

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

In the Matter of Instream Lease IL-350,) DETERMINATION and
Certificate 38089, Klamath County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

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 instream lease applications.

Lessor

Stephen Hess
P.O. Box 111
Beatty, OR. 97621

Findings of Fact

1. On September 17, 2012, Stephen Hess filed an application to renew instream lease IL-350, involving a portion of Certificate 38089 for instream use. The Department assigned the application number IL-350.
2. The portion of the right to be leased is as follows:

Certificate: 38089 in the name of W.M.and Elizabeth A. Williams (perfected under Permit S-28803)
Use: Irrigation of 139.7 acres
Priority Date: November 9, 1962
Quantity
Rate: 1.75 Cubic Feet per Second (CFS)
Duty: 419.1 Acre-Feet (AF)
Limit: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: Whiskey Creek, tributary to the Sprague River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	11 E	WM	13	SW NE	10	180 FEET WEST AND 1790 FEET SOUTH FROM THE NW CORNER OF THE NENE, SECTION 13

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	GLot	Acres
36 S	11 E	WM	12	NE SE	17	19.2
36 S	11 E	WM	12	NE SE	24	20.2
36 S	11 E	WM	12	NW SE	18	6.5
36 S	11 E	WM	12	NW SE	23	13.6
36 S	11 E	WM	12	SW SE	31	19.9
36 S	11 E	WM	12	SW SE	26	19.9
36 S	11 E	WM	13	SE SE	32	20.2
36 S	11 E	WM	13	SE SE	25	20.2

3. Certificate 38089 does not specify the irrigation season. However, the recent Order of Determination for the Klamath Basin Adjudication identifies that the irrigation season for the area of the place of use is April 1 through October 31.
4. Certificate 38089 does not specify the duty limit per acre. Based upon the recent Order of Determination for the Klamath Basin Adjudication, it appears that the duty for the area of the place of use is 3.0 acre-feet per acre.
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:
Whisky Creek, tributary to Sprague River

Instream Reach: From the POD (as described in Finding of Fact #2) to the mouth of Whisky Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
38089	November 9, 1962	1.75	419.1	May 1 through August 28

7. 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.
8. 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. 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.
9. 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.

The Lessor has requested that the lease terminate on October 31, 2017. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, being the first day of the irrigation season.

10. 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 conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That 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 water rights for irrigation use, including ground water registrations and Klamath Adjudication Claims.
3. The term of the lease will commence upon approval of this instream lease and terminate on October 31, 2017. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (May 1 through August 28) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 24 day of April, 2013.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Joan
Smith and if you have any questions,
please call 503-986-0898*

Mailing date: APR 25 2013