

**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 7641, 53000, 53001, 45299, ) PROPOSED INSTREAM  
2412, 2432, 67090, 80585 and 80583, ) LEASE  
Klamath County, Oregon

**FINDINGS OF FACT**

1. A Short-Term Lease Application was submitted to the Department by:

Lessor:	Lessee:
JaCox Ranch	Klamath Basin Rangeland Trust (KBRT)
PO Box 435	340 A Street, Suite 201
Fort Klamath, OR 97626	Ashland, OR 97520

2. The Instream Lease Application (the Application) included the required fees. The Department assigned this Application lease agreement number L-480.
3. The Application proposed to lease a portion of certificate 53001 and all of certificates 53000, T-4431, 7641, 2432, 2412, 45299, and 67090 for instream purposes. Under Certificate 53001, the Lessor and Lessee (together "the Applicant") requested to lease the entire right instream with the exception of a small portion, 0.5 Cubic Foot per Second (CFS) to be used for stockwatering purposes.

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.

4. The Application proposed to lease water instream under each of the water rights identified in Finding 3 as follows:

Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
53000	1883	Shattuck Ditch POD to the Wood River	1.2 CFS 0.788 CFS		April 1 - July 19 July 20 - Sept. 30	378.0 AF	
53001	1883	Shattuck Ditch POD to the Wood River	0.69 CFS 0.379 CFS		April 1 - July 19 July 20 - Sept. 30	206.27	
T-4431	1883	Scott Ditch POD to the Wood River	3.166 CFS 2.083 CFS		April 1 - July 19 July 20 - Sept. 30	994.5 AF	
7641	6/25/1927	Scott Ditch POD to the Wood River	0.535 CFS	0.34 CFS	June 2 - Sept. 30	128.4 AF	81.6 AF
45299	6/25/1927	Scott Ditch POD to the Wood River	1.922 CFS	0.818 CFS	June 2 - Sept. 30	462.0 AF	196.5 AF
2432	6/22/1914	Scott Ditch POD to the Wood River	0.36 CFS		June 2 - Sept. 30	87.0 AF	
2412	10/22/1914	Scott Ditch POD to the Wood River	0.74 CFS-Tract 1 1.11 CFS-Tract 2		June 2 - Sept. 30	177.0 AF - T1 267.0 AF - T2	
67090	8/3/1981	Scott Ditch POD to the Wood River	0.019 CFS	2.806 CFS	April 1 - Oct. 31	9.0 AF	1347.0 AF

5. 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 open comment period, which ended January 13, 2004. On March 18, 2004, the Department received a letter from Martha Pagel, on behalf of Roger Nicholson, asserting that this proposed lease and Instream Lease Application L-479 would result in injury to water rights held by Mr. Nicholson.
6. On May 3, 2004, the Department received from the KBRT an April 30, 2004, letter from Martha Pagel, on behalf of Roger Nicholson, additionally indicating that that the proposed lease would result in enlargement of the water rights to be leased.
7. The Department reviewed Ms. Pagel's letters but did not find that the lease would result in injury or enlargement.
8. Ms. Pagel indicated in her April 30, 2004, letter that if Mr. Nicholson's concerns on Sevenmile Creek (Instream Lease Application L-479) were addressed, he would not pursue any objections to the lease of water instream in Annie Creek.
9. On August 12, 2004, Department staff met with the Applicant, Mr. Nicholson and their respective counsel. As a result of this discussion, the parties reached a stipulated agreement.

