frey (perfected under

Permit S-23466)

Use:

Irrigation of 135.0 acres

Priority Date:

March 25, 1955

Quantity:

Rate: 1.69 CFS

Volume: 405.0 AF

Limit: One-fortieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3 AF per acre

for each acre irrigated during the irrigation season of each year.

Source:

Sprague River, tributary to the Williamson River

Authorized Point of Diversion (POD):

Twr	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	11 E	WM	12	SE NE	9	Description not provided

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
36 S	11 E	WM	12	NE NE	1	19.6
36 S	11 E	WM	12	NE NE	8	19.7
36 S	11 E	WM	12	NW NE	2	20.6
36 S	11 E	WM	12	NW NE	7	21.2
36 S	11 E	WM	12	SW NE	10	21.2
36 S	11 E	WM	12	SW NE	15	15.4
36 S	11 E	WM	12	SE NE	9	14.5

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
36 S	11 E	WM	12	SE NE	16	2.8
	Total Acres					

6. Certificate 27073 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the applicant, for purposes of this instream lease, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	11 E	WM	12	SE NE	9	1,531.2 FEET SOUTH FROM THE NE CORNER OF SECTION 12

- 7. Certificates 46195 and 27073 do not specify the irrigation season. However, the Sprague River Decree establishes the irrigation season for the area as March 1 to October 1.
- 8. 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.
- 9. The Lessor has requested to protect water instream from June 1 through September 30, a 122 day period, under Certificates 46195 and 27073. At the full instream rates and volumes proposed, water may only be protected instream for 117 days under Certificate 46195 and 120 days under Certificate 27073. To prevent enlargement of the right, the requested instream use requires modification. The instream period may be shortened to prevent any enlargement and to maximize the instream use.
- 10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

 Sprague River, tributary to Williamson River

Instream Point No. 1: At the POD for Certificate 46195 (as described in Finding of Fact No. 4)

		Instream Rate	Instream	
Certificate	Priority Date	(cfs)	Volume (AF)	Period Protected Instream
46195	March 3, 1970	1.66	386.1	June 6 through September 30

Instream Point No. 2: At the POD for Certificate 27073 (as described in Finding of Fact No. 6)

			Instream Rate	Instream	
L	Certificate	Priority Date	(cfs)	Volume (AF)	Period Protected Instream
[27073	March 25, 1955	1.69	405.0	June 3 through September 30

- 11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right(s).
- 12. 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. Return flows resulting from the exercise of the existing water right would re-enter the river downstream of the points of the instream water right.
- 13. The total monthly quantities of water to be protected under the existing and proposed instream rights at the points will provide for a beneficial purpose.
- 14. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the points do not exceed the estimated average natural flow.
- 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 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.
- 18. The Lessor has requested that the lease terminate on September 30, 2018. The lease may commence on the date this final order is signed.
- 19. The Lessor has requested that there not be an option to terminate the lease.

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 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 upon approval of the instream lease and terminate on September 30, 2018. The lease may not be terminated by any party to the lease prior to the specified termination date.

Dated at Salem, Oregon this _____ day of August, 2014.

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

This document was prepared by Amy Bueno and if you have any questions, please call 503-986-0898.

Mailing date: ____AUG **2 5** 2014