

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

In the Matter of the Proposed Short-Term) FINAL ORDER TERMINATING
Lease of Existing Water Rights for Instream) INSTREAM LEASE
Use, Certificate 39143, Klamath County)

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 short-term instream lease applications.

Lessor

The Nature Conservancy
821 SE 14th Avenue
Portland, Oregon 97214

Findings of Fact

1. On April 20, 2005, The Nature Conservancy filed an application to lease a portion of Certificate 39143 to instream use. The Department assigned the instream lease application number L-466.
2. The lease application requested to protect water instream for five years, terminating on October 31, 2009. A Final Order approving this lease was issued by the Department on August 8, 2005, as evidenced by Special Order Volume 66, Page 24.
3. The lease order required that the former place of use no longer receive water during the term of the lease from the rights leased instream.
4. On October 30, 2007, The Nature Conservancy used explosives to breach two miles of levees along Upper Klamath Lake. This effort was part of a project to restore the wetlands that once dominated the Williamson River Delta. The breaching of the levees caused the inundation of some of the lands leased instream under L-466.
5. The Lessor cannot keep all of the lands leased under L-466 from receiving water. Therefore, the instream lease, as exercised, does not meet the requirements of OAR 690-077-0076 (3)(f) to suspend the original use.
6. The lease was exercised during the 2005, 2006, and 2007 water use period ending on October 31, 2007.

<p>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.</p>

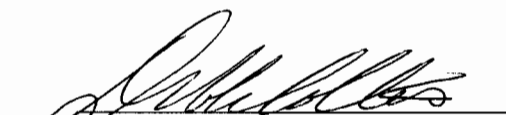
CONCLUSIONS OF LAW

Because the Lessor is unable to suspend the original use, the instream lease, as executed, results in enlargement. Consistent with OAR 690-077-0077(4), if the Department determines that a proposed lease results in injury or enlargement after the lease has been executed, the Department shall terminate the lease unless the may be modified to prevent injury or enlargement. The existing lease cannot be modified to prevent injury and enlargement.

ORDER

Therefore, it is ORDERED that the Short-Term Lease described herein is TERMINATED and no longer in effect.

Dated at Salem, Oregon this 18th day of April, 2008.


Phillip C. Ward
Director

Mailing date: APR 23 2008