

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1018, Certificate 35561, Klamath) FINAL ORDER ON PROPOSED
County) 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

James and Valerie Root
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Medford, OR 97501
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Lessee

Klamath Basin Rangeland Trust (KBRT)
700 Main Street, Suite 201 A
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Findings of Fact

1. On June 30, 2009, the KBRT and James and Valerie Root filed an application to lease a portion of Certificate 35561 for instream use. The Department assigned the application number IL-1018.
2. On July 29, 2009, the Lessee submitted a revised application map.
3. The portion of the right to be leased is as follows:

Certificate: 35561 in the name of US National Bank of Portland, Trustee for non-withdrawing members of the Klamath Indian Tribe

Use: Irrigation of 378.0 acres

Priority Date: October 20, 1960

Quantity: **Rate:** 7.56 Cubic Foot per Second (CFS)

Duty: 1890.0 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre, not to exceed 5.0 AF per acre per year

Source: Agency Spring, tributary to Crooked Creek (Wood River)

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
34 S	7 E	WM	18	SW SW	4	1100 FEET NORTH AND 815 FEET EAST FROM THE SW CORNER OF SECTION 18

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
34 S	7 E	WM	19	SW SW	4	24.2
34 S	7 E	WM	30	NE NW	5	2.5
34 S	7 E	WM	30	NW NW	1	31.8
34 S	7 E	WM	30	SW NW	2	37.5
34 S	7 E	WM	30	SE NW		10.7
34 S	7 E	WM	30	NW SW	3	28.1
34 S	7 E	WM	30	SW SW	4	33.0
34 S	7.5 E	WM	24	SW NE		0.5
34 S	7.5 E	WM	24	SE NE		20.0
34 S	7.5 E	WM	24	NE SE		39.7
34 S	7.5 E	WM	24	NW SE		8.3
34 S	7.5 E	WM	24	SW SE		3.9
34 S	7.5 E	WM	24	SE SE		38.6
34 S	7.5 E	WM	25	NE NE	13	13.9
34 S	7.5 E	WM	25	NE NE	12	25.5
34 S	7.5 E	WM	25	NW NE		9.0
34 S	7.5 E	WM	25	SE NE	14	10.3
34 S	7.5 E	WM	25	SE NE	15	18.7
34 S	7.5 E	WM	25	NE SE	16	4.0
34 S	7.5 E	WM	25	NE SE	17	12.6
34 S	7.5 E	WM	25	SE SE		5.2

4. Certificate 35561 does not specify the irrigation season nor is an irrigation season specified by Basin Program. An irrigation season is identified under the Wood River Decree as April 1 through September 30. For the purpose of this instream lease, an irrigation season of April 1 through September 30 may be used to establish when water may be protected instream.
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 lease application requests to protect water instream from Agency Spring into Crooked Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Agency Spring) but may be protected further if measurable in the receiving stream (Crooked Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Agency Spring is not measurable into Crooked Creek and may not be protected instream in Crooked Creek.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Agency Spring, tributary to Crooked Creek

Instream Reach #1: From the POD (as described in Finding of Fact #3) to the mouth of Agency Spring

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35561	10/20/1960	5.2	1890.0	April 1 through September 30

8. 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.
9. 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.
10. 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.
11. The Lessor has requested that the lease terminate on December 31, 2013. An instream lease may terminate on the last day of the irrigation season. The irrigation season is April 1 through September 30. This lease may terminate on September 30, 2013.
12. 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 September 30, 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 (April 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 6th day of August, 2009.


Phillip C. Ward, Director

Mailing date: AUG 13 2009