

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1500, Klamath County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications. Senate Bill (SB) 206 (Oregon Laws 2015, Chapter 445) allows determined claims in the Klamath Basin Adjudication to be leased instream.

Lessor

Quinten and Lynne Bettles
36055 Hwy 97 N
Chiloquin, OR 97624

Findings of Fact

1. On December 14, 2015, Quinten and Lynne Bettles filed an application to lease the vested portion of Klamath Adjudication Claim 276 for instream use. The Department assigned the application number IL-1500.

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

Claim: KA276 in the name of PHYLLIS MAE WALKER (Partial Order of Determination Water Right Claim 276)

Use: Irrigation of 70.5 acres and Livestock Watering

Season of Use: March 1 through October 16 for Irrigation and January 1 through December 31 for Livestock Watering

Priority Date: October 14, 1864

Quantity: **Rate:** 1.7605 Cubic Foot per Second (CFS), being; 1.76 CFS for irrigation and 0.0005 CFS for livestock watering not to exceed 312 gallons per day

Volume: 303.51 Acre-Feet (AF), being 303.15 AF for irrigation and 0.4AF for livestock watering

Limit: One-fortieth CFS per acre, not to exceed 4.3 AF per acre irrigated during the irrigation season of each year

Source: Williamson River, tributary to Upper Klamath Lake

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 Point of Diversion (POD):

POD	Twp	Rng	Mer	Sec	Q-Q	GLot
1	35S	7E	WM	9	SE SE	25

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	9	SE NE	9	2.1
35 S	7 E	WM	9	SE NE	16	3.4
35 S	7 E	WM	9	NE SE	17	4.7
35 S	7 E	WM	9	NE SE	24	9.9
35 S	7 E	WM	9	SE SE	25	16.2
35 S	7 E	WM	9	SE SE	32	11.6
35 S	7 E	WM	9	SE SE		3.3
35 S	7 E	WM	10	SW NW	3	3.5
35 S	7 E	WM	10	SW NW		2.4
35 S	7 E	WM	10	SW NW	4	3.5
35 S	7 E	WM	10	NW SW	5	4.0
35 S	7 E	WM	10	NW SW	6	2.1
35 S	7 E	WM	10	NW SW		3.3
35 S	7 E	WM	10	SW SW		0.4
35 S	7 E	WM	10	SE SE	7	0.1

3. Claim KA276 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 is described as follows:

POD	Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
1	35S	7E	WM	9	SE SE	25	581 FEET NORTH AND 90 FEET WEST FROM THE SW CORNER OF SECTION 10

4. During the review process, the Department identified an error in the place of use described in the Partial Order of Determination for Claim 276. The claim states that there is 0.1 acre in, government lot 7, within the SE SE of section 10, T.35S. R.7E. It is more accurately described as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	7 E	WM	10	SW SW	7	0.1

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:

Williamson River, tributary to Upper Klamath Lake

Instream Reach: From the POD (as described in Finding of Fact No. 3) to the mouth of the Williamson River

Claim	Priority Date	Use	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
276	10/14/1864	IR	0.665	303.15	March 1 through October 16
276	10/14/1864	LV	0.0005	0.40	January 1 through December 31

7. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
8. The protection of flows within the proposed reach is appropriate, considering:
 - a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
9. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
10. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
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, 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 claim which has been leased is later proposed to be leased again or temporarily transferred a new injury review shall be required to determine consistency with the requirements of OAR Chapter 690, Division 380, Division 077 and SB 206 (Oregon Law 2015, Chapter 445). Approval of this lease does not establish a precedent for approval of any future transactions.
14. The Lessors have requested that the lease terminate on December 31, 2020. The lease may commence on the date this final order is signed.
15. The Lessors have requested the option of terminating the lease early but only with consent of all parties to the lease.


Conclusions of Law

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077 and SB 206 (Oregon Laws 2015, Chapter 445). The lease conforms to the applicable provisions of OAR 690-077-0015.

Now, therefore it is ORDERED:

1. 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 irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2020. For multiyear leases, the lessors *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessors may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (January 1 through December 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 13 day of January, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: _____

*This document was prepared by
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questions, please call 503-986-0888.*