

**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, Certificates 24599 and 31064, Klamath) County)	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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 #1
 Grant and Fred Brown
 8200 Squaw Flat Rd.
 Bonanza, OR 97623

Lessee
 Shannon Peterson
 Klamath Basin Rangeland Trust (KBRT)
 340 A Street, Suite #302
 Ashland, OR 97520
shannon.peterson@kbrt.org

Findings of Fact

1. Grant and Fred Brown and the KBRT filed an application to lease a portion of Certificates 24599 and 31064 to instream use. The Department assigned the application number L-681.
2. The rights to be leased are as follows:

Certificate: 24599
Use: Irrigation
Acres: 43.4 acres
Priority Date: July 28, 1932
Season of Use: May 1 to October 1
Quantity: Rate: 0.543 Cubic Foot per Second (CFS), being 0.497 CFS from Cherry Creek and 0.046 CFS from Tiger Lily Springs
 Duty: 130.2 Acre-Feet (AF)
Source: Cherry Creek and Tiger Lily Springs, tributaries of Fourmile Creek
Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	6 E	WM	15	SE NE	Tiger Lily Springs
34 S	6 E	WM	22	SE NE	Cherry Creek

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:

Township		Range		Meridian	Sec	1/4 1/4		Acres
34	S	6	E	W.M.	11	SW	SW	6.5
34	S	6	E	W.M.	14	NW	NW	3.0
34	S	6	E	W.M.	14	SE	NW	19.0
34	S	6	E	W.M.	14	NE	SW	14.9

Certificate: 31064
Use: Irrigation
Acres: 138.6 acres
Priority Date: November 23, 1953
Season of Use: May 1 to October 1
Quantity: Rate: 1.73 Cubic Foot per Second (CFS)
 Duty: 415.8 Acre-Feet (AF)
Source: Drainage and Seepage Water, tributary to Cherry Creek
Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
34 S	6 E	WM	11	SE NW	Unnamed Drainage and Seepage Water

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Acres
34	S	6	E	W.M.	11	SE	NW	6.4
34	S	6	E	W.M.	11	NE	SW	25.2
34	S	6	E	W.M.	11	SE	SW	24.2
34	S	6	E	W.M.	11	NW	SE	38.0
34	S	6	E	W.M.	11	SW	SE	30.0
34	S	6	E	W.M.	14	NW	NE	7.6
34	S	6	E	W.M.	14	NE	NW	7.2

- 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.
- The instream use is clarified from the lease application and is as follows:

Certificate	Priority Date	Source & Reach	Instream Rate (cfs)	Period Protected Instream
24599	7/28/1932	Cherry Creek: at the Cherry Creek POD (as described in finding of fact #2)	0.39	May 1 – Sept. 30
24599	7/28/1932	Tiger Lily Springs: at the Springs POD (as described in Finding of Fact #2)	0.04	May 1 – Sept. 30
31064	11/23/1953	Unnamed Drainage & Seepage Water: at the POD (as described in Finding of Fact #2)	1.37	May 1 – Sept. 30

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 terminate on September 30, 2005.

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, 2005.

Dated at Salem, Oregon this 15th day of August 2005.



Phillip C. Ward, Director

Mailing date: AUG 16 2005