

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

In the Matter of the Proposed Lease of )  
Existing Water Rights for Instream Use, )  
Certificates 8597 and 42409, Klamath )  
County, Oregon )

) DETERMINATION and  
) 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 #1**

Hickey Ranches, Inc.  
PO Box 67  
Merrill, OR 97633

**Lessor #2**

H7H Cattle Feeders, Inc.  
PO box 60  
Merrill, OR 97633

**Findings of Fact**

1. On March 16, 2009, Hickey Ranches and H7H Cattle Feeders filed an application to renew instream lease L-469, involving a portion of Certificates 8597 and 42409. The Department assigned the application number IL-469.
2. The portion of the first right to be leased is as follows:

**Certificate:** 8597 in the name of CHAS E. DREW  
**Use:** Irrigation of 261.5 acres  
**Priority Date:** August 15, 1921  
**Quantity:** **Rate:** 3.27 Cubic Foot per Second (CFS)  
**Limit:** One-eightieth CFS per acre  
**Source:** Whiskey Creek, tributary to the Sprague River

**Authorized Point of Diversion (POD):**

Twtp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	11 E	WM	13	NW SE	18	Not described in certificate

**Authorized Place of Use:**

Twtp	Rng	Mer	Sec	GLot	Acres	Additional Place of Use Description Provided in Application - ¼ ¼
36 S	11 E	WM	11	15	16.00	SW NE
36 S	11 E	WM	11	14	20.00	SE NW
36 S	11 E	WM	11	11	5.00	SE NW
36 S	11 E	WM	11	19	20.00	NE SW

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	GLot	Acres	Additional Place of Use Description Provided in Application - ¼ ¼
36 S	11 E	WM	11	22	20.00	NE SW
36 S	11 E	WM	11	27	20.00	SE SW
36 S	11 E	WM	11	30	20.00	SE SW
36 S	11 E	WM	11	17	12.00	NE SE
36 S	11 E	WM	11	24	20.00	NE SE
36 S	11 E	WM	11	18	20.00	NW SE
36 S	11 E	WM	11	23	20.00	NW SE
36 S	11 E	WM	11	26	20.00	SW SE
36 S	11 E	WM	11	31	16.50	SW SE
36 S	11 E	WM	11	20	20.00	SE SE
36 S	11 E	WM	11	32	12.00	SE SE

3. The coordinates to the location of the point of diversion are not identified in Certificate 8597. However, additional information provided with the lease application identifies the location of the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	11 E	WM	13	NW SE	18	SOUTH 65 DEGREES 05' EAST 1080' FROM THE CENTER OF SECTION 13

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

**Certificate:** 42409 in the name of Denis Hickey  
**Use:** Supplemental Irrigation of 142.0 acres  
**Priority Date:** December 12, 1969  
**Quantity:** **Rate:** 3.55 Cubic Foot per Second (CFS)  
**Duty:** 426.0 Acre-Feet (AF)  
**Limit:** One-fortieth CFS per acre, not to exceed 3.0 AF per acre per year  
**Source:** Sprague River, tributary to the Williamson River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
36 S	11 E	WM	11	NE SE	24	1780 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 11

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	GLot	Q - Q	Acres
36 S	11 E	WM	11	19	NE SW	0.10
36 S	11 E	WM	11	22	NE SW	9.20
36 S	11 E	WM	11	27	SE SW	19.70
36 S	11 E	WM	11	30	SE SW	19.30
36 S	11 E	WM	11	17	NE SE	0.50
36 S	11 E	WM	11	24	NE SE	16.20
36 S	11 E	WM	11	18	NW SE	4.00
36 S	11 E	WM	11	23	NW SE	10.70
36 S	11 E	WM	11	26	SW SE	20.00
36 S	11 E	WM	11	31	SW SE	13.50
36 S	11 E	WM	11	25	SE SE	18.80
36 S	11 E	WM	11	32	SE SE	10.00

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. Certificates 8579 and 42409 do not specify an irrigation season. Nor is one specified by Basin Program or decree. However, an irrigation season of March 1 through October 31 may be applied, for purposes of this lease, consistent with OAR 690-250.
7. The instream use is as follows:  
Whiskey Creek, tributary to Sprague River

**Instream Reach:** From POD (as described in Finding of Fact #3) to the mouth of Whiskey Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
8579	8/15/1921	2.5	376.2	May 1 through July 16

Sprague River, tributary to the Williamson River

**Instream Reach:** At the POD (as described in Finding of Fact #4)

Certificate	Priority Date	May 1 through July 16		July 16 through September 30	
		Instream Rate (cfs)	Instream Volume (AF)	Instream Rate (cfs)	Instream Volume (AF)
42409	12/12/1969	0.77	115.9	1.918	292.4

8. Other conditions to prevent injury and enlargement are:  
  
The source of water for Certificate 8579, Whiskey Creek, fluctuates seasonally. Supplemental Certificate 42409 is being protected instream as primary to make up deficiencies in the primary source.
9. 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.
10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on October 31, 2013.

13. 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. 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 during the term of the lease.
3. The lease will terminate on October 31, 2013. 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) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 20<sup>th</sup> day of April, 2009.

  
Phillip C. Ward, Director

Mailing date: APR 29 2009