

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

In the Matter of Instream Lease Application) DETERMINATION and
IL -1474, Klamath 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

Deming Ranch Land and Cattle, LLC
Dan Kominek, Managing Partner
2064 Camp Whitney Circle
Rocklin, CA 95765
dkominek@wildlandsinc.com

Lessee

Upper Klamath Improvement District (UKID)
Randall Kizer, President of Directors
421 Commercial St.
Klamath, OR 97601
Randal.K2T@gmail.com

Findings of Fact

1. On May 7, 2015, Deming Rand Land and Cattle LLC and the UKID filed an application to lease a portion of Certificates 9950 and 9984 for instream use. The Department assigned the application number IL-1474.
2. The portion of the first right to be leased is as follows:

Certificate: 9950 in the name of W.R. Campbell (confirmed by decree entered of record of the State Engineer, in Volume 10, at page 236)
Use: Irrigation of 151.6 acres; being 52.7 acres in Tract No. 1, 92.58 acres in Tract No. 2, and 6.32 acres in Tract 3
Priority Date: 1876 Tract 1, July 11, 1879 Tract 2, and August 28, 1883 Tract 3
Quantity: **Limit:** One-fortieth cubic foot per second (CFS) per acre prior to June 15th, and one-eightieth CFS per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1 of each year.
Source: South Fork of Sprague River, tributary to Sprague River
Authorized Point of Diversion (POD): Not Described

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:

Tract	Twp	Rng	Mer	Sec	Q-Q	Acres
1	36S	14E	WM	26	SENE	28.0
1	36S	14E	WM	26	SENE	24.7
2	36S	14E	WM	26	SWNE	40.0
2	36S	14E	WM	26	SENE	32.1
2	36S	14E	WM	26	NESE	19.78
2	36S	14E	WM	26	SESE	0.7
3	36S	14E	WM	26	NWSE	6.32
Total:						151.6

3. The portion of the second right to be leased is as follows:

Certificate: 9984 in the name of J.P. and Nora McAuliffe (confirmed by decree entered of record of the State Engineer, in Volume 10, at page 236)

Use: Irrigation of 11.79 acres

Priority Date: 1878

Quantity: **Limit:** One-fortieth cubic foot per second (CFS) per acre prior to June 15th, and one-eightieth CFS per acre after June 15th, with a total limitation of three acre feet per acre from March 1st to October 1 of each year.

Source: South Fork of Sprague River, tributary to Sprague River

Authorized Point of Diversion (POD): Not Described

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
36S	14E	WM	26	NESW	1.74
36S	14E	WM	26	NWSW	10.05
Total:					11.79

4. The certificates do not provide a description of the location of the point of diversion. Based upon additional information provided by the Department's Watermaster and the applicant, for purposes of this instream lease, the point of diversion for both certificates is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Lat/Long
26S	14E	WM	26	SESE	42° 24' 54.83" N & 121° 1' 3.49" W

5. 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.

6. The instream use is as follows:

South Fork of Sprague River, tributary to Sprague River

Instream Reach: From the POD (as described in Finding of Fact No. 4) to the confluence of the Sprague River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
9950	1876	0.370	158.10	March 1 to October 1
9950	1879	0.650	277.74	
9950	1883	0.044	18.96	
9984	1878	0.083	35.37	
Total:		1.147	490.17	

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

8. 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 reach of the instream water right.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. The Lessor and Lessee has requested that the lease terminate on October 1, 2017. The lease may commence on the date this final order is signed.

15. The Lessor and Lessee has requested the option of terminating the lease early but only with consent of all parties to the lease.

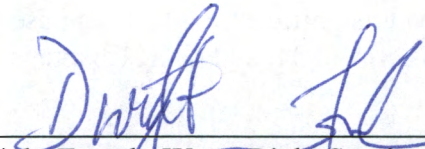
Conclusions of Law

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 October 1, 2017. The lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor and/or Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (March 1 – October 1) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 25 day of June, 2015.



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

Mailing date: JUN 26 2015

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