

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

In the Matter of Split Season Instream)
Lease Application SL-32, Klamath County) DETERMINATION and
) 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.

Lessor

Harlowe Ranch LLC
Gerald H. Hawkins, Manager
PO Box 426
Fort Klamath, OR 97626

Lessor-Co

Meadows Drainage District
Gerald H. Hawkins, Board Member
PO Box 426
Fort Klamath, OR 97626

Lessee

Upper Klamath Landowner Improvement
District (UKLID)
Randall Kizer, President
421 Commercial Street
Klamath Falls, OR 97601

Findings of Fact

1. On May 7, 2015, Harlowe Ranch LLC, Meadows Drainage District, and UKLID filed a split season application to lease a portion of Certificate 42581 for instream use. The Department assigned the application number SL-32.
2. During the review process the Department determined that the area intended to be leased required clarification before the final order could be issued. On July 13, 2015 the Department received an amended application, clarifying the applicant's intent.
3. The portion of the right to be leased is as follows:
Certificate: 42581 in the name of Meadows Drainage District (perfected under permit S-309)
Use: Irrigation of 1,411.0 acres
Priority Date: January 26, 1910

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.

Quantity: **Rate:** 17.63 Cubic Foot per Second (CFS)
Volume: 5,350.38 Acre-Feet (AF)
Limit: One-eightieth of one cubic foot per second (CFS) per acre, or its equivalent for each acre irrigated.
Source: Wood River, tributary to Agency Lake

Authorized Point of Diversion (POD):

| Twp | Rng | Mer | Sec | GLot | Measured Distances |
|------|-------|-----|-----|------|---|
| 34 S | 7.5 E | WM | 3 | 3 | 2470 FEET SOUTH AND 940 FEET EAST FROM THE NW CORNER OF SECTION 3 |

Authorized Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
|------|-------------------|-----|-----|-------|------|-------|
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NE NE | | 19.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NW NE | | 20.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SW NE | | 39.5 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SE NE | | 39.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NE NW | | 20.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SE NW | | 39.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NE SW | | 39.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SE SW | | 39.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NE SE | | 39.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | NW SE | | 39.5 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SW SE | | 37.8 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 9 | SE SE | | 39.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NE NE | 1 | 7.4 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NW NE | | 20.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SW NE | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SE NE | 2 | 28.3 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NE NW | | 20.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NW NW | | 20.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SW NW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SE NW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NE SW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NW SW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SW SW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SE SW | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NE SE | 3 | 35.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | NW SE | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SW SE | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 10 | SE SE | | 40.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 11 | SW SW | 1 | 13.6 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | NE NE | | 6.7 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | NW NE | | 28.2 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | SW NE | | 0.3 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | NE NW | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | NW NW | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | SW NW | | 35.2 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | SE NW | | 15.5 |

| Twp | Rng | Mer | Sec | Q-Q | GLot | Acres |
|--------|-------------------|-----|-----|-------|------|--------|
| 34 S | 7 $\frac{1}{2}$ E | WM | 15 | NW SW | | 2.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NE NE | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NW NE | | 37.6 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | SW NE | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | SE NE | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NE NW | | 36.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | SE NW | | 36.8 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NE SW | | 10.8 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NE SE | | 21.9 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | NW SE | | 38.0 |
| 34 S | 7 $\frac{1}{2}$ E | WM | 16 | SW SE | | 3.0 |
| Total: | | | | | | 1411.0 |

4. Certificate 42581 does not specify the irrigation season; however, the Wood River Decree establishes the irrigation season as April 1 through October 1 of each year.
5. Certificate 42581 does not specify a duty limit per acre. However, the Wood River Decree specifies the duty limit as 5.0 acre feet per acre.
6. 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.
7. The instream lease application, as proposed, is a split season lease. Under Certificate 42581, water may be used for its existing use up to a maximum rate of 17.63 CFS and no more than 2,133.08 AF, consistent with the water right limits identified in Finding of Fact No. 3. The existing use period (irrigation) will be May 1 through June 30, a period of 61 days.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Wood River, tributary to Agency Lake
Instream Point: At the POD (as described in Finding of Fact No. 3)

| Certificate | Priority Date | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|---------------------|----------------------|-----------------------------|
| 42581 | 1/26/1910 | 17.63 | 3,217.11 | July 1 through September 30 |

9. Other conditions to prevent injury and enlargement are:

The Watermaster shall record measurements before and after the transition from out of stream use to instream use, and as needed thereafter. The measuring device shall be a headgate at the point of diversion.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

11. 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 point of the instream water right.
12. 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.
13. 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.
14. 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.
15. 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.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
17. The Lessor and Lessee have requested that the lease terminate on October 1, 2016. The last day in the term of a lease is generally the last day in the irrigation season. Consistent with Finding of Fact No. 4, the lease may terminate on October 1, 2016. The lease may commence on the date this final order is signed.
18. The Lessors and Lessee have 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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the place of use may continue to receive water for irrigation (up to 2,133.08 AF under Certificate 42581) during the period May 1 through June 30. For the remainder of the irrigation season, during the term of this lease, the former place of use will not receive water as part of this right, any supplemental rights, or any other layered water rights for irrigation use, including groundwater registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 1, 2016. The lessors and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (May 1 through June 30) 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 15 day of July, 2015.



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

Mailing date: July 17 2015

*This document was prepared by
Lanaya Blakely and if you have any
questions, please call 503-986-0888.*