

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1257, Certificate 8597, 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

Crystal McMahon
5264 Wicket Court
Klamath Falls, OR 97603

Lessee

Klamath Basin Rangeland Trust (KBRT)
700 Main Street, Suite 201 A
Klamath Falls, OR 97601
jbottcher@kbrt.org

Findings of Fact

1. On July 23, 2012, the KBRT and Crystal McMahon filed an application to lease a portion of Certificate 8597 for instream use in 2013. The Department assigned the application number IL-1257.
2. On April 8, 2013, the KBRT submitted request to clarify the portion of the right proposed for lease and the proposed instream period.
3. On April 23, 2013, the KBRT also submitted a revised application map and request to reduce the number of acres of irrigation proposed to be leased instream.
4. The portion of the right to be leased is as follows:

Certificate: 8597 in the name of Chas E. Drew (perfected under Permit S-5184)
Use: Irrigation of 13.7 acres
Priority Date: August 15, 1921
Quantity: **Rate:** 0.17 Cubic Foot per Second (CFS)
Limit: One-eightieth CFS per acre
Source: Whiskey Creek, tributary to the Sprague River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot
36 S	11 E	W.M.	13	NW SE	18

Authorized Place of Use:

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.

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
36 S	11 E	W.M.	10	NE SE	17	15.0

5. Certificate 8597 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.
6. Certificate 8597 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.
7. In addition, Certificate 8597 does not provided measured distances for the location of the point of diversion. Based upon additional information provided by the Department's Watermaster, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Measured Distances
36 S	11 E	W.M.	13	NW SE	18	42°44'79.45" North 121°35'61.68" West

8. 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.
9. The instream use has been modified from the original lease application and is as follows:
Whiskey Creek, tributary to the Sprague River

Instream Reach: At the POD (as described in Finding of Fact #7)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
8597	8/15/1921	0.17	41.1	July 3 through October 31

10. Other conditions to prevent injury and enlargement are:

There is a Claim, KA-114, appurtenant to all or a portion of the lands described in Finding of Fact #4. Use of water under this claim must be suspended during the term of this lease to avoid any injury or enlargement.

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, 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.
13. 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.

14. The Lessor has requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.
15. 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 Claim KA-114.
3. The term of the lease will commence upon approval of the 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 (July 3 through October 31) or after the period of allowed use has begun for the water right 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 25 day of April, 2013.



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

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: APR 25 2013

