

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use, Certificates 42935, 42934, 42936, and)	PROPOSED INSTREAM
65386, Klamath County, Oregon)	LEASE

FINDINGS OF FACT

1. A Short-Term Lease Application, which proposed to lease all of certificates 42935, 42934, 42936, and 65386 for instream purposes was submitted to the Department by:

Lessor	Lessee
Kurt Thomas	Klamath Basin Rangeland Trust (KBRT)
5800 Georgia Dr.	340 A Street, Suite 201
Bakersfield, CA 93308	Ashland, OR 97520

2. The instream lease application included the required fees. The Department assigned this lease agreement number L-574.
3. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6) on December 23, 2003. No comments were received during the comment period.
4. The rights to be leased, as requested by the Lessor and Lessee, are as follows:

Certificate: 42935 (leasing entire right instream)
Use: Irrigation
Acres: 316.2 acres
Priority Date: September 20, 1960 for 6.03 CFS & October 20, 1960 for 0.3 CFS
Season of Use: April 1 to October 1
Quantity: Rate (limited to 1/50th Cubic foot per Second (CFS/acre): 6.33 CFS,
being 5.06 CFS from Fort Creek and 1.27 CFS from Crooked Creek
Duty (limited to 5.0 Acre-Foot (AF)/acre): 1581.0 AF
Source: Fort Creek and Crooked Creek, tributary to the Wood 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
33	S	7.5	E	W.M.	26	NW	NE	Fort Creek - 960 feet South & 1050 feet East from the NW Corner, Section 26
33	S	7.5	E	W.M.	26	NW	NW	Crooked Cr - #1 - 1260 feet South & 270 feet East from W1/4 Corner, Section 26
34	S	7.5	E	W.M.	13	NW	SE	Crooked Cr - #2 - 1510 feet North & 2210 feet West from SE Corner, Section 13

Authorized Place of Use: See Certificate 42935.**Certificate:** 42934 (leasing entire right instream)**Use:** Irrigation**Acres:** 1148.9 acres**Priority Date:** September 20, 1960**Season of Use:** April 1 to October 1**Quantity:** Rate (limited to 1/50th CFS/acre): 22.98 CFS
Duty (limited to 5.0 AF/acre): 5744.5 AF**Source:** Wood River, tributary to Agency Lake**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	Lot	1/4 1/4		Location
34	S	7.5	E	W.M.	14	5	NW	NW	30 feet South & 2450 feet West from the N1/4 Corner, Section 14

Authorized Place of Use: See Certificate 42934.**Certificate:** 42936 (leasing entire right instream)**Use:** Supplemental Irrigation (supplemental to certificates 42934 and 42935)**Acres:** 720.1 acres**Priority Date:** April 13, 1965**Season of Use:** April 1 to October 1**Quantity:** Rate (limited to 1/50th CFS/acre): 14.4 CFS
Duty (limited to 5.0 AF/acre): 3600.5 AF**Source:** Wood River, tributary to Agency Lake**Authorized Points of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
33	S	7.5	E	W.M.	26	NW	NE	1260 feet South & 270 feet East from N1/4 Corner, Section 26
34	S	7.5	E	W.M.	13	NW	SE	1510 feet North & 2210 feet West from SE Corner, Section 13

Authorized Place of Use: See Certificate 42936.

Certificate: 65386 (leasing entire right instream)
Use: Irrigation
Acres: 34.1 acres
Priority Date: April 14, 1983
Season of Use: April 1 to October 1
Quantity: Rate (limited to 1/50th CFS/acre): 0.68 CFS
 Duty (limited to 5.0 AF/acre): 170.5 AF
Source: Agency Spring, tributary to Crooked Creek and Wood River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	Lot	1/4 1/4		Location
34	S	7.5	E	W.M.	18	4	SW	SW	870 feet North & 690 feet East from the SW Corner of Section 18

Authorized Place of Use: See Certificate 65386.

5. The Department finds that the lease application requires modification in order to clarify the water rights to be leased. The following modification is needed:
 - a. The source of water for certificate 2936 was identified in the lease application as being the Wood River. However, the authorized source on the certificate is Crooked Creek.
6. Based on Finding 5 above, the rights to be leased are clarified as follows (all changes are shown in bold text):

Certificate: 42936 (leasing entire right instream)
Use: Supplemental Irrigation (supplemental to certificates 42934 and 42935)
Acres: 720.1 acres
Priority Date: April 13, 1965
Season of Use: April 1 to October 1
Quantity: Rate (limited to 1/50th CFS/acre): 14.4 CFS
 Duty (limited to 5.0 AF/acre): 3600.5 AF
Source: **Crooked Creek, tributary to the Wood River**

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
33	S	7.5	E	W.M.	26	NW	NE	1260 feet South & 270 feet East from N1/4 Corner, Section 26
34	S	7.5	E	W.M.	13	NW	SE	1510 feet North & 2210 feet West from SE Corner, Section 13

Authorized Place of Use: See Certificate 42936.

