

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

In the Matter of the Proposed Short-Term )  
Lease of Existing Water Rights for Instream )  
Use, Certificate 38880, Wasco and Wheeler )  
Counties )

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 short-term instream lease applications.

**Lessor**

Prineville BLM  
Attn: Anna Smith  
3050 NE 3rd Street  
Prineville, Oregon 97754

**Findings of Fact**

1. The Prineville BLM filed an application to lease a portion of Certificate 38880 to instream use. The Department assigned the application number L-606.
2. The rights to be leased are as follows:

Certificate 38880

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	19 E	WM	19	SW NE	0.10
7 S	19 E	WM	19	SE NE	13.7
7 S	19 E	WM	19	NE SE	9.5
7 S	19 E	WM	20	NW NW	1.60
7 S	19 E	WM	20	SW NW	17.6
7 S	19 E	WM	20	NW SW	14.4

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	19 E	WM	20	SW NW	3530 FT N & 880 FT E FM SW COR, S20

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.

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.

4. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

John Day River

Tributary to Columbia River in the John Day Basin

**Instream Reach:** From the POD (approximately RM 107, described in Finding of Fact #2) to McDonald Ferry Gauging Station (approximately RM 21)

Certificate	Priority Date	Instream Rate (cfs)			Period Protected Instream
		At POD	Below POD	At McDonald Ferry	
38880	April 5, 1965	0.84	0.46	0.20	April 12 to September 30

5. To prevent injury and enlargement, a 44 percent return flow factor has been applied immediately below the POD and an additional 1 percent loss per mile has been applied to account for streamflow losses.
6. 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.
7. 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.
8. The lease will terminate on September 30, 2009.
9. 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 agreement conforms to the applicable provisions of OAR 690-077-0015.

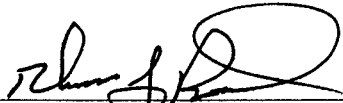
#### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.

3. The lease shall terminate on September 30, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by March 12 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 11<sup>th</sup> day of April 2005.

  
Phillip C. Ward, Director

Mailing date: APR 14 2005