10. Based upon continued evaluation of the Application, the Department has also found the following:
- a. The instream lease application submitted to the Department, requested that a portion of water normally diverted for irrigation be left out of the lease for certificate 53001 (0.5 CFS) to supply stockwater. However, the Annie Creek decree, under which this certificate was issued, limits the diversion of water for stock or domestic purposes. The Decree states that during the irrigation season such appropriations shall not be entitled to any water for stock or domestic purposes in addition to the quantity which they are entitled to divert for irrigation. If the entire irrigation portion of the water right is being leased instream during the irrigation season, no water may be diverted for livestock use.
  - b. On June 30, 2004, the Lessee requested to amend the lease application to withdraw 40.0 acres of irrigated lands under certificate 53001 to provide for some irrigation and livestock water during the irrigation season.
  - c. The instream lease application requests to lease water under approved Transfer Application T-4413 (Special Order Volume 35, Page 365) to instream use. Since this application was filed, confirming rights for this transfer application, certificate 80582 and 80583, have been issued. The lease will be modified to appropriately describe the quantities of water to be leased instream under each of these certificates.
  - d. Pursuant to findings in the Wood River Decree, the priority dates on lands covered by certificates 45299 (permit S-8029) and 7641 (permit S-8029) should be 1900. See finding 3 of the Wood River Decree, Volume 12, Page 269. To reflect the corrections made in the Wood River Decree to the priority date of these rights, water will be leased instream under the 1900 priority date. In addition, the instream lease application identified portions of these certificates as being supplemental to certificates 10900, 2412 and 80582 (formerly described as T-4413). Certificates 10900 and 80582 have priority dates of 1898 and are considered primary. However, certificate 2412 has a priority date of 1914 and is considered supplemental for the purposes of this lease. The instream lease will be modified to clarify the quantities of water to be leased instream under certificate 45299 and 2412, including primary and supplemental quantities.
  - e. The 4.5 acres described as supplemental for certificate 45299 in the SE 1/4 SE 1/4, Section 1, Township 33 South, Range 6 East, appears to be appurtenant to lands covered by certificate 2412 rather than certificate 80582. Given the above finding, these 4.5 acres will be considered primary for certificate 45299 and supplemental for certificate 2412.
  - f. The irrigation season described in the lease application for each right needs clarification. The irrigation season under the Anna Creek Decree is May 1 through October 31, unless otherwise specified on the certificate.
  - g. The quantities of supplemental water to be leased instream under certificate 67090 required clarification. Portions of this certificate are supplemental to certificates 53001, 80582 (T-4413) and 80583 (T-4413). The applicant requested that water be leased instream when needed to make up a deficiency in these primary rights. While each of these certificates has an 1883 priority date, the quantity of associated supplemental water

for each certificate needs to be described. In addition, certificate 67090 has one allowed rate prior to July 20<sup>th</sup> and another allowed rate after July 20<sup>th</sup> for supplemental irrigation. The information provided in the Application does not reflect this rate change and the lease will be modified to reflect this rate change.

11. Based upon continued evaluation and findings made in Finding 10 above, the Department has determined that the lease application requires modification in order to clarify water rights to be leased. The rights to be leased are clarified as follows (all changes to the Application are shown in bold text):

**Certificate:** 53000 (no modifications made to the description of this certificate)  
**Use:** Irrigation, domestic and stock (the applicant requested to lease the entire right instream)  
**Acres:** 126.0 acres  
**Priority Date:** 1883  
**Season of Use:** April 1 through October 31  
**Quantity:** Rate: April 1 to July 20: 1.575 CFS  
 July 20 through October 31: 0.788 CFS  
 Duty: 378.0 AF  
**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	NE	SW	Shattuck Ditch - 1850 feet North and 1650 feet East from the SW Corner, Section 31

**Authorized Place of Use:**

Township	Range	Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	7.5	E	W.M.	6 SW NW	1883	28.0
33	S	7.5	E	W.M.	6 NW SW	1883	21.3
33	S	7.5	E	W.M.	6 SW SW	1883	36.7
33	S	7.5	E	W.M.	6 SE SW	1883	40.0
Total acres							126.0

**Certificate:** 53001  
**Use:** Irrigation, domestic and stock (a portion of the right is being leased instream)  
**Acres:** 99.5 acres  
**Priority Date:** 1883  
**Season of Use:** April 1 through October 31  
**Quantity:** Rate: April 1 to July 20: 1.254 CFS  
 July 20 through October 31: 0.627 CFS  
 Duty: 298.5 AF  
**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	NE	SW	Shattuck Ditch - 1850 feet North and 1650 feet East from the SW Corner, Section 31

**Authorized Place of Use:**

Township	Range	Meridian	Sec	1/4 1/4		Priority Date	Acres		
33	S	6	E	W.M.	12	NE	NE	1883	1.0
33	S	6	E	W.M.	12	SE	NE	1883	21.8
33	S	6	E	W.M.	12	NE	SE	1883	36.7
33	S	6	E	W.M.	12	SE	SE	1883	40.0
								Total acres	<b>99.5</b>

**Certificate:** 80582 (issued based on approved transfer T-4431 and together with certificate 53000 supersede certificate 1098)

**Use:** Irrigation, stockwater and domestic (the applicant requested to lease the entire right instream)

**Acres:** 34.0 acres

**Priority Date:** 1883

**Season of Use:** April 1 through October 31

**Quantity:** Rate: April 1 to July 20: **0.425 CFS**  
 July 20 - Oct. 31: **0.212 CFS**

(if available at the original point of diversion, described as the Shattuck Ditch)