7. The application proposes to lease water for instream as follows:

Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
42935 Primary	9/20/1960	Crooked Creek PODs to Agency Lake	1.21 CFS		unspecified	302.4 AF	
		Fort Creek POD to Agency Lake	4.81 CFS			1202.1 AF	
	10/20/1960	Crooked Creek PODs to Agency Lake	0.06 CFS		unspecified	15.0 AF	
		Fort Creek POD to Agency Lake	0.24 CFS			59.98 AF	
42934 primary	9/20/1960	Wood River POD to Agency Lake	22.98 CFS		May 28 - Sept 30	5743.1 AF	
42936 supplemental	4/13/1965	Wood River POD to Agency Lake		14.04 CFS	May 28 - Sept 30		3598.8 AF
65386 primary	4/14/1983	At the Agency Spring POD	0.68 CFS		May 28 - Sept 30	170.5 AF	

8. In order to prevent injury and enlargement, the Department finds that the following modifications to the proposed lease are needed:

- a. On August 9, 2004, the Lessee clarified that water should be leased instream for certificate 42935 from May 28 through September 30.
- b. The volumes described for certificates 42934 and 42936 would limit the protection of water instream to 125 days, which is one day short of the full period requested in the application. The volumes may be increased to the full duty allowed in order to protect the full rate instream for the full period requested.
- c. For certificate 42936, the authorized source of water is Crooked Creek. This water right shares the same points of diversion as certificate 42935.
- d. The lease application requests to protect water under each of the certificates, except 65386, from their respective POD's to Agency Lake. The authorized source of water for certificate 42935 is Fort Creek and Crooked Creek. The authorized source for certificate 42936 is Crooked Creek. Each of these creeks is tributary to the Wood River, which is tributary to Agency Lake. Normally, instream water may be maintained downstream to the mouth of the source stream. However, instream water may be maintained further downstream if the quantity of water to be protected is a measurable portion of the flows in the receiving stream, in this case, the Wood River (OAR 690-077-0015 (7)). The quantity of water to be leased instream from Fort Creek (5.05 CFS) under certificate 42935 and the supplemental quantity (14.4 CFS) under certificate 42836 from Crooked Creek are measurable portions of the flows in the Wood River and may be protected to

Agency Lake. However, the quantity of water to be leased instream from Crooked Creek under certificate 42935 (1.26 CFS) is not a measurable portion of the flows in the Wood River and may not be protected past the mouth of Crooked Creek.

e. The instream reach on Crooked Creek for certificates 42935 and 42936 shall begin at the uppermost POD located in T33S, R7.5E, Section 13.

9. To clarify the amount of water that may be leased instream under each right, the Department has made the following modifications (changes shown in bold text):

Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
42935 Primary	9/20/1960	Uppermost Crooked Creek POD to the mouth of Crooked Creek	1.21 CFS		May 28 - Sept 30	302.4 AF	
		Fort Creek POD to Agency Lake	4.81 CFS			1202.1 AF	
	10/20/1960	Uppermost Crooked Creek POD to the mouth of Crooked Creek	0.06 CFS		May 28 - Sept 30	15.0 AF	
		Fort Creek POD to Agency Lake	0.24 CFS			59.98 AF	
42934 primary	9/20/1960	Wood River POD to Agency Lake	22.98 CFS		May 28 - Sept 30	5744.5 AF	
42936 supplemental	4/13/1965	Uppermost Crooked Creek POD to Agency Lake		14.04 CFS	May 28 - Sept 30		3600.5 AF
65386 primary	4/14/1983	At the Agency Spring POD	0.68 CFS		May 28 - Sept 30	170.5 AF	

10. The Department finds that certificate 42936 is supplemental to certificates 42934 and 42935. Certificate 42936 shall only be protected instream when necessary to make up a deficiency of the respective rates and duties of the primary supply under certificates 42934 and 42935 during the period for which water is being leased instream.

11. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease, as modified, will not result in injury or enlargement.

12. The lease will terminate on October 1, 2008. 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, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER


Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
42935 Primary	9/20/1960	Uppermost Crooked Creek POD to the mouth of Crooked Creek	1.21 CFS		May 28 - Sept 30	302.4 AF	
		Fort Creek POD to Agency Lake	4.81 CFS			1202.1 AF	
	10/20/1960	Uppermost Crooked Creek POD to the mouth of Crooked Creek	0.06 CFS		May 28 - Sept 30	15.0 AF	
		Fort Creek POD to Agency Lake	0.24 CFS			59.98 AF	
42934 primary	9/20/1960	Wood River POD to Agency Lake	22.98 CFS		May 28 - Sept 30	5744.5 AF	
42936 supplemental	4/13/1965	Uppermost Crooked Creek POD to Agency Lake		14.04 CFS	May 28 - Sept 30		3600.5 AF
65386 primary	4/14/1983	At the Agency Spring POD	0.68 CFS		May 28 - Sept 30	170.5 AF	

4. Certificate 42936 is supplemental to certificates 42934 and 42935. Certificate 42936 shall only be protected instream when necessary to make up a deficiency of the respective rates and duties of the primary supply under certificates 42934 and 42935 during the period for which water is being leased instream.
5. The lease will terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, prior to the lease being exercised (May 28), with 30 days written notice to the Department.

Dated at Salem, Oregon this 29th day of August 2004.


 Phillip C. Ward, Acting Director