

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1497, 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.

Lessor

Taylor Hyde and Becky Hatfield-Hyde
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Lessee

Upper Klamath Landowner Improvement District
421 Commercial St.
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Findings of Fact

1. On July 2, 2015, Taylor Hyde and Becky Hatfield-Hyde and Upper Klamath Landowner Improvement District filed an application to lease portions of Certificates 34772, 34775, and 34777 for instream use. The Department assigned the application number IL-1497.
2. The portion of the first right to be leased has been clarified from the lease application and is as follows:

Certificate: 34772 in the name of Homer A. and Inez V. DeLamater (perfected under permit S-26785)
Use: Irrigation of 12.54 acres
Priority Date: May 31, 1960
Quantity: **Rate:** 0.16 Cubic Foot per Second (CFS)
Volume: 37.62 Acre-Feet (AF)
Limit: One-fortieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.
Source: Sycan River, tributary to the Sprague River

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):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
36 S	12 E	WM	3	NE NE	1	320 FEET SOUTH AND 2330 FEET WEST FROM THE NE CORNER OF SECTION 3
36 S	12 E	WM	3	NW NE	2	2540 FEET NORTH AND 2520 FEET EAST FROM THE CENTER OF SECTION 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
36 S	12 E	WM	10	NW NE	2	11.89
36 S	12 E	WM	10	NW NE	7	0.65
Total						12.54

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

Certificate: 34775 in the name of Homer A. and Inez V. DeLamater (perfected under S-27972)

Use: Irrigation of 76.49 acres

Priority Date: April 9, 1962

Quantity: **Rate:** 1.91 Cubic Foot per Second (CFS)

Volume: 229.47 Acre-Feet (AF)

Limit: One-fortieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year; and the right allowed herein shall be subject to prior existing rights of the Klamath project of the B.L.M., U.S. Department of Interior.

Source: Sycan River, tributary to Sprague River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
36 S	12 E	WM	3	NE NE	1	5000 FEET NORTH AND 310 FEET EAST FROM THE S 1/4 CORNER OF SECTION 3
36 S	12 E	WM	3	NW NE	2	4770 FEET NORTH AND 1370 FEET EAST FROM THE S 1/4 CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
36 S	12 E	WM	3	NW SE	1	35.05
36 S	12 E	WM	3	SW SE	1	38.63
36 S	12 E	WM	3	SE SE	1	2.81
Total						76.49

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

Certificate: 34777 in the name of Homer A. and Inez V. DeLamater (perfected under S-30264)

Use: Irrigation of 39.25 acres

Priority Date: November 4, 1964

Quantity: **Rate:** 0.323 Cubic Foot per Second (CFS)

Volume: 117.75 Acre-Feet (AF)

Limit: One-fortieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: Sycan River, tributary to Sprague River

Authorized Point of Diversion (POD):

Twtp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
36 S	12 E	WM	3	NE NE	1	5000 FEET NORTH AND 310 FEET EAST FROM THE S 1/4 CORNER OF SECTION 3
36 S	12 E	WM	3	NW NE	2	4770 FEET NORTH AND 1370 FEET EAST FROM THE S 1/4 CORNER OF SECTION 3

Authorized Place of Use:

Twtp	Rng	Mer	Sec	Q-Q	Lot	Acres
36 S	12 E	WM	3	NW NE	1	12.26
36 S	12 E	WM	3	SW NE	1	19.10
36 S	12 E	WM	3	SW NE	2	5.62
36 S	12 E	WM	3	SE NE	1	1.92
36 S	12 E	WM	3	SE NE	2	0.35
Total						39.25

5. Certificates 34772, 34775, and 34777, do not specify the irrigation season; however, it is specified in the Sprague River Decree Volume 10, Page 236 as March 1 to October 1 of each year.
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 use has been modified from the lease application and is as follows:
Sycan River, tributary to the Sprague River

Instream Reach: From the PODs (as described in Finding of Fact Nos. 2, 3, and 4) to the confluence with the Sprague River.

Certificate	Priority Date	Instream Rate CFS	Instream Volume (AF)	Period Protected Instream
34772	May 30, 1960	0.10	37.62	April 1 through October 1
34775	April 9, 1962	0.63	229.47	
34777	Nov. 4, 1964	0.32	117.75	
Totals		2.33	384.84	

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
9. The protection of flows at the authorized points of diversion and within the proposed reach are 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.
10. 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.
 11. 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.
 12. 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.
 13. 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.
 14. 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.
 15. The Lessor and Lessee have requested that the lease terminate on October 1, 2015. The lease may commence on the date this final order is signed.
 16. The Lessor and Lessee have requested that there not be an option to terminate the lease.

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 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 October 1, 2015.

Dated at Salem, Oregon this 14 day of August, 2015.



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

Mailing date: Aug. 17 2015

This document was prepared by Joan Smith if you have question with regard to this order, please call 503-986-0892.