**Duty: 102.0 AF**

**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

**Authorized Place of Use:**

Township	Range	Meridian	Sec	1/4 1/4		Priority Date	Acres		
33	S	6	E	W.M.	1	SE	SE	1883	12.0
33	S	7.5	E	W.M.	6	NW	SW	1883	18.7
33	S	7.5	E	W.M.	6	SW	SW	1883	3.3
								Total acres	<b>34.0</b>

**Certificate:** 80583 (issued based on approved transfer T-4431 and together with certificate 53001 supersede certificate 1088)  
**Use:** Irrigation, stockwater and domestic (the applicant requested to lease the entire right instream)  
**Acres:** 297.5 acres  
**Priority Date:** 1883  
**Season of Use:** April 1 through October 31  
**Quantity:** Rate: April 1 to July 20: 3.742 CFS  
July 20 - Oct. 31: 1.871 CFS  
(if available at the original point of diversion, described as the Shattuck Ditch)  
**Duty:** 891.0 AF  
**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	6	E	W.M.	12	NE	NE	1883	36.0
33	S	6	E	W.M.	12	SE	NE	1883	18.2
33	S	6	E	W.M.	12	NE	SW	1883	40.0
33	S	6	E	W.M.	12	SE	SW	1883	40.0
33	S	6	E	W.M.	12	NE	SE	1883	3.3
33	S	6	E	W.M.	12	NW	SE	1883	40.0
33	S	6	E	W.M.	12	SW	SE	1883	40.0
33	S	6	E	W.M.	13	NW	NE	1883	40.0
33	S	6	E	W.M.	13	NE	NW	1883	40.0
								<b>Total acres</b>	<b>297.5</b>

**Water Right:** Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299)

**Use:** Irrigation (the applicant requested to lease the entire right instream)  
**Acres:** 219.5 acres, being 203.1 acres of primary irrigation and 16.4 acres of supplemental irrigation (supplemental to certificate 10900 - for the purpose of this lease)

**Priority Date:** 1900

**Season of Use: Primary:** May 1 through October 31 (based upon Anna Creek Decree)

**Supplemental:** April 1 to October 1 (legal season for certificate 10900)  
**Quantity:** Rate: 2.74 CFS, being 2.54 CFS for primary irrigation and 0.2 CFS for supplemental irrigation

Duty: 658.5 AF, being **609.3** AF for primary irrigation and **49.2** AF for supplemental irrigation

**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location		
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31		

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres
33	S	6	E	W.M.	1	NE	NE	6/25/1927	20.0	
33	S	6	E	W.M.	1	SE	NE	6/25/1927	20.0	
33	S	6	E	W.M.	1	NE	SE	6/25/1927	20.0	
33	S	6	E	W.M.	1	SE	SE	6/25/1927	<b>4.5</b>	
33	S	6	E	W.M.	1	SW	SE	6/25/1927	<b>31.0</b>	
33	S	6	E	W.M.	12	NW	SW	6/25/1927	10.0	
33	S	6	E	W.M.	12	SW	SW	6/25/1927	20.0	
33	S	6	E	W.M.	13	NW	NW	6/25/1927	40.0	
33	S	6	E	W.M.	13	SE	NW	6/25/1927	12.0	
33	S	6	E	W.M.	13	SE	NE	6/25/1927	<b>13.6</b>	<b>16.4</b>
33	S	7.5	E	W.M.	6	SW	NW	6/25/1927	12.0	
<b>Total acres</b>									<b>203.1</b>	<b>16.4</b>

**Water Right:** Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641)

**Use:** Irrigation (the applicant has requested to lease the entire right instream)

**Acres:** 70.0 acres, being 42.8 acres of primary irrigation and 27.2 acres of supplemental irrigation (supplemental to certificate 10900)

**Priority Date:** 1900

**Season of Use: Primary:** May 1 through October 31 (based upon Anna Creek Decree)

**Supplemental:** April 1 to October 1 (legal season for certificate 10900)

**Quantity:** 0.88 Cubic Foot per Second (CFS) (limited to 1/80<sup>th</sup> CFS per acre), being 0.54 CFS for primary irrigation and 0.34 CFS for supplemental irrigation  
 Duty (limited to 3.0 Acre-Feet (AF) per acre by decree): 210 AF, being 128.4 AF for primary irrigation and 81.6 AF for supplemental irrigation

**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location		
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31		

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres
33	S	7.5	E	W.M.	18	NE	SW	6/25/1927	30.8	9.2
33	S	7.5	E	W.M.	18	NW	SW	6/25/1927	12.0	4.0
33	S	7.5	E	W.M.	18	SE	SW	6/25/1927		14.0
								Total acres	42.8	27.2

**Certificate:** 2432  
**Use:** Irrigation (the applicant has requested to lease the entire right instream)  
**Acres:** 29.0 acres  
**Priority Date:** June 22, 1914  
**Season of Use:** May 1 through October 31 (Anna Creek Decree)  
**Quantity:** Rate: 0.36 CFS  
Duty: 87.0 AF  
**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	6	E	W.M.	12	NE	NW	6/22/1914	3.0
33	S	6	E	W.M.	12	SE	NW	6/22/1914	26.0
								Total acres	29.0

**Certificate:** 2412  
**Use:** Irrigation (the applicant has requested to lease the entire right instream)  
**Acres:** 148.0 acres, being:  
59 acres in Tract 1: **Primary: 28.0 acres**  
**Supplemental: 31.0 acres**  
(supplemental to the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299))  
89 acres in Tract 2: **Primary: 84.5 acres**  
**Supplemental: 4.5 acres**  
(supplemental to the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299))  
**Priority Date:** October 22, 1914 for Tract 1 and June 22, 1914 for Tract 2  
**Season of Use:** May 1 through October 31 (based upon Anna Creek Decree)



**Quantity:** 1.85 CFS, being:  
0.74 CFS for tract 1: **Primary: 0.35 CFS**  
**Supplemental: 0.39 CFS**  
1.11 CFS for Tract 2: **Primary: 1.06 CFS**  
**Supplemental: 0.05 CFS (for purposes of this lease)**

Duty: 444.0 AF, being  
177 AF for Tract 1: **Primary: 84.0 AF**  
**Supplemental: 93.0 AF**  
267 AF for Tract 2: **Primary: 253.5 AF**  
**Supplemental: 13.5 AF**

**Source:** Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location	
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31	

**Authorized Place of Use Tract 1:**

Township	Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres
33	S	6	E	W.M.	1	SW	SE	10/22/1914	31.0
33	S	6	E	W.M.	1	SE	SE	10/22/1914	23.0
33	S	6	E	W.M.	12	NW	NE	10/22/1914	5.0
<b>Total acres</b>								<b>28.0</b>	<b>31.0</b>

**Authorized Place of Use Tract 2:**

Township	Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres
33	S	6	E	W.M.	1	SW	SE	6/22/1914	9.0
33	S	6	E	W.M.	1	SE	SE	6/22/1914	0.5
33	S	6	E	W.M.	12	NW	NE	6/22/1914	35.0
33	S	6	E	W.M.	12	SW	NE	6/22/1914	40.0
<b>Total acres</b>								<b>84.5</b>	<b>4.5</b>

**Certificate:** 67090

**Use:** Irrigation and supplemental irrigation (the applicant requested to lease the entire right instream)

**Acres:** 452.0 acres, being 3.0 acres for primary irrigation and 449.0 acres for supplemental irrigation (**12.0 acres supplemental to certificate 80582, 139.5 acres supplemental to certificate 53001, and 297.5 acres supplemental to certificate 80583**)

**Priority Date:** August 3, 1981

**Season of Use: Primary:** May 1 through October 31 (based upon Anna Creek Decree)

**Supplemental:** April 1 through October 31 (legal season for certificates 80583, 53001, 80583)

**Quantity:**      **Rate:**      **cumulative total of 2.81 CFS, being**  
**0.038 CFS for primary irrigation (limited to 1/80<sup>th</sup> CFS/acre) and**  
**2.81 CFS for supplemental irrigation, being**  
**April 1 through July 20 (for purposes of this lease,**  
**limited to 1/159.8<sup>th</sup> CFS/acre)**  
**0.075 CFS supplemental to certificate 80582**  
**0.873 CFS supplemental to certificate 53001**  
**1.862 CFS supplemental to certificate 80583**  
**July 21 through October 31 (1/160<sup>th</sup> CFS/acre)**  
**0.075 CFS supplemental to certificate 80582**  
**0.872 CFS supplemental to certificate 53001**  
**1.859 CFS supplemental to certificate 80583**

**Duty (limited to 3.0 AF per acre):**  
1356 AF, being  
9.0 AF for primary irrigation and  
1347.0 AF for supplemental irrigation, **being**  
**36.0 AF supplemental to certificate 80582**  
**418.5 AF supplemental to certificate 53001**  
**892.5 AF supplemental to certificate 80583**

