

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

In the Matter of Instream Lease Application ) DETERMINATION and  
SL-30, Wasco County ) FINAL ORDER ON PROPOSED  
) INSTREAM LEASE

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

**Lessor**

Gerald H. Hawkins  
Owens and Hawkins  
PO Box 426  
Fort Klamath, OR 97626

**Lessee**

Randall Kizer  
Upper Klamath Landowner Improvement  
District (UKLID)  
421 Commercial Street  
Klamath Falls, OR 97601

**Findings of Fact**

1. On May 7, 2015, Gerald H. Hawkins and UKLID filed an application to lease a portion of Certificate 38454 for split season instream use. The Department assigned the application number SL-30.
2. The portion of the right to be leased is as follows:

**Certificate:** 38454 in the name of Thomas W. and Elizabeth Hawkins, Jack B. and Elaine Owens, Craig and Maxine Owens, c/o William L. Wales (perfected under Permit S-29027)

**Use:** IRRIGATION of 43.6 acres

**Priority Date:** July 15, 1963

**Quantity:** **Rate:** 0.87 Cubic Foot per Second (CFS)

**Volume:** 218.0 Acre-Feet (AF)

**Limit:** One-fiftieth CFS per acre, and shall not exceed 5.0 AF per acre during the irrigation season of each year

**Source:** Fort Creek, tributary to the Wood River

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	7 $\frac{1}{2}$ E	WM	26	NW NW	940 FEET SOUTH AND 960 FEET EAST FROM THE NW CORNER OF SECTION 26

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 Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
34 S	7 $\frac{1}{2}$ E	WM	1	NW SW	37.0
34 S	7 $\frac{1}{2}$ E	WM	1	NE SW	5.2
34 S	7 $\frac{1}{2}$ E	WM	2	NE SE	1.4
Total					43.6

3. Certificate 38454 does not specify the irrigation season. The Partial Order of Determination for neighboring irrigation water right claims (KL235 and KL697) identify the period of allowed use as March 1 through October 16. For purpose of this instream lease, an irrigation season of March 1 through October 16, shall be used to establish when water may be leased instream.
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. The instream lease application, as proposed, is a split season lease. Under Certificate 38454, water may be used for its existing use up to a maximum rate of 0.87 CFS and no more than 105.26 AF, consistent with the water right limits identified in Finding of Fact No. 2. The existing use period (out of stream) will be May 1 through June 30, a period of 61 days.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Port Creek, tributary to the Wood River

**Instream Point:** At POD No. 1 (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
38454	7/15/1963	0.618	112.77	July 1 through September 30

7. Other conditions to prevent injury and enlargement are:

The Watermaster shall record measurements before and after the transition from out of stream use to instream use, and as needed thereafter. The measuring device shall be a headgate at the point of diversion.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. 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 point of the instream water right.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Lessor and Lessee have requested that the lease terminate on October 1, 2016. The last day of the term of an instream lease is generally the last day in the period of allowed use (irrigation season). Consistent with Finding of Fact No. 3, the lease may terminate on October 16, 2016. 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 this lease, the place of use will continue to receive water for irrigation (up to 105.26 AF under Certificate 38454 during the period May 1 through June 30). For the remainder of the irrigation season, during the term of this lease, the former place of use will not receive water as part of this right, any supplemental rights, or any other layered water rights for irrigation use, including groundwater registrations.

3. The term of the lease will commence upon approval of the instream lease and terminate on October 16, 2016.

Dated at Salem, Oregon this 22 day of June, 2015.



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

*This document was prepared by  
Lanaya Blakely and if you have any  
questions, please call 503-986-0888.*

Mailing date: JUN 25 2015