

**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 48391, 19752, and 21836, ) Malheur 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**

K, S, & D Lands, LLC  
 Stephen K. Barker, Managing Partner  
 P.O. Box 601  
 Ontario, Oregon 97914

**Findings of Fact**

1. K, S, & D Lands, LLC filed an application to lease a portion of Certificates 48391, 19752, and 21836 to instream use. The Department assigned the application number L-699.

2. The rights to be leased are as follows:

Certificate: 48391, 19752, and 21836

**Certificate:** 48391 in the name of U S NATIONAL BANK (perfected under Permit S-17871)

**Use:** IRRIGATION of 22.0 ACRES

**Priority Date:** AUGUST 18, 1947

**Rate:** 0.55 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 3.50 acre-feet per acre per year (77.0 acre-feet)

**Source:** SNAKE RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
19 S	47 E	WM	4	SE SE	3	190 FT N & 4240 FT E FM SW COR, S4

**Authorized Place of Use:**

**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	4	SE SW	22.0

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.

**Certificate:** 19752 in the name of WILHEMINE K SHEARMAN (perfected under Permit S-12923)

**Use:** IRRIGATION of 38.4 ACRES

**Priority Date:** JANUARY 3, 1938

**Rate:** 0.64 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-SIXTIETH cfs per acre, not to exceed 4.50 acre-feet per acre per year (172.8 acre-feet)

**Source:** SNAKE RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
19 S	47 E	WM	16	SW NE	2

**Authorized Place of Use:**

**IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	9	SE SW	7.5
19 S	47 E	WM	9	NW SE	5.2
19 S	47 E	WM	9	SW SE	15.8
19 S	47 E	WM	16	NW NE	2.7
19 S	47 E	WM	16	NE NW	7.2

**Certificate:** 21836 in the name of WILHEMINE K SHEARMAN (perfected under Permit S-22694)

**Use:** SUPPLEMENTAL IRRIGATION of 38.4 ACRES

**Priority Date:** OCTOBER 12, 1953

**Rate:** 0.07 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-FORTIETH cfs per acre, not to exceed 4.50 acre-feet per acre per year

**Source:** SNAKE RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
19 S	47 E	WM	15	SW NW	2

**Authorized Place of Use:**

**SUPPLEMENTAL IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
19 S	47 E	WM	9	SE SW	7.5
19 S	47 E	WM	9	NW SE	5.2
19 S	47 E	WM	9	SW SE	15.8
19 S	47 E	WM	16	NW NE	2.7
19 S	47 E	WM	16	NE NW	7.2

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.

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

**Instream Reach:** From POD (as described in Finding of Fact #2) to STATE LINE

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
48391	AUGUST 18, 1947	0.32	JUNE 1 THROUGH SEPTEMBER 30
19752	JANUARY 3, 1938	0.64	JUNE 1 THROUGH SEPTEMBER 30
21836	OCTOBER 12, 1953	0.07	JUNE 1 THROUGH SEPTEMBER 30

5. Certificate 21836 is supplemental to certificate 19752, to allow a rate closer to a full 1/40 cfs/ac.
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 commence on March 1, 2007 and terminate on October 31, 2011.
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 October 31, 2011. The lessor shall have the option of terminating the lease each year, with notification to the Department by February 1 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 15<sup>th</sup> day of May 2006.

  
Phillip C. Ward, Director

Mailing date:           MAY 25 2006