**Source:**      Annie Creek (or Anna Creek), tributary to the Wood River

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	1/4 1/4		Location	
32	S	7.5	E	W.M.	31	SW	NW	3650 feet North and 460 feet East from the SW Corner, Section 31	

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres 53001	Supp. Acres 80582	Supp. Acres 80583
33	S	6	E	W.M.	1	NE	NE	8/3/1981			12.0	
33	S	6	E	W.M.	12	NE	NE	8/3/1981	3.0	1.0		36.0
33	S	6	E	W.M.	12	SE	NE	8/3/1981		21.8		18.2
33	S	6	E	W.M.	12	NE	SW	8/3/1981				40.0
33	S	6	E	W.M.	12	SE	SW	8/3/1981				40.0
33	S	6	E	W.M.	12	NE	SE	8/3/1981		36.7		3.3
33	S	6	E	W.M.	12	NW	SE	8/3/1981				40.0
33	S	6	E	W.M.	12	SW	SE	8/3/1981				40.0
33	S	6	E	W.M.	12	SE	SE	8/3/1981		40.0		
33	S	6	E	W.M.	13	NE	NE	8/3/1981		40.0		
33	S	6	E	W.M.	13	NW	NE	8/3/1981				40.0
33	S	6	E	W.M.	13	NE	NW	8/3/1981				40.0
<b>Total acres</b>									<b>3.0</b>	<b>139.5</b>	<b>12.0</b>	<b>297.5</b>

12. To clarify the amount of water that may be leased instream under each right, the Department finds that modifications to the lease are necessary. Many of the changes made have been made to reflect the clarifications made to the water rights to be leased, as described in Finding 11 above. All modifications are shown in bold text:

Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
53000	1883	Shattuck Ditch POD to the Wood River	1.2 CFS 0.788 CFS		April 1 - July 19 July 20 - Sept. 30	378.0 AF	
53001	1883	Shattuck Ditch POD to the Wood River	<b>0.952 CFS</b> <b>0.627 CFS</b>		April 1 - July 19 July 20 - Sept. 30	<b>298.5 AF</b>	
<b>80582</b>	1883	Scott Ditch POD to the Wood River	<b>0.327 CFS</b> <b>0.212 CFS</b>		April 1 - July 19 July 20 - Sept. 30	<b>102.0 AF</b>	
<b>80583</b>	1883	Scott Ditch POD to the Wood River	<b>2.84 CFS</b> <b>1.871 CFS</b>		April 1 - July 19 July 20 - Sept. 30	<b>892.5 AF</b>	
<b>Wood River Decree, Volume 12, Page 269, Finding 3</b>	<b>1900</b> <b>(see also cert. 7641)</b>	Scott Ditch POD to the Wood River	0.535 CFS	0.34 CFS	June 2 - Sept. 30	128.4 AF	81.6 AF
<b>Wood River Decree, Volume 12, Page 269, Finding 3</b>	<b>1900</b> <b>(see also cert. 45299)</b>	Scott Ditch POD to the Wood River	<b>2.54 CFS</b>	<b>0.2 CFS</b>	June 2 - Sept. 30	<b>609.3 AF</b>	<b>49.2 AF</b>
2432	6/22/1914	Scott Ditch POD to the Wood River	0.36 CFS		June 2 - Sept. 30	87.0 AF	
2412	10/22/1914	Scott Ditch POD to the Wood River	<b>0.35 CFS-Tract 1</b> <b>1.06 CFS-Tract 2</b>	<b>0.39 CFS-T1</b> <b>0.05 CFS-T2</b>	June 2 - Sept. 30	<b>84.0 AF - T1</b> <b>253.5 AF - T2</b>	<b>93.0 AF - T1</b> <b>13.5 AF - T2</b>
67090	8/3/1981	Scott Ditch POD to the Wood River	<b>0.025 CFS</b>	<b>Cert 80582 - 0.74 CFS</b> <b>Cert 53001 0.865 CFS</b> <b>Cert 80583 1.845 CFS</b>	<b>Primary:</b> <b>May 1 - Oct 31</b> <b>Supplemental:</b> <b>April 1 - July 20</b> <b>July 21 - Sept. 30</b>	9.0 AF	<b>Cert 80582 - 36.0 AF</b> <b>Cert 53001 418.5 AF</b> <b>Cert 80583 892.5 AF</b>

13. The Department finds that a portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) is supplemental to certificate 10900 (see Instream Lease L-479). The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.

14. The Department finds that a portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) is supplemental to certificate 10900 (see Instream Lease L-479). The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.
15. The Department finds that a portion of certificate 2412 is supplemental to the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299). The portion of certificate 2412 being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.
16. The Department finds that a portion of certificate 67090 is supplemental to certificates 53001, 80582 and 80583. The portion of certificate 67090 being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the respective rates and duties of the primary supply under certificates 53001, 80582 and/or 80583 during the period for which water is being leased instream.
17. Based upon review of the application, comments received, 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.
18. The lease will terminate on October 31, 2008. The lessor has requested the option of terminating the lease early, prior to the lease being exercised (April 1), with 30 days written notice to the Department.

### **CONCLUSIONS OF LAW**

The Department concludes that the lease, as modified above, will not result in injury or enlargement, pursuant to OAR 690-077-0077.

### **ORDER**

Therefore, it is ORDERED:

1. That Short-Term Lease L-480 described herein is APPROVED.
2. The authorized place, as described in the instream lease application and as modified in Finding 11 in the Findings of Fact Section, of use shall not be irrigated during the term of this lease under certificates 53000, 53001, 80582, 80583, 2431, 2412, 67090, and Wood River Decree, Volume 12, Page 269, Finding 3.

3. Water is leased instream as follows:

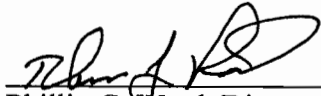
Certificate	Priority Date	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream	Primary Vol. Instream	Supp. Volume Instream
53000	1883	Shattuck Ditch POD to the Wood River	1.2 CFS 0.788 CFS		April 1 - July 19 July 20 - Sept. 30	378.0 AF	
53001	1883	Shattuck Ditch POD to the Wood River	0.952 CFS 0.627 CFS		April 1 - July 19 July 20 - Sept. 30	298.5 AF	
80582	1883	Scott Ditch POD to the Wood River	0.327 CFS 0.212 CFS		April 1 - July 19 July 20 - Sept. 30	102.0 AF	
80583	1883	Scott Ditch POD to the Wood River	2.84 CFS 1.871 CFS		April 1 - July 19 July 20 - Sept. 30	892.5 AF	
Wood River Decree, Volume 12, Page 269, Finding 3	1900 (see also cert. 7641)	Scott Ditch POD to the Wood River	0.535 CFS	0.34 CFS	June 2 - Sept. 30	128.4 AF	81.6 AF
Wood River Decree, Volume 12, Page 269, Finding 3	1900 (see also cert. 45299)	Scott Ditch POD to the Wood River	2.54 CFS	0.2 CFS	June 2 - Sept. 30	609.3 AF	49.2 AF
2432	6/22/1914	Scott Ditch POD to the Wood River	0.36 CFS		June 2 - Sept. 30	87.0 AF	
2412	10/22/1914	Scott Ditch POD to the Wood River	0.35 CFS-Tract 1 1.06 CFS-Tract 2	0.39 CFS-T1 0.05 CFS-T2	June 2 - Sept. 30	84.0 AF - T1 253.5 AF - T2	93.0 AF - T1 13.5 AF - T2
67090	8/3/1981	Scott Ditch POD to the Wood River	0.025 CFS	Cert 80582 - 0.74 CFS Cert 53001 0.865 CFS Cert 80583 1.845 CFS	Primary: May 1 - Oct 31 Supplemental: April 1 - July 20 July 21 - Sept. 30	9.0 AF	Cert 80582 - 36.0 AF Cert 53001 418.5 AF Cert 80583 892.5 AF

4. A portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) is supplemental to certificate 10900. The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.
5. A portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) is supplemental to certificate 10900. The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see

certificate 7641) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.

6. A portion of certificate 2412 is supplemental to the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299). The portion of certificate 2412 being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.
7. A portion of certificate 67090 is supplemental to certificates 53001, 80582 and 80583. The portion of certificate 67090 being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the respective rates and duties of the primary supply under certificates 53001, 80582 and/or 80583 during the period for which water is being leased instream.
8. 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 (April 1), with 30 days written notice to the Department. In addition, the lease may be modified by the parties as provided in Paragraph VII. of the Stipulated Agreement, or the lease shall be terminated by the Department, as provided therein, if the lease is determined by the Department to result in injury or enlargement that cannot be prevented by modifying the lease terms.

Dated at Salem, Oregon this 5<sup>th</sup> day of JANUARY 2005.

  
Phillip C. Ward